



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

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, Lead Analyst; Chris Gonzales, Commission Assistant; Simon Russell, Enforcement Chief.

City Attorney Staff: Trish Shafie, 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](mailto:ethicscommission@oaklandca.gov) for assistance filing a complaint.

### **ACTION ITEMS**

- 4. Approval of Commission Meeting Draft Minutes.**
  - a. August 9, 2023, Regular Meeting Minutes ([Meeting Minutes](#))
  - b. August 25, 2023 Special Meeting Minutes – Retreat ([Meeting Minutes](#))
- 5. Adoption of Revised Complaint Procedures and Penalty Guidelines Relating to Streamline and Diversion Programs.** The Commission will consider adopting amendments to the PEC Complaint Procedures and Penalty Guidelines re: expanding the types of violation eligible for streamline settlement; authorizing the Executive Director to enter streamlined settlement agreements on their own authority; and authorizing use of diversion to resolve streamlined cases. ([Staff Memo](#); [Redline of amendments to PEC Complaint Procedures](#); [Redline of amendments to PEC Penalty Guidelines](#); [PowerPoint Presentation](#))



6. **Adoption of Lobbying and Campaign Finance Late Filing Fee Waiver Guidelines.** The Commission will consider adopting guidelines for when the Executive Director may waive per diem filing fees for the late filing of lobbying statements and campaign finance statements and procedures for late filers to appeal the Executive Director's decision. ([Staff Memo](#); [Draft Guidelines](#).)
7. **Pursuing Grant Funding Opportunities to Support the Democracy Dollars Program.** The Commission will consider authorizing Staff to apply for a grant from the Evelyn and Walter Haas, Jr. Fund to hire or contract for a Democracy Dollars outreach and education specialist. ([Staff Memo](#))
8. **Amendment to the PEC's Limited Public Financing Act of 2024 Proposal.** The Commission will consider amending its proposal for establishing a limited public financing program in 2024, adopted at its August 9, 2023, meeting, to remove the \$155,000 cap in program funding. ([Staff Memo](#); [Draft Resolution](#); [Exhibit A](#))

## DISCUSSION ITEMS

9. **Presentations on Voter Guide Models.** Executive Director Heidorn will present on different types of voter guides used in Oakland, Seattle, and elsewhere, and share a tentative timeline for the PEC piloting a voter guide for the 2024 election. Sharon Stone, the Membership and Technology Manager for the League of Women Voters of California, will present on the League's Voter's Edge online guide. ([Director Heidorn's presentation](#); [Stone's presentation](#).)
10. **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. ([Subcommittee formation memo](#); [September 26, 2023, Meeting Minutes](#).)
  - 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. ([Subcommittee formation memo](#); [September 8, 2023, Meeting Minutes](#))
11. **Commissioner Recruitment.** The Commission is recruiting to fill one Commission appointed vacancy that will occur in January 2024. A second vacancy to occur at the same time will be due to the appointment of a new City Clerk and a new report



updating the Commission on the status of applications and the next steps for filling the vacancy; the announcement and application that is being distributed widely via the Commission's website, email distribution lists, social media, and other channels; and a recruitment flyer. ([Recruitment Report](#); [Announcement and Application](#); [Recruitment Flyer](#))

- 12. Discussion of Options for Setting the Mayor's Salary.** The Commission will discuss whether the responsibility for setting the Mayor's salary should be transferred from the City Council to the Commission and, if so, what factors the Commission should follow or consider in setting the Mayor's salary. ([Staff Memo](#))

### **INFORMATION ITEMS**

- 13. Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting. ([Disclosure Report](#))
- 14. Enforcement Program.** Enforcement Chief Simon Russell provides a summary of the Commission's enforcement process, caseload, planned updates to caseload reports, Form 700 enforcement, staffing and caseload management, data security, enforcement-related litigation, and case closures or dismissals. ([Enforcement Report with attachment: PEC 23-30 Notice of Complaint Dismissal \(re Christopher Scyphers\)](#))
- 15. Executive Director's Report.** Executive Director Nicolas Heidorn reports on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives not covered in other staff reports. The Director's report includes a discussion of the near and mid-term priorities that came out of the PEC's August retreat. The Director's report also includes updates on waived late filing fees and late filing fees exceeding \$,1000. ([Executive Director's Report](#))
- 16. Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

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

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 submit written comments to [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov).

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Regular Commission Meeting  
Hearing Room 1  
Wednesday, October 11, 2023  
6:30 p.m.



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://uso2web.zoom.us/j/84356782713> 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://uso2web.zoom.us/j/84356782713>

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](mailto:ethicscommission@oaklandca.gov) or visit our webpage at [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec).

*Nicolas Heidorn*

9/29/23

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Approved for Distribution

Date

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Regular Commission Meeting  
Hearing Room 1  
Wednesday, October 11, 2023  
6:30 p.m.



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](mailto:ethicscommission@oaklandca.gov) or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

郵 [ethicscommission@oaklandca.gov](mailto: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](mailto:ethicscommission@oaklandca.gov) or hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

# Item 4a - Meeting Minutes

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
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Wednesday, August 9, 2023  
6:30 p.m.

DRAFT



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, Lead Analyst; Chris Gonzales, Commission Assistant; Ana Lara-Franco, Commission Analyst; Simon Russell, Enforcement Chief.

City Attorney Staff: Trish Shafie, Deputy City Attorney.

## **PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES**

### **1. Roll Call and Determination of Quorum.**

The meeting was called to order at 6:31 p.m.

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

Staff present: Nicolas Heidorn, Suzanne Doran, Chris Gonzales, Simon Russell.

City Attorney Staff: Tricia Shafie.

### **2. Staff and Commission Announcements.**

Micik announced that the Public Ethics Commission (PEC) will have its annual PEC Retreat on August 25, 2023. The PEC will be taking a recess in September, so the regular PEC meeting will be cancelled.

### **3. Open Forum.**

Public Comment: David Shor.

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](http://www.oaklandca.gov/pec).

## **ACTION ITEMS**

### **4. Approval of Commission Meeting Draft Minutes.**

Hill moved, and Steele seconded to approve the July 12, 2023, minutes.

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

Noes: None.

Vote: Passed 6-0

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Public Comment: None.

## 5. Amendments to the Lobbyist Registration Act.

Executive Director Nicolas Heidorn presented staff's proposal that the PEC recommend that the City Council amend the Lobbyist Registration Act (LRA) to incorporate the annual registration fee recently adopted in the Master Fee Schedule; waive or reduce the annual registration fee for some lobbyists; place a cap on lobbyist report late filing fees; modify the quarterly lobbyist report filing schedule; require that lobbyists attend a training on the LRA; authorize the PEC to require additional information in quarterly reports; and other changes. Director Heidorn noted an error in the chart on page 11 of the staff report, which indicated that the lobbyist registration fee for lobbyists employed by small businesses or organizations would be reduced to \$200, when the proposal is for the fee to be reduced to \$100.

Director Heidorn also proposed the following amendment to the recommended draft ordinance language:

In Subsection D of Section 3.20.045, delete the following sentence: "Failure to file the signed declaration required by this section within 60 days of the local governmental lobbyist's initial registration shall constitute a violation of this Act." so that that subsection as amended reads as follows:

D. The Public Ethics Commission may invalidate a registration for failure to comply with this section.

Commissioners discussed the proposed recommendations.

Commissioner Perteet moved and Hill seconded a motion to approve the staff recommendation as stated in the agenda packet, with the additional changes proposed by Director Heidorn at the meeting relating to lobbyist training, and also amending the proposal to allow lobbyists employed by 501 (c) (4) organizations with less than \$750,000 in annual revenue to qualify for a lobbyist registration fee waiver on the same basis as lobbyists employed by 501 (c) (3) organizations with less than \$750,000 in annual revenue.

Ayes: Gage, Perteet.

Noes: Micik, Hill, Steele, and Upton IV

Vote: Failed 2-4

Public Comment: None.

Micik moved and Upton IV seconded a motion to adopt the staff recommendation for the

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amendment to the LRA with the additional change recommended by Director Heidorn at the meeting.

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

Noes: Perteet.

Vote: Passed 5-1.

Public Comment: None.

## 6. Limited Financing Act of 2024.

Director Heidorn presented the staff proposal that the Commission adopt a resolution recommending to the City Council that it establish a limited campaign public financing program in an amount not to exceed \$155,000 for the 2024 election cycle only, as well as to authorize the PEC to pilot a voter guide in the 2024 election cycle.

Director Heidorn noted that there was a typo in the draft ordinance language and recommended the following change to Exhibit A of the Resolution:

For Exhibit A, in Section 1, renumber the second Section 3.13.260 with the Section title "Sunset" to be Section 3.13.265.

Director Heidorn stated that the City Attorney's office had advised the PEC that the PEC is already authorized under existing law to create a voter guide without the proposed amendments. Based on that, Director Heidorn recommended amending the resolution and proposed draft language in Exhibit A to remove reference to a voter guide, as follows:

1. For the caption of the Resolution, delete the phrase " , AND ADDING OAKLAND MUNICIPAL CODE SECTION 3.15.050(F) (THE OAKLAND FAIR ELECTIONS ACT) TO AUTHORIZE THE COMMISSION TO CREATE A VOTER GUIDE" so that the caption as amended reads as follows:

"RESOLUTION RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 3.13 (THE LIMITED PUBLIC FINANCING ACT OF 2024) TO TEMPORARILY RESTORE PUBLIC FINANCING, OR A SUBSTANTIVELY SIMILAR ORDINANCE"

2. For the Resolution, delete the following Whereas clauses in their entirety, which are the third to last and second to last Whereas clauses:

"WHEREAS, the Commission further finds that authorizing the Commission to create a voter guide furthers the purposes of the Oakland Fair Elections Act by providing registered voters with information which may assist them in assigning their vouchers and voting; and"

"WHEREAS, the Commission finds that authorizing the Commission to create



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a voter guide furthers the purposes of expanding public participation in the local democratic process, empowering all Oakland residents with an opportunity to engage meaningfully in the campaign process, enabling candidates to communicate their views and positions adequately to the public, and assisting residents with making an informed decision about each candidate; and”

3. For the Resolution, amend the last Whereas clause to delete the phrase “and authorizing the Public Ethics Commission to create a voter guide” so that the last Whereas clause as amended reads as follows:

“WHEREAS, the Commission recommends that the City Council adopt an ordinance temporarily restoring a limited public financing program for the 2024 election;”

4. For the Resolution, amend the first Resolved clause by deleting phrase “and authorizing the Public Ethics Commission to create a voter guide” so that the first Resolved clause as amended reads as follows:

“RESOLVED, that the Commission hereby recommends that the City Council adopt an ordinance temporarily restoring a limited public financing for the 2024 election; and be it”

5. For the Resolution, amend the last Further Resolved clause by deleting the phrase “and adding Subsection (F) to Section 3.15.050 of the Oakland Municipal Code” and the comma following that phrase, so that the last Further Resolved clause as amended reads as follows:

“FURTHER RESOLVED, that, to implement this recommendation, the Commission hereby recommends that the City Council adopt an ordinance adding Chapter 3.13 of the Oakland Municipal Code, the Limited Public Financing Act of 2024, or a substantively similar ordinance, attached as Exhibit A.”

6. For Exhibit A, in Section 1, delete Section 3.13.170 in its entirety, which reads as follows:

“For the 2024 election, the Commission may create a pilot version of the voter guide provided in Section 3.15.050 (F).”

7. For Exhibit A, delete Section 2 in its entirety, which proposed adding Subsection (F) to Section 3.15.050 of the Oakland Municipal Code.

Chair Micik proposed the following amendment:

For the Resolution, amend the first Resolved clause by adding the word “program” after “public financing” so that the first Resolved clause as amended reads as follows:

“RESOLVED, that the Commission hereby recommends that the City Council adopt an ordinance temporarily restoring a limited public financing program for the 2024 election; and be it.”

Micik moved, and Gage seconded to adopt the staff recommendation to approve the proposed amendments to the Limited Financing Act of 2024, with the two additional changes proposed by Director Heidorn and the change proposed by Chair Micik.

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

Noes: None.

Vote: Passed 6-0

Public Comment: None.

### DISCUSSION ITEMS

#### **7. Measure W Implementation – Oakland Fair Elections Act.**

Lead Analyst Doran provided an update on activities necessary to implement Measure W, which passed the ballot on November 8, 2022, and which altered the Commission's staffing, authority, and created a newly designed public financing program to be administered by the Public Ethics Commission beginning with the 2026 regular election.

Public Comment: None.

#### **8. Reports on Subcommittees and Commissioner Assignments.**

**a. Measure W Equity and Outreach Subcommittee** (ad hoc, created on March 8, 2023) – Charlotte Hill (Chair), Alea Gage, Vincent Steele.

Hill reported that the subcommittee did not meet. Micik stated that there will be more discussions about the future of this subcommittee at the upcoming retreat.

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

Upton IV reported that the subcommittee did not meet.

Public Comment: None.

### INFORMATION ITEMS

#### **9. Commissioner Recruitment.**

Director Heidorn provided an update on Commissioner Recruitment. The application deadline for the PEC -appointed position is October 27, 2023.

Public Comment: None.

#### **10. Disclosure and Engagement.**

**October 11, 2023 PEC Regular Meeting Agenda Packet 10**

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Lead Analyst 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.

### **11. Enforcement Program.**

Enforcement Chief Simon Russell provided a summary of the Commission's ongoing enforcement work, including overall caseload status, informal complaint intake, and enforcement-related litigation.

Public Comment: None.

### **12. Executive Director's Report.**

Director Heidorn provided an update regarding the approval of the proposed salaries for the City Auditor and City Attorney. Director Heidorn noted that the City Council has asked that the City Administrator provide a recommendation for a potential ballot measure in November 2024 which would amend the City Charter to assign to the PEC the role of setting the Mayor's salary.

Director Heidorn provided an update on the status for the hiring of a Program Manager for Measure W and hiring for the permanent investigator position, which will likely be complete in October. Director Heidorn shared that Investigator Garrett Micheels resigned in August 2023.

Public Comment: None.

### **13. Future Meeting Business.**

Micik encouraged commissioners to prepare for the retreat by reviewing the annual report and the website, including different disclosure tools posted on the website. Micik noted that Commissioners might be asked, as an ice breaker, to come up with a slogan for the PEC. Staff will target providing materials for the PEC retreat seven days before the retreat. Chair Micik encouraged commissioners, if they have suggestions for retreat agenda topics, to send those to staff.

Public Comment: None.

The meeting adjourned at 8:30 p.m.

# Item 4b - Special Meeting Minutes, Retreat

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Special Commission Meeting  
Friday, August 25, 2023  
Hearing Room 4  
3:00 p.m.

DRAFT



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

Commission Staff: Nicolas Heidorn, Executive Director; Suzanne Doran, Lead Analyst; Chris Gonzales, Commission Assistant; Jelani Killings, Ethics Analyst; Ana Lara-Franco, Commission Analyst; Simon Russell, Enforcement Chief.

City Attorney Staff: Trish Shafie, Deputy City Attorney

## SPECIAL MEETING MINUTES

### **1. Roll Call and Determination of Quorum.**

The meeting was called to order at 3:01 p.m.

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

Perteet arrived at 3:11 pm and Gage at 3:21 p.m.

Staff present: Nicolas Heidorn, Suzanne Doran, Jelani Killings, Ana Lara-Franco, Chris Gonzales, Simon Russell.

City Attorney Staff: Trish Shafie, Deputy City Attorney

### **2. Staff and Commission Announcements.**

Executive Director Nicolas Heidorn announced the September Recess for the PEC regular meeting.

### **3. Open Forum.**

Public Speakers: Gene Hazzard

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](http://www.oaklandca.gov/pec).

## ACTION ITEMS

### **4. Public Ethics Commission Retreat.**

# Item 4b - Special Meeting Minutes, Retreat

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
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The Commission convened for its annual retreat to conduct team development, assess Commission accomplishments, and current context, participate in strategic visioning, and identify key opportunities and priorities for 2023-2025. There was discussion and decisions were made as group regarding overall PEC direction, goals activities and priorities.

## *Welcome, Goals, Icebreaker*

Executive Director Heidorn welcomed commissioners, staff, and guests to the retreat. Director Heidorn explained that the goal of the retreat was to identify agency priorities over the next 18 months to 2 years that go beyond the PEC's routine core services. He explained that he did not anticipate any votes being taken at the retreat on program priorities, but that staff would memorialize non-enforcement program priorities in a roadmap which would be brought before the Commission in October.

Chair Micik led commissioners, staff, and guests in an icebreaker exercise where participants shared something interesting about themselves and a proposed new slogan for the PEC.

## *Non-Enforcement Program Area Overview.*

### *A. Lead/Collaborate – Executive/Policy Projects & Priorities*

Director Heidorn provided an overview of current and potential executive and policy projects over the next 2 years and led participants in activities and discussion to share their thoughts and preferences for program priorities.

### *B. Disclose/Illuminate – Disclosure Projects & Priorities*

Lead Analyst Suzanne Doran provided an overview of current and potential disclosure program projects, challenges and opportunities over the next 2 years and led participants in activities and discussion to share their thoughts and preferences for program priorities.

### *C. Educate/Engage – Public Outreach Priorities*

Ethics Analyst Jelani Killings and Vice Chair Charlotte Hill led a discussion to identify public outreach goals and conducted an exercise to develop an outreach plan to communicate the Commission's need for additional enforcement resources. Vice Chair Hill recommended that commissioners commit to doing one outreach activity per quarter.

5:54 p.m. – Micik called for a recess.

6:21 p.m. – The meeting returned from recess.

## *Ad Hoc Subcommittees Review.*

# Item 4b - Special Meeting Minutes, Retreat

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Chair Micik provided an overview of the reason for creating ad hoc subcommittees and requested that, as part of the formation of an ad hoc committee, the following questions should be addressed: 1) What is the specific goal of the committee? 2) What is the expected deliverable and in what time period? and 3) What level of staff versus commissioner work is expected?

Vice Chair Hill recommended that the Measure W Equity and Outreach Subcommittee be disbanded and that an Outreach Subcommittee, focused on implementing the outreach priorities discussed at this meeting, be created in its place. Chair Micik stated that the Measure W Equity and Outreach Subcommittee would sunset with this meeting. He also formed a new ad hoc subcommittee, the Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints and Campaign Finance subcommittee. He designated Vice Chair Hill as the chair of that subcommittee with Commissioners Gage and Steele as additional subcommittee members.

Commissioner Upton recommended that the Transparency and Public Records Subcommittee continue and that its focus be on developing a long-term vision statement for government transparency in Oakland and short-term next steps to make progress towards that goal.

*Detect/Deter/Prosecute - Enforcement Program Overview, Content of Monthly Enforcement Reports, Enforcement Case Prioritization.*

Enforcement Chief Simon Russell explained how information is provided on the monthly Enforcement Reports, what information is contained in enforcement reports in other jurisdictions, and led a discussion with commissioners as to what type of information they may wish to see in monthly reports.

Enforcement Chief Russell explained the factors that the Enforcement Program uses to prioritize its caseload and led an exercise where commissioners selected which of several hypothetical enforcement matters to prioritize for investigation in an environment of limited enforcement resources.

*Wrap-Up.*

Chair Micik thanked retreat participants.

Public Speakers: Gail Wallace, Gene Hazzard, Lynda Johnston, and David Shor.

## **DISCUSSION ITEMS**

### **5. Future Meeting Business.**

## Item 4b - Special Meeting Minutes, Retreat

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Chair Micik announced the September Recess for the PEC regular meeting. The next regular PEC meeting will be held on October 11, 2023.

The meeting adjourned at 7:51 p.m.



## Item 5a - Staff Memo

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

Nicolas Heidorn, Executive Director

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TO: Public Ethics Commission  
FROM: Simon Russell, Enforcement Chief  
DATE: September 22, 2023  
RE: Proposed amendments to PEC Complaint Procedures and Penalty Guidelines re: expanding violation types eligible for streamline settlement; authorizing Executive Director to enter streamlined settlement agreements on own authority; authorizing use of diversion to resolve streamlined cases; for discussion and vote at the October 11, 2023, meeting of the Public Ethics Commission

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### OVERVIEW

PEC staff is proposing changes to how the Commission processes what are known as “streamline cases.” These are cases involving common, low-level types of violations such as the late filing of a Form 700 or campaign finance report, where no aggravating factors exist. The purpose of the streamline program is to facilitate a quick and predictable resolution of these low-level matters, in order to free up staff resources for more serious cases.

This report summarizes proposed amendments to the PEC’s Complaint Procedures and Penalty Guidelines that would do the following:

1. Expand the types of violations that may be resolved by way of a streamlined settlement agreement;
2. Clarify the circumstances under which particular types of violations may be eligible for resolution by way of a streamlined settlement agreement;
3. Authorize the Executive Director to enter most streamlined settlement agreements on their own authority, without the necessity of a vote by the Commission (as is currently required for all case resolutions, streamlined or not);
4. Require that Commission staff inform the Commission of any such streamlined settlement agreements entered into by the Executive Director; and
5. Authorize use of diversion to resolve some streamlined cases.



The goal of these changes is to allow Enforcement to initiate and resolve a larger volume of low-level cases, with the aim of fostering a Citywide culture of compliance in a manner that is not overly punitive nor a substantial drain on limited PEC staff resources.

Because the Complaint Procedures and Penalty Guidelines are issued by the PEC itself, the Commissioners may vote to amend them without the necessity of a subsequent vote by the City Council (as is needed for ordinance changes) or adoption by Oakland voters via ballot measure (as is needed for City Charter changes). However, should the Commission vote to adopt any of the changes being proposed here by staff, the City Council must be notified and given a 60-day window to reject the proposed changes.

**BACKGROUND: ENFORCEMENT’S STREAMLINE AND DIVERSION PROGRAMS**

“Streamline” cases are those involving the most minor types of violations over which the PEC has enforcement jurisdiction. Currently, these involve the late filing of required forms (e.g. Form 700 or campaign finance statements) or the receipt of impermissible but low-value gifts. They are also cases in which no aggravating factors are present. For example, while the late filing of a Form 700 might be considered a minor violation, it would be an aggravating factor (and therefore not a streamline case) if it turned out that the late filer also had an unreported source of income that created a conflict of interest in their job. Typically, the respondent in a streamline case has never had a prior violation of a similar type, and wants to work with Commission staff in order to quickly resolve the matter.

These types of cases are called “streamline” because the PEC endeavors to resolve them quickly in exchange for a minor penalty. This is possible for two reasons. First, we have Penalty Guidelines that provide a clear timetable and penalty tiers for these kinds of cases. And second, we have also developed a stripped-down stipulation template that is less detailed than the ones staff prepares to resolve “mainline” cases (where the facts of the case are necessarily more complicated, and therefore require more description and analysis).

However, streamline settlement agreements must still be approved by the full Commission at one of its public meetings, just as in a mainline case. And only the following types of cases are currently eligible for streamlined resolution under the Penalty Guidelines:

- a. Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040);
- b. Gift Restrictions (GEA § 2.25.060C);
- c. Form 301 Non-Filer (OCRA § 3.12.190); and
- d. Campaign Statement/Report Non-Filer and Non-Reporter (OCRA § 3.12.240);

The streamline program was created in 2015 when the PEC adopted its Penalty Guidelines. It is not mentioned in the PEC's Complaint Procedures, which govern how complaints and cases are processed.

In 2020, the PEC amended its Complaint Procedures in order to allow certain cases to be resolved via diversion (usually in the form of a training). Similar to the streamline program, it was intended to be used in cases involving less-serious violations. However, neither the Complaint Procedures nor the Penalty Guidelines were amended to make clear that diversion could be used to resolve streamline cases in addition to mainline ones.

### **PROPOSED AMENDMENTS TO THE PROGRAMS**

In the years since the streamline program was initiated, Enforcement has found that it frequently encounters certain types of low-level violations that are not included in the current version of the streamline program. These include minor campaign contribution limit violations and minor misuse of City resources, among others. More often than not, these are straightforward cases with no significant aggravating factors, and would therefore be ideal for streamline resolution.

Enforcement has also found that some of our current procedural requirements can frustrate the purpose of the streamline program. Aside from lower penalties, the main advantage to a streamline program for respondents is its predictability – knowing that a matter will be resolved quickly, discretely, and on definite terms. And for staff, the main advantage is the ability to quickly resolve simple cases without expending the full amount of resources necessary for a mainline case.

However, the requirement that streamlined stipulations be finalized through a vote by the full Commission at a public meeting results in a process that can be uncertain and intimidating for respondents. It can also be confusing for respondents who are unfamiliar with the PEC and don't understand why staff can't simply execute an agreement with them, among other inconveniences (e.g. the necessity of obtaining a cashier's check for the penalty amount prior to the full Commission meeting, instead of paying by personal check). For some respondents, this can make them reluctant to engage in the process at all, with the result that staff must spend more time trying to contact and follow up with them. It also requires staff to invest limited resources on the preparation and presentation of these cases at Commission meetings, just as it would with a mainline case.

Staff is aware that certain types of streamline cases might merit closer scrutiny via a full Commission vote. For example, streamline cases involving elected officials or senior City staff tend to be of heightened public interest, even if the underlying violation is not serious. And even for streamline cases involving ordinary respondents, clear eligibility criteria will be

necessary to ensure that only the most straightforward and uncontroversial cases would be resolved without a Commission vote.

Finally, staff has often found that low-level violations occur because the respondent is simply unfamiliar with the law in question. In these instances, an ideal resolution may be for the respondent to take a diversion training rather than pay a fine; but this is not expressly given as an option for resolution under the current streamline program.

For these reasons, staff is recommending changes to the streamline program in order to address these concerns. Attached to this memo are red-lined versions of the PEC's Complaint Procedures and Penalty Guidelines, including the specific changes being recommended by staff. A summary of the proposed changes is as follows:

*For the streamline program:*

- Allowing the Executive Director to enter most streamline settlement agreements on their own authority, without requiring a vote by the full Commission.
- All streamline settlement agreements will be reported to the Commission at the next PEC meeting, but no vote will be required because the agreements are already final.
- Notwithstanding the above, still requiring Commission approval for streamline cases involving the following types of respondents: elected City officials and their Chiefs of Staff; OUSD Board members; any City Department Director; or campaigns that have received or spent more than \$50,000 in the prior year.
- Adding the following types of violations for streamline eligibility: Misuse of City Resources, Contribution Limit Violations, Contractor Contribution Prohibition, Campaign Statement Non-Filing and Mis-Reporting, Lobbyist Registration Non-Filing, and Lobbyist Report Non-Filing and Mis-Reporting.
- Clarifying the circumstances under which those violations will be eligible for streamline settlement. In addition to the requirement that no aggravating factors be present, the following eligibility criteria are proposed (depending upon the type of violation):

<b>Violation Type</b>	<b>Criteria Making a Case Eligible For Streamline Settlement</b>
Form 700 Non-Filer	The form in question is no more than six months late. <sup>1</sup>
Form 700 Non-Reporter (i.e., someone files a Form 700 but fails to include required information, such as a source of income or a gift)	The unreported interest does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the respondent’s exercise of their official duties.
Misuse of City Resources	The total value of misused City resources is \$100 or less and does not involve campaign activity.
Gift Restrictions (i.e., receiving a gift with a value over the legal limit)	The aggregate amount of the gift(s) from a single source is no more than \$250 over the legal limit, the source of the gift(s) was not a restricted source or a lobbyist, and the gift does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the Respondent’s exercise of their official duties.
Making or Receiving a Campaign Contribution Over the Legal Limit	The total amount of the aggregate contributions from a single source in excess of the contribution limit is \$250 or less.
City Contractor Making a Campaign Contribution	The total amount of the aggregate contributions from a single prohibited source or its principals is \$250 or less.
Form 301 Non-Filer (i.e., the form that allows a candidate to accept contributions at the higher limit in exchange for abiding by the spending limit) <sup>2</sup>	The form in question is no more than ninety (90) calendar days late.

<sup>1</sup> This will apply only to Form 700s due in 2024 and later. This year (2023), Enforcement may use streamlined settlement for Form 700s that are more than six months late, as we work with the City Clerk’s office to obtain regularly-updated data on late-filers (not previously available to the PEC, which is not the filing officer for Form 700s) and make City staff aware of our intentions to broadly enforce the Form 700 requirement and make streamline settlement available as an inducement to file.

<sup>2</sup> Measure W (2022) eliminated the two-tier contribution limit system, and therefore Form 301s are not currently in use. But given the delayed implementation of the Democracy Dollars program, we are keeping this violation type in the Penalty Guidelines until it is clear that Form 301s will no longer be necessary.

<p>Non-Filing or Mis-Reporting on a Pre-Election Campaign Statement (i.e., the campaign finance reports that must be filed every few weeks before an election)</p>	<p>The report is no more than thirty (30) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made.</p>
<p>Non-Filing or Mis-Reporting on a Semiannual Campaign Statement (i.e., the campaign finance reports that must be filed every six months during non-election periods)</p>	<p>The report is no more than one-hundred and eighty (180) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made.</p>
<p>Non-Filing or Mis-Reporting on a Form 496 or 497 (i.e., the campaign finance reports that must be filed within 24 hours of receiving a large contribution or putting out an “independent expenditure” such as a mailer)</p>	<p>The report is no more than seven (7) calendar days late, the unreported activity does not exceed \$10,000 in either contributions raised or expenditures made, and the report is filed before the date of the election.</p>
<p>Lobbyist Registration Non-Filer</p>	<p>The registration form is no more than one-hundred and eighty (180) days late, and the total compensation received for previously-unreported lobbying does not exceed \$2,000 in a single quarter or, in the case of a salaried lobbyist, the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000 in a single quarter.</p>
<p>Lobbyist Report Non-Filer and Non-Reporter (i.e., a lobbyist is registered but fails to file their quarterly report of their clients and compensation)</p>	<p>The report in question is no more ninety (90) days late, and total compensation received for unreported lobbying activity is \$2,000 or less or, in the case of a salaried lobbyist, the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000.</p>

*For the diversion program:*

- Clarifying that diversion may be used to resolve some streamline cases.
- Clarifying that diversion may be used to resolve staff-initiated cases, and not just those initiated by a public complaint.
- Harmonizing the procedural requirements of the diversion program with the proposed changes to the streamline program procedures (e.g. not requiring the Commission to approve diversion agreements in streamline cases resolved under the Executive Director’s authority).

The proposed changes to the Complaint Procedures and Penalty Guidelines also include some non-substantive amendments for clarity and consistency (e.g. referring to the Oakland Campaign Reform Act as “OCRA” in the Penalty Guidelines instead of “CRA,” because the latter acronym is rarely used elsewhere).

**STAFF RECOMMENDATION AND NEXT STEPS**

Staff presents these proposed amendments to the Complaint Procedures and Penalty Guidelines to the Commission and recommends approval.

If the Commission approves these amendments, they will be forwarded to the City Council. No Council vote is necessary for their adoption; however the Council will have sixty days to exercise a veto over their adoption. If that does not happen, the amendments will come into force.

# Item 5b - Redline of Amendments to PEC Complaint Procedures



## CITY OF OAKLAND

### PUBLIC ETHICS COMMISSION

#### MEDIATION AND COMPLAINT PROCEDURES

*Effective January 3, 2020*

## I. INTRODUCTION

The Public Ethics Commission (“Commission”) adopts the following procedures applicable to the Commission’s enforcement authority as granted by the Oakland City Charter and Oakland Municipal Code.

**A. Purpose.** These procedures are intended to ensure a fair, just, and timely process for the review, investigation, and hearing of complaints submitted to the Public Ethics Commission by doing the following:

1. Maintain objective standards for investigations and enforcement of the law,
2. Eliminate any improper influence in the investigation and resolution of complaints,
3. Provide a fair hearing for persons and entities accused of violations,
4. Ensure timely enforcement and complaint resolution, and
5. Coordinate with other governmental agencies to share enforcement responsibility in a manner most appropriate to ensure justice is served.

**B. Enforcement Authority.** These procedures are applicable to potential violations of the following laws:

1. The Oakland Campaign Reform Act;
2. The Oakland Government Ethics Act;
3. The Oakland Limited Public Financing Ordinance;
4. The Oakland Sunshine Ordinance;
5. The Oakland Lobbyist Registration Act;
6. The Oakland False Endorsement in Campaign Literature Act; and
7. Any other law or policy over which the Commission has jurisdiction or with which the Commission is charged with overseeing compliance.

## II. DEMAND FOR MEDIATION OF PUBLIC RECORD REQUEST UNDER THE OAKLAND SUNSHINE ORDINANCE

**A. Scope of Section.** This section applies only to a demand for mediation of an unfulfilled public records request under the Oakland Sunshine Ordinance. All other complaints are subject to the procedures in the subsequent sections of these Complaint Procedures, starting with Section III.

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**B. Mediation.** A person whose public records request was denied, in whole or in part, by a local agency or department may demand mediation of their request.<sup>1</sup> To begin mediation, a requestor should complete the Commission's Mediation Request Form and submit it to Commission staff. Mediation is the first step in the process of submitting a matter to the Commission; mediation must be requested and completed before submission of a formal complaint to the Commission.

1. The Executive Director of the Commission, his or her designee who may be a Commissioner, or a mutually agreed upon volunteer mediator, may serve as mediator.<sup>2</sup>
2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable.<sup>3</sup>
3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendation is not binding on any party.<sup>4</sup>
4. Statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.<sup>5</sup>
5. At the conclusion of mediation, the mediator shall close the mediation and issue a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts the mediator would recommend to resolve the dispute. The report shall be filed with the Commission, provided to all parties, and made available for public inspection.

**C. Additional Remedies.** After the Commission closes a mediation:

1. The requestor may file a formal complaint requesting that the Commission investigate whether the local agency's or department's actions violated the Oakland Sunshine Ordinance. (See procedures beginning in Section III.). In that case, the mediator will offer to pre-fill a formal complaint form based on the information provided in the Mediation Request Form and provide a copy to the requestor.
2. If the requestor does not wish to submit a formal complaint, the mediator may submit an informal complaint. (See procedures beginning in Section III.)
3. No person may file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation.<sup>6</sup> Participation in mediation is satisfied when the complainant was responsive to the mediator and willing to take action to complete the mediation.

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<sup>1</sup> OMC 2.20.270(C)(1).

<sup>2</sup> OMC 2.20.270(C)(1).

<sup>3</sup> OMC 2.20.270(C)(2).

<sup>4</sup> OMC 2.20.270(C)(3).

<sup>5</sup> OMC 2.20.270(C)(3).

<sup>6</sup> OMC 2.20.270(F).



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4. In order to prevent statements obtained during mediation from being used in any related proceeding, the mediator will not participate in any subsequent investigation.<sup>7</sup>
5. This mediation process constitutes the administrative process for review and enforcement required by the Oakland Sunshine Ordinance.<sup>8</sup> Upon closure of mediation, the requestor may seek injunctive relief, declaratory relief, or a writ of mandate in any court of competent jurisdiction, whether or not the person also files a complaint with the Commission.<sup>9</sup> A requestor must complete the administrative process before seeking court action.<sup>10</sup>

### III. SUBMITTING A COMPLAINT

**A. Complaints.** A complaint alleging a violation of any law listed above may be submitted by any person, including a member of the public, any employee or official of the City of Oakland, or any member of the Commission.

**1. Formal Complaints.** A formal complaint must be submitted either 1) in writing on a complaint form as prescribed by Commission staff, or 2) in a manner designated as a method for submitting a formal complaint as determined by Commission staff. The forms and instructions will be available at the Commission's office, on the Commission website, and upon request to Commission staff.

**a. Contents of Formal Complaints.** A formal complaint must be signed or verified by the complainant under penalty of perjury. A formal complaint also must include the following information:

- i. name, address, and phone number of complainant,
- ii. name of the respondent, and any known addresses or phone numbers,
- iii. the facts of the alleged violation,
- iv. area of law allegedly violated, if known,
- v. names and addresses of any witnesses, if known, and
- vi. any documentation that might aid in the investigation of the alleged violation.

**b. Effect of Formal Complaints.**

- i. Upon receipt of a formal complaint, Commission staff will make a reasonable effort to acknowledge receipt of the complaint.
- ii. Commission staff shall process and review all formal complaints.

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<sup>7</sup> OMC 2.20.270(C)(3).

<sup>8</sup> OMC 2.20.270(A)(3).

<sup>9</sup> OMC 2.20.270(B).

<sup>10</sup> OMC 2.270(B)(1).

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2. **Informal Complaints.** An informal complaint may be submitted by telephone, in person, or in writing.
  - a. **Contents of Informal Complaints.** An informal complaint must include the name of the person or organization believed to have violated the law and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not meet the requirements of a formal complaint will be considered as an informal complaint.
  - b. **Effect of Informal Complaints.** Commission staff has no obligation, but retains discretion, to process and review informal complaints. In exercising discretion to process and review informal complaints, Commission staff should consider the nature of the alleged violation, whether the information contained in the complaint permits review and investigation of the alleged violations, and whether the complainant is justified in submitting the complaint in a form other than the proscribed form.
  - c. **Anonymous Complaints.** A complaint may be submitted without a name or without identifying the complainant, and these complaints will be considered anonymous complaints. An anonymous complaint shall be considered an informal complaint, whether submitted on a formal complaint form or in another form, and the processing of these complaints will be at the discretion of Commission staff.
3. **Commission-initiated Complaints.** Commission staff may initiate an investigation without conforming to any formal complaint requirements. A member of the Commission may submit a formal or informal complaint. A member of the Commission will be recused from all consideration, review, investigation, or hearing of any complaint submitted by the member, but may provide information or be called as a witness at any hearing on the complaint.
4. **Withdrawal of a Complaint.** If a complainant requests that his or her complaint be dismissed or withdrawn, the Commission may continue to review, investigate, and hold hearings or proceedings regarding the violations alleged in the complaint.
5. **Repetitive and Unmeritorious Complaints.** Any person who has submitted four (4) complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a “repetitive unmeritorious complainant.” Any subsequent complaint submitted by a “repetitive unmeritorious complainant” during the twelve month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. The Commission Chair’s decision shall be final and shall be reflected in the Commission’s public report on pending complaints, and Commission staff shall notify the complainant of the determination. If the Commission Chair determines that there are grounds to investigate any subsequent complaint, the complaint shall be forwarded to Commission staff to receive and process the complaint.

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**6. Ex-Parte Communications.** Once a complaint is submitted, no Commissioner shall engage in oral or written communications, outside a hearing, Commission meeting, or other meeting that provides all relevant parties with proper notice and opportunity to be heard regarding the substance of the complaint with the respondent, complainant, witnesses, or any person communicating on behalf of the respondent or complainant, unless the communication is necessary to investigate, remediate, enforce or enter into a stipulated order regarding the alleged violation.

**B. Preliminary Review of Complaints.** Upon receipt of a formal complaint, Commission staff shall conduct a preliminary review of the complaint to determine whether to open an investigation. The preliminary inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the person or entity accused of a violation, and any other reasonable inquiry to determine whether a full investigation is warranted.

### IV. PRELIMINARY REVIEW OF COMPLAINTS

**A. Intake Resolution.** After conducting a preliminary review of a complaint, Commission staff shall decide whether to open a case for investigation, resolve the complaint by way of dismissal, or recommend closure. Commission staff shall notify the complainant of the result of the preliminary review in writing.

**1. Dismissal.** Commission staff may dismiss a complaint if the allegations do not warrant further action for reasons that may include, but are not limited to the following:

- a. The allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction.
- b. The complaint does not include enough information to support further investigation.
- c. The allegations in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
- d. The complaint should be referred to another governmental or law enforcement agency better suited to address the issue.

**2. Closure.** Commission staff may recommend closure of a complaint if it falls within the Commission's jurisdiction but there is reason to support closure. The Commission shall review Commission staff's determination at a subsequent Commission meeting and must take formal action in order to close the complaint. Commission staff's recommendation to close the complaint may include one or more of the following actions:

- a. Close with no action
- b. Close with advisory letter
- c. Close with warning letter

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- d. Close with additional Commission action, such as holding an informational hearing or providing follow-up diversion requirements, training or communications on a matter
  3. **Referral.** Commission staff may refer a complaint to the appropriate enforcement authority instead of or in addition to dismissal, closure, or the opening of an investigation.
  4. **Complaints Against the Public Ethics Commission.** Within 90 days of receiving a complaint against the Commission, Commission members, or Commission staff, Commission staff will reply to the complainant with the name and address of the entities that have concurrent or overlapping jurisdiction and inform the complainant that they have the right to file a civil action. In most instances, the Commission will close the complaint. However, where a single respondent Commissioner or staff can be walled off entirely from the investigation and approval process, the Commission may continue adjudicating the complaint, in addition to making a referral to an alternate entity.
- B. Report to the Commission.** Commission staff shall notify the Commission of all dismissals by reporting the information, including the action taken and the reason for dismissal, on the next enforcement program report posted in advance of the Commission's subsequent Commission meeting.
- C. Notification to Respondent.** After the preliminary review of the complaint, if Commission staff dismisses the complaint, then Commission staff may notify the respondent of the receipt and dismissal of the complaint. If Commission staff recommends closure or the opening of an investigation, then Commission staff shall notify the respondent of the complaint and the issue(s) to be investigated in writing.
- D. Notification to Complainant.** After the preliminary review of the complaint, Commission staff shall notify the complainant of its decision to dismiss, close, make a referral, or open an investigation. If Commission staff opens an investigation, Commission staff shall also provide to the complainant a copy of the notice to the respondent. The complainant shall have 10 days to respond to Commission staff concerning the scope of the investigation, and Commission staff may alter the scope of the investigation based on feedback from the complainant.
- E. Final Closure.** A dismissal, after notification to the Commission pursuant to subsection IV.B, or a closure of a complaint is a final decision and represents closure of the administrative process for that complaint.

### V. INVESTIGATION OF COMPLAINTS

- A. Investigation.** If Commission staff determines that the allegations in the complaint warrant further inquiry, Commission staff shall open an investigation regarding the violations alleged in the complaint. An investigation may include, but not be limited to, interviews of the complainant, respondent, and any witnesses, and the review of documentary and other evidence. Commission staff, and anyone conducting interviews

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- on behalf of Commission staff, may administer oaths and affirmations for interviewees to tell the truth under penalty of perjury.
- B. Subpoenas During Investigation.** The Executive Director may issue a subpoena on behalf of the Commission if he or she finds, based on the information submitted to him or her in writing, that the information requested in the subpoena is material to a specific matter under investigation and is under the control of the person or entity being subpoenaed. The Executive Director shall report each subpoena he or she issues on behalf of the Commission to the Commission Chair within 7 days of issuing the subpoena.
  - C. Contacting the Respondent.** If Commission staff's attempt to contact a person or entity accused of a violation is unsuccessful, Commission staff will pursue other methods of contact, including formal methods, such as certified mail, and informal methods, such as social media channels or neighborhood contacts, as appropriate.
  - D. Audit Program.** Commission staff may initiate routine investigations or audits as part of its enforcement program. Such investigations may use a streamlined review process to determine compliance with City ordinances and need not include a full investigation or written summary. Commission staff may create standard forms for summarizing and communicating the audit findings.

### VI. RESOLUTION OF COMPLAINTS

- A. Probable Cause Report.** After an investigation, and, in the absence of a stipulated agreement or other recommended resolution, Commission staff shall prepare a written report that includes a summary of the evidence gathered and a recommendation of whether there is probable cause to believe that a violation occurred. The probable cause report shall be submitted to the Commission for consideration.
- B. Notification.** At the time that Commission staff submits a probable cause report to the Commission for consideration (per the advanced-notice requirements for the public meeting), Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.
- C. Commission Review.** Upon review of Commission staff's written report and recommendation of whether there is probable cause to believe that a violation occurred, the Commission may decide to close the matter, request further investigation, and/or request that Commission staff seek a stipulated settlement.. In addition, if the Commission has determined that probable cause exists to believe that a respondent violated a law listed in Section I.B, the Commission may refer the matter to an administrative hearing or, for probable violations of the Oakland Sunshine Ordinance, may decide to file a court proceeding seeking injunctive relief, declaratory relief, or writ of mandate.<sup>11</sup> The Commission may issue a warning letter, advisory letter, or diversion agreement at any phase of the Commission's review, in conjunction with another remedy or as a stand-alone resolution.

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<sup>11</sup> OMC 2.20.270(B).

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**D. Stipulated Settlement.** At any time after a complaint has been submitted, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulated agreement, followed by Commission approval of the decision. The Commission's Enforcement Penalty Guidelines outline the principles that guide Commission staff in determining fine amounts to pursue via stipulations.

1. **Stipulation.** Any proposed stipulation shall explicitly state that:
  - a. The proposed stipulation is subject to approval by the Commission;
  - b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
  - c. The respondent understands and acknowledges that any stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
  - d. The respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and,
  - e. In the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.
2. **Commission Decision and Order.** The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority. Stipulated agreements must be approved by the Commission and, upon approval, be announced publicly.
3. **Concurrent Referral to Commission.** Commission staff may submit a probable cause report to the Commission for the Commission's consideration of other methods of resolution, including referring the matter to an administrative hearing, concurrently or in lieu of Commission staff's pursuit of a stipulated settlement. Commission staff may submit a probable cause report to the Commission for concurrent consideration, especially where doing so may result in more timely resolution of the matter.

**E. Diversion Agreement.** At any time after a complaint has been submitted or initiated by Commission staff, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a diversion agreement, followed by Commission approval of the agreement. If the diversion agreement is being entered into under a streamlined settlement, Commission approval is only necessary as specified in Section VI(H).

1. **Agreement.** Any proposed diversion agreement shall explicitly state that:
  - a. The proposed diversion is subject to approval by the Commission, unless the diversion agreement is being entered into by way of a

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streamlined settlement under authority of the Executive Director pursuant to Section VI(H).

- b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
  - c. The respondent understands and acknowledges that any diversion agreement is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
  - d. The respondent agrees that in the event the Commission refuses to approve the proposed diversion agreement, it shall become null and void; and,
  - e. In the event the Commission rejects the proposed diversion agreement and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the diversion agreement.
2. **Commission Decision and Order.** The diversion agreement shall set forth the pertinent facts and may include an agreement as to the imposition of a fee, training requirement, and/or anything that facilitates the Commission's goals and that is agreed to by the respondent. Diversion agreements must be approved by the Commission and, upon approval, be announced publicly.
- F. Default Decision.** When a Respondent has failed to respond to or otherwise defend the complaint, or when a respondent waives his or her right to a hearing, the PEC may make a final decision against the respondent through the following default process:
1. Upon a finding of probable cause by the Commission, Commission staff shall prepare a written summary report, which shall include the charges, a summary of the evidence to support the charges, and an explanation of the default process, and shall serve the complaint on the Respondent via personal or substitute service.
  2. A Respondent has 30 days from the date he or she is served with the staff summary report to file a written response. The PEC may still accept a response from the respondent after 30 days, if Commission staff has not yet filed a written request for default with the Commission.
  3. After the 30 day response period has passed, Commission staff shall submit the summary report and a request for default decision to the Commission for review and decision at a subsequent Commission meeting. The request for default shall include an affidavit signed by Commission staff that attests to and includes the following:
    - a. Commission staff had attempted to notify the respondent on multiple prior occasions as specified, or the respondent has waived his or her right to a hearing;

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- b. The Commission made a determination of probable cause on a date specified;
  - c. Commission staff served the Respondent with notice of the complaint and pending default process; and
  - d. the documentation explains how Commission staff has met all of the default process requirements.
4. The request for default submitted to the Commission shall include the range of enforcement options available to the Commission, and it may include a recommendation by Commission staff for corrective, remedial or punitive actions, such as penalties and fines.
  5. The Commission shall determine whether to adopt, amend, or reject the findings and conclusions in Commission staff's summary report and recommendation, if any, including making a decision regarding corrective, remedial or punitive actions (penalties and fines) to impose on the Respondent in accordance with the adopted findings and consistent with the Commission's authority. The Commission's decision following approval of a default shall be final and shall constitute closure of the administrative process with respect to the complaint.
  6. The Commission can set aside a default decision upon written request of a Respondent, if the Respondent can show cause as to why the default decision should not have been approved.

### G.

**Court Proceeding.** After the Commission has reviewed a probable cause report from Commission staff concerning an alleged violation of the Oakland Sunshine Ordinance, the Commission may decide to initiate court proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to obtain a Respondent's compliance with the Oakland Sunshine Ordinance.<sup>12</sup>

**H. Streamlined Settlement.** As an alternative to the procedures described in the rest of this Section VI, Commission staff may enter into a streamlined settlement agreement for low-level types of violations specifically identified in the PEC's Penalty Guidelines as being eligible for streamlined resolution.

1. The Executive Director may approve and enter into a streamlined settlement agreement on their own authority, without the necessity of a vote by the Commission, except for streamlined settlement agreements with the following types of respondents:
  - i. an elected City official or Oakland Unified School District Board of Education member;
  - ii. the Chief of Staff of an elected City official;
  - iii. a City Department Director; or

<sup>12</sup> OMC 2.20.270(B), OMC 2.24.020(E).



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iv. for violations of OCRA, a controlling candidate and/or their controlled committee, its treasurers, and its officers, where that committee has either received contributions or made expenditures of more than \$50,000 in the twelve (12) months prior to the violation.

2. For any streamlined settlement agreement entered into under authority of the Executive Director, Commission staff shall inform the Commission on the next enforcement program report posted in advance of the Commission's subsequent Commission meeting.
3. Streamlined settlement agreements may take the form of a diversion agreement in lieu of, or in addition to, any penalties or late fees imposed.
4. Any streamlined settlement agreement can only be subsequently amended or rescinded by the Executive Director and for substantial non-compliance with the terms of the agreement, or other extraordinary circumstances frustrating the purpose of the agreement.

### VII. ADMINISTRATIVE HEARING PROCESS

**A. Selection of Hearing Panel or Officer.** If the Commission decides to schedule a hearing pursuant to Section VI(B)(3), the Commission shall decide whether to sit as a hearing panel or to delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing officer.

1. If the Commission decides that the full Commission will not sit as a hearing panel, the Commission shall appoint the hearing officer(s).
2. If the Commission elects to use a hearing officer(s) provided by an outside entity, that entity shall appoint the hearing officer(s).
3. The selected hearing officer shall disclose any actual or potential conflicts of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, he or she might have with the City of Oakland, the parties, or a Commissioner, in which case, the appointing authority shall consider whether to appoint an alternative hearing officer(s).

**B. Notice of Administrative Hearing.** The Executive Director shall provide notice of the date, time and location of the hearing to the respondent at least 30 days prior to the date of the hearing. A copy of the notice shall be posted publicly, sent to the complainant, and filed with the Office of the City Clerk at least seven days before the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a hearing will be held before the Ethics Commission [or name of the hearing officer, entity, or assigned Commissioner(s)] on \_\_\_\_ (date) at the hour of \_\_\_\_, at \_\_\_\_ (location), upon the charges made in Complaint No. \_\_\_\_\_. At the hearing, you may, but need not, be represented by counsel, and you may present any relevant evidence. You may request the issuance of

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subpoenas to compel the attendance of witnesses and the production of documents by applying to the Commission on or before \_\_\_\_\_.”

**C. Subpoenas of Persons or Documents.** Any party requesting subpoenas to bring people or documents to the hearing shall notify the Executive Director no later than 14 days before the hearing date. The request shall include a written statement specifying the name and address of the witnesses, and the reason for their testimony.

1. If the request is for a document subpoena, it shall be accompanied by a statement which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents.
2. Subpoenas may be issued by the Executive Director, or the hearing officer upon the above showing of good cause.
3. The party requesting the subpoena shall be responsible for its service on the appropriate persons and shall provide a copy to all opposing parties.

**D. Resolution of Preliminary Matters.** No later than seven days before the hearing date, any party may submit in writing preliminary matters for determination by the hearing officer or entity. If the complaint is to be heard by the full Commission, or by one or more Commissioners, preliminary matters shall be determined by the Commission Chair or his or her designee. The party submitting any preliminary matter for determination shall demonstrate that an attempt to resolve the preliminary matter was made with any opposing party and that copies of the request were delivered to any opposing party. The opposing party shall be allowed to address a request to hear a preliminary matter. The hearing officer or the Commission Chair may determine preliminary matters upon submission of the written requests and without an oral hearing. Preliminary matters may include, but are not limited to, the following:

1. Whether multiple claims within a single complaint may be scheduled separately;
2. Whether similar complaints filed by separate individuals or entities may be joined;
3. Scheduling of witnesses;
4. Production of documents and issuance of subpoenas;
5. Scheduling of pre-hearing conferences;
6. Disqualification of any member of the Commission from participation in the hearing on the merits; and
7. Any other matters not related to the truth or falsity of the factual allegations in the accusation.

**E. Conduct of Hearings; Submission of Written Materials.** All materials to be considered at a hearing and not otherwise subpoenaed shall be submitted to the person(s) conducting the hearing, the Executive Director, and to all opposing parties

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no later than five days prior to the hearing. A written argument need not be submitted. Any written argument submitted shall not exceed 15 pages except upon prior approval of the person(s) conducting the hearing. When prior approval has not been granted, the person(s) conducting the hearing shall disregard all pages of a written argument beyond the 15<sup>th</sup> page.

- F. Conduct of Hearings; Presentation of Testimony; Rules of Evidence.** The hearing on the complaint shall be open to the public, provided that witnesses may be excluded at the discretion of the person(s) conducting the hearing. The person(s) conducting the hearing (Hearing Officer) shall brief the parties at the beginning of the hearing on applicable procedures. The Hearing Officer will conduct a fair and impartial hearing on the record, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order.
1. The hearing shall not be subject to the formal rules of evidence. Documentation and written testimony not in compliance with subsection (E) above may be excluded at the discretion of the person(s) conducting the hearing.
  2. The Commission, and any individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
  3. Oral and written testimony shall be received under penalty of perjury. Although the proceedings are informal, testimony shall be brief and confined to the issues. Oral testimony may be excluded if duplicative, irrelevant, or disruptive to the conduct of the meeting. The person(s) conducting the hearing may ask questions of both sides to further clarify facts and viewpoints. Any party may bring a representative and/or interpreter to speak on his or her behalf, but the person(s) conducting the hearing retains the authority to put questions to any party.
  4. If the hearing is conducted by a Commissioner, the following procedure applies: the Commission staff will be the first to call witnesses and present evidence of the violation. After the Commission staff presents its case, the Respondent will have the opportunity to call witnesses, present evidence and present argument. After both sides have presented their case, the hearing officer will open the hearing to take public testimony/ statements/comment. After public statements, the Respondent and Commission staff or it's legal counsel will have an opportunity to present rebuttal information and present an oral summation of the case.
  5. Special accommodations for disabled persons may be made by providing the Executive Director 72 hours advanced notice.
  6. While there is no right to cross-examination, the parties shall be allowed the opportunity for rebuttal, and the parties, through the person(s) conducting the hearing, may ask questions of any witness. Except for raising preliminary matters as provided by these procedures, no party may communicate with any Commissioner or hearing officer regarding a complaint outside of the formal public hearing.

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7. If the Commission refers a matter to the California Office of Administrative Law, or another administrative law judge or entity, that entity's administrative process rules shall apply, with these complaint procedures providing guidance where there are gaps or questions in that administrative process.
  8. If the respondent fails to appear at a properly noticed hearing, Commission staff may proceed with presenting the Commission's case or may request to submit a written summary in lieu of a verbal presentation. The hearing officer may proceed with issuing findings and recommendations based solely on the information received from Commission staff.
- G. Record of Proceedings.** Proceedings shall be recorded on audio and/or videotape and made available upon request. A party electing to have a stenographer present to record the proceedings may do so upon providing at least three full business days' notice to Commission staff, and at that party's own expense.
- H. Continuation and Postponement of Hearings.** A postponement may be granted prior to the hearing only upon written request to the Commission Chair or hearing officer. At the hearing a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.
- I. Action upon Conclusion of Hearing.** Upon hearing all evidence submitted at the hearing and any arguments by the parties or comments by the public, the hearing shall be closed.
1. If the complaint was heard by a hearing officer, single member of the Commission or Commission panel, he, she or they may take the matter under submission for a period of no more than 14 days before delivering to the Executive Director proposed Findings of Fact and Conclusions. Any deliberations by two or more Commissioners shall be done publicly. Upon receipt, the Executive Director shall deliver a copy of the proposed Findings of Fact and Conclusions to all parties.
    - a. No later than seven days after delivery, any party may submit a written request to the Commission Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint. The Commission Chair may accept the proposed Findings of Fact and Conclusions as correct unless the party making the request for re-hearing demonstrates that: 1) the proposed Findings of Fact contain one or more material error(s) of fact that necessarily affects one or more Conclusions, or 2) the Conclusions are not supported by substantial evidence.
    - b. The party making the request shall provide a complete copy of the written request to all other parties by the time the written request is submitted to the Commission Chair. Any other party shall have seven days from receipt of the written request to submit written opposition or support to the Commission Chair.
    - c. If the Commission Chair determines there are no grounds to rehear all or portions of the complaint, he or she shall notify the Executive

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Director, who shall place the proposed Findings of Fact and Conclusions on the agenda for approval at the next regular Commission meeting or any special meeting called by the Commission Chair.

- d. If the Commission Chair determines that grounds exist to rehear all or portions of the complaint, the Commission Chair may specify what facts need to be established or reviewed, the form and under what circumstances any new evidence shall be received, and a timetable for re-submitting any revised Findings of Fact and Conclusions to the Executive Director.
  - e. The decision of the Commission Chair on any request for re-hearing shall be final.
2. After notifying all parties and the complainant of the date, time, and location of its meeting, the Commission shall either adopt the proposed Findings of Fact and Conclusions in their entirety or adopt the Findings of Fact and reach additional or different conclusions consistent with the Findings of Fact. The Commission has discretion to reach additional or different conclusions consistent with the Findings of Fact, including the full range of options from dismissal, with or without a warning letter, through assessment of maximum penalties, including other remedial measures.
  3. If the complaint was heard by the full Commission, the Commission shall decide, upon conclusion of the hearing and by an affirmative vote of a majority of Commissioners, whether a violation has occurred. The Commission may, in the alternative, direct the Executive Director or designee to prepare a Findings of Fact and Conclusions for consideration at the next Commission meeting.
  4. The Commission shall determine that a violation of City law over which the Commission has jurisdiction has occurred only if the weight of the evidence shows that it was more likely than not that a violation has occurred.
  5. Any Findings of Facts and Conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions (penalties and fines) in accordance with the adopted findings and consistent with Commission authority. The Commission will make its findings and recommendations public.

**J. Decision and Order:** The Commission's decision and order on a complaint following a hearing or default proceeding shall be final and shall constitute closure of the administrative process for that complaint.

### VIII. COURT REVIEW

Upon conclusion of the administrative process – whether via default or an administrative hearing, any party contesting a decision of the Commission may file suit for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction, within ninety days as provided by law.

### IX. COMMISSIONER RECUSAL

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A Commissioner or a member of the Commission Staff shall recuse himself or herself from participating in the resolution of any complaint in which he or she has a conflict of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, or in which he or she, by reason of interest or prejudice, cannot perform his or her duties in an impartial and unbiased manner.

### **X. REPEAL, SEVERABILITY, CONFLICT, AND COMMISSION AUTHORITY**

- A. Repeal.** Upon adoption of these procedures, all prior procedures regulating the administration of complaints filed with the Commission including are hereby repealed.
- B. Severability.** If the legislature, court or other entity determines that any portion of these rules is invalid, the other remaining rules shall not be affected and will continue in effect.
- C. Conflict with Law.** To the extent a law or regulation set forth above contains specific procedures or rules that conflict with these General Complaint Procedures, the more specific provisions provided in the laws or regulations set forth above shall control.
- D. Commission Authority.** Nothing in these complaint procedures limits the Commission's ability to review, refer, make recommendations, or take other actions regarding an issue that does not fall within its enforcement authority, but which may fall within its general authority to ensure fairness, openness, honesty, and integrity in City government.

## Public Ethics Commission

### ENFORCEMENT PENALTY GUIDELINES

The Public Ethics Commission (PEC) is authorized by the Charter of the City of Oakland (City Charter) to impose penalties, remedies, and fines as provided for by local ordinances that are within the PEC's jurisdiction, including the Government Ethics Act, Oakland Campaign Reform Act and Lobbyist Registration Act. This Guideline includes general principles and factors to consider in determining a penalty, and a tiered approach to penalties based on the seriousness of the violation. This Guideline is advisory only, and does not limit the PEC from using discretion to deviate from the guidance when atypical or egregious circumstances exist.

The penalties set forth in this Guideline are separate and apart from any late filing fees that may be owed by a respondent.

#### Guiding Principles for Enforcement

The overarching goal of the PEC's enforcement activity is to obtain compliance with rules under its responsibility, and provide timely, fair and consistent enforcement that is proportional to the seriousness of the violation. The following principles guide the PEC's compliance activities as part of an effective enforcement program:

- 1. Timeliness** – For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed. Compliance should be timely to provide the public with required disclosures, and to mitigate harm caused by a violation(s). Enforcement resolutions should be viewed through this lens to craft a range of penalties and enforcement actions that drive timely compliance and mitigate harm. For campaign violations, this should mean swift resolution and correction of violations, especially before an election. Timely public disclosure is crucial in these cases, as the value of required pre-election disclosure declines significantly after the election. Similarly, PEC enforcement of violations should also be pursued in a diligent and timely manner as allowed by PEC staffing/priorities.
- 2. Fairness** – The core of the PEC's work is fairness to ensure that enforcement actions are even-handed and consistent, as well as to ensure due process for those accused of violating the law. The PEC frequently investigates and administratively prosecutes public officials, and it is essential that politics and rivalries not become part of such investigations. The PEC shall track penalty amounts over time and articulate in each enforcement action its consistency with previous actions. This allows the public, respondents, and future PEC Commissioners to see the articulated rationale for the decision and the reasons for any variation. Additionally, effective enforcement of violations leads to fairness in government, as timely enforcement of government ethics rules also shows respect and fairness to those who follow the rules.
- 3. Focus on Serious Violations and Repeat Offenders** – The focus of the PEC's work – both in terms of resources spent as well as the level of penalty imposed – should reflect the seriousness of each violation so that penalties urge compliance, while preserving PEC resources for major

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violations that may occur. Minor violations will not be ignored, but proportionality in penalties and an ability to take on more significant cases is important to creating a culture of compliance. Violations will not be considered minor where a pattern of violations exists.

- 4. Education and Support** – To fully embrace the goals of its enforcement responsibilities, the PEC has implemented a full range of services for the purpose of educating and supporting the regulated community, including: voluntary and mandatory training sessions; published materials and guidebooks explaining rules and requirements; on-line access to rules, forms, guidebooks and advice; access to staff members in person, via email and by phone for guidance and assistance; proactive monitoring, communication and reminders regarding filing deadlines; and electronic filing platform for most filing requirements. These services are intended to ensure that the regulated community is advised of, and aware of, filing and reporting requirements, and to ensure full and timely compliance with various regulatory requirements. Given the array of services, including the availability of PEC staff for questions, claims of ignorance regarding the obligations of the regulated community will not be given much weight, if any, in an enforcement action.

## Specific Factors to Consider in Determining a Penalty

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty.



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## Penalty Options Based on Levels

To obtain compliance with the law and provide timely and fair enforcement that is proportional to the seriousness of the violation, the PEC institutes a three-tiered approach that utilizes warning letters, streamlined stipulations, and more severe penalties based on the level of public harm and the articulated aggravating and mitigating circumstances. This approach aims to provide consistency across similar violations and an expedited way to handle cases according to the level of seriousness so that staff resources are allocated according to the level and significance of the violation.

1. **Warning Letter:** A warning letter is an enforcement option for any minor violations without any aggravating circumstances. It is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of a potential or proven low-level violation. This allows for respondents to be educated about the rules and provides the PEC with a historical list of prior violations for future consideration in enforcement cases. A warning letter may be used to address a violation where the evidence demonstrates that a monetary penalty is not justified, or in the interest of justice. A warning letter will not be available where the respondent has had a prior violation of the same or similar type.
  
2. **Streamline Stipulation:** The streamlined stipulation program takes common low-level violations, such as the non-filing of a campaign statement, and provides a scaled-down stipulation document and set penalties. These more common cases can be quickly handled with a penalty commensurate to the violation, which helps preserve staff time to focus on more serious cases. The streamlined stipulation program is an option (but is not required) to resolve the following types of low-level violations without any serious aggravating circumstances:
  - a. Form 700 Non-Filer (GEA § 2.25.040), where the form in question is no more than six months late;
  - a.b. Form 700 Non-Reporter (GEA § 2.25.040), where the unreported interest does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the Respondent's exercise of their official duties;
  - c. Misuse of City Resources (GEA § 2.25.060(A)(1)), where the total value of misused City resources is \$100 or less and does not involve campaign activity;
  - d. Gift Restrictions (GEA § 2.25.060(C)), where the aggregate amount of the gift(s) from a single source is no more than \$250 over the legal limit, the source of the gift(s) was not a restricted source or a lobbyist, and the gift does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the Respondent's exercise of their official duties;
  - e. Contribution Limits (OCRA §§ 3.12.050 - 3.12.080), where the total amount of the aggregate contributions from a single source in excess of the contribution limit is \$250 or less;
  - f. Contractor Contribution Prohibition (OCRA § 3.12.140), where the total amount of the aggregate contributions from a single prohibited source or its principals is \$250 or less;

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- g. Form 301 Non-Filer (OCRA § 3.12.190), where the form in question is no more than ninety (90) calendar days late;
- h. Campaign Statement/Report Non-Filer and Non-Reporter (OCRA § 3.12.240), where:
  - i. for a pre-election report, the report is no more than thirty (30) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made;
  - ii. for a semiannual report, the report is no more than one-hundred and eighty (180) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made;
  - iii. for a late contribution or late independent expenditure report, the report is no more than seven (7) calendar days late, the unreported activity does not exceed \$10,000 in either contributions raised or expenditures made, and the report is filed before the date of the election;
- i. Lobbyist Registration Non-Filer (LRA § 3.20.040.), where the registration form is no more than one-hundred and eighty (180) days late, and the total compensation received for previously-unreported lobbying does not exceed \$2,000 in a single quarter or, in the case of a salaried lobbyist, the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000;
- b.j. Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110.), where the report in question is no more than ninety (90) days late. and the total compensation received for unreported lobbying activity is \$2,000 or less or, in the case of a salaried lobbyist, where the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000.

For purposes of streamlined settlements, the term “non-filer” includes late filers.

The streamlined stipulation program takes into account that the articulated evidence demonstrates a greater degree of public harm than a case that qualifies for a warning letter and is therefore worthy of a penalty. Streamlined stipulations will not be available where the respondent has had a prior violation of the same or similar type resolved by way of Commission action in the previous six years, except as to treasurers in OCRA cases where the violation was primarily due to the actions of others. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations have been standardized and shortened to promote efficiency.

The penalty tiers applying to streamlined stipulations ~~are~~ set forth below shall be applied on a per-violation basis and are contingent upon the following conditions:

- the respondent has taken corrective action as requested by Commission staff, such as filing~~ed~~ the form or amendment that forms the basis of the violation, or returning or disgorging a prohibited contribution or gift;
- the respondent has agreed to the terms of the streamlined stipulation; and
- the respondent has paid all late filing ~~finest fees,; and~~

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~~• the penalties are applied on a per-violation basis.~~

<b>Violation</b>	<b>Compliance prior to or in response to first PEC enforcement contact</b>	<b><del>Compliance prior to publication of PEC investigation report</del> <u>Compliance in response to second PEC enforcement contact</u></b>	<b><u>Compliance prior to publication of PEC investigation report</u></b>
<u>Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040):</u>	<del>\$400</del> <u>Diversion</u>	<del>\$400</del> <u>\$800</u>	<u>\$800</u>
<u>Gift Restrictions (GEA § 2.25.060C)</u>	<del>\$400, plus unlawful amount</del> <u>Diversion</u>	<del>\$400, plus unlawful amount</del> <u>\$800, plus unlawful amount</u>	<u>\$800, plus unlawful amount</u>
<u>Form 301 Non-Filer (CRA § 3.12.190)</u>	<del>\$400, plus 2% of contributions received over limit prior to filing form</del> <u>Diversion, plus 2% of contributions received over limit prior to filing form</u>	<del>\$400, plus 2% of contributions received over limit prior to filing form</del> <u>\$800 plus 2% of contributions received over limit prior to filing form</u>	<u>\$800 plus 2% of contributions received over limit prior to filing form</u>
<u>Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340)</u>	<del>\$400, plus 1% of all financial activity not timely reported</del> <u>Diversion, plus 1% of all financial activity not timely reported</u>	<del>\$400, plus 1% of all financial activity not timely reported</del> <u>\$800, plus 1% of all financial activity not timely reported</u>	<u>\$800, plus 1% of all financial activity not timely reported</u>
<u>Misuse of City Resources. (GEA § 2.25.060A1.)</u>	<u>Diversion, plus the unlawful amount</u>	<u>\$400, plus the unlawful amount</u>	<u>\$800, plus the unlawful amount</u>
<u>Contribution Limits (CRA §§ 3.12.050 - 3.12.080.)</u>	<u>Diversion, plus 1% of the total amount received over the limit</u>	<u>\$400, plus 1% of the total amount <del>given or</del> received over the limit</u>	<u>\$800, plus 1% of the total amount <del>given or</del> received over the limit</u>

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<u>Contractor Contribution Prohibition. (CRA § 3.12.140.)</u>	<u>Diversion, plus 1% of the total amount of the prohibited contribution</u>	<u>\$400, plus 1% of the total amount of the prohibited contribution</u>	<u>\$800, plus 1% of the total amount of the prohibited contribution</u>
<u>Lobbyist Registration Non-Filer. (LRA § 3.20.040.)</u>	<u>Diversion, plus \$200</u>	<u>\$400</u>	<u>\$800</u>
<u>Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>

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As used in the table above, the term “contact” means any method of communication reasonably calculated to ensure notice based upon Commission staff’s due diligence in obtaining the respondent’s contact information. The contact may be made verbally or in writing. In the case of verbal contacts, Commission staff shall keep a record of all verbal contacts. In the case of a written contact, the contact may be made electronically and/or physically, and need not be personally served on the respondent. Contact is presumed to be effective if it is sent via email to the City email address of a current City employee or official, or in the case of an open campaign committee or registered lobbyist, to the most recent email address provided by that committee or lobbyist to the PEC.

- 3. Mainline Penalty.** For more serious violations and violations that do not qualify for a warning letter or the streamlined stipulation program, the PEC will start with the following “base-level” penalty amount and then adjust the penalty amount based on mitigating and aggravating factors of the enforcement action, which will be articulated in any decision to impose a monetary penalty.

Violation	Base-Level Per Violation	Statutory Limit Per Violation
Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.)	\$1,000.	\$5,000 or three times the amount not timely reported, whichever is greater.
Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Revolving Door Provisions. (GEA § 2.25.050.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of City Resources. (GEA § 2.25.060A1.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of Position or Authority (GEA § 2.25.060A2.)	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.
Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Gift Restrictions. (GEA § 2.25.060C.)	\$1,000 plus the unlawful amount.	\$5,000 or three times the unlawful amount, whichever is greater.
Contracting Prohibition. (GEA § 2.25.060D.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Bribery/Payment for Position. (GEA § 2.25.070A-B.)	\$5,000, or three times the unlawful amount, whichever is greater	\$5,000 or three times the unlawful amount, whichever is greater.
Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)	\$1,000.	\$5,000 or three times the unlawful amount, whichever is greater.

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Contribution Limits. (CRA §§ 3.12.050 -3.12.080.) and Contractor Contribution Prohibition. (CRA § 3.12.140.)	\$1,000, plus the unlawful amount.	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.
One Bank Account Rule. (CRA § 3.12.110.)	\$1,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Fundraising Notice Requirement. (CRA § 3.12.140P.)	\$1,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Officeholder Fund Requirements. (CRA § 3.12.150.)	\$2,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Form 301 Requirement. (CRA § 3.12.190.)	\$1,000, plus 2% of contributions received over contribution limit prior to filing Form 301.	\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.
Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.)	\$1,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Contribution and Expenditure Restrictions. (CRA §§ 3.12.065 and 3.12.130.)	\$1,000	\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.
Campaign Statement/Report Non-Filer and Non-Reporter. (CRA § 3.12.340.)	\$1,000, plus 1% of the all financial activity not timely reported.	\$5,000 or three times the amount not properly reported, whichever is greater.
Public Finance Program Requirements. (LPFA § 3.13.010.)	\$1,000.	\$1,000 and repayment of public financing unlawfully received or expended.
Lobbyist Registration Non-Filer. (LRA § 3.20.040.)	\$750.	\$1,000.
Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)	\$750.	\$1,000.

### Application of this Guideline

While most enforcement matters will likely fall within the penalty structure outlined in this guideline, this document was created merely to assist the PEC in determining an appropriate penalty in certain types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty that deviates from this guideline or from the PEC’s past practice. Additionally, this guideline is not a comprehensive list of violations for which the PEC has jurisdiction to investigate and impose a penalty, and exclusion of a type of violation from this guideline does not in any way limit the PEC or its staff from investigating and imposing a fine or penalty on any person who commits such a violation.



# Streamline and Diversion Amendments

**PEC meeting of October 11, 2023  
Simon Russell, Enforcement Chief**

# WHAT IS “STREAMLINE”?

2

Cases involving:

- Minor violations
- No aggravating factors
- No prior history of similar violations



# WHAT IS “STREAMLINE”?

3

<b>Violation</b>	<b>Compliance prior to or in response to first PEC enforcement contact</b>	<b>Compliance prior to publication of PEC investigation report</b>
<u>Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040):</u>	<u>\$400</u>	<u>\$800</u>
<u>Gift Restrictions (GEA § 2.25.060C)</u>	<u>\$400, plus unlawful amount</u>	<u>\$800, plus unlawful amount</u>
<u>Form 301 Non-Filer (CRA § 3.12.190)</u>	<u>\$400, plus 2% of contributions received over limit prior to filing form</u>	<u>\$800 plus 2% of contributions received over limit prior to filing form</u>
<u>Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340)</u>	<u>\$400, plus 1% of all financial activity not timely reported</u>	<u>\$800, plus 1% of all financial activity not timely reported</u>

# WHAT IS “DIVERSION”?

4

- A way of resolving less-serious violations without a fine.
- Usually by requiring a training.

# WHAT CHANGES ARE WE PROPOSING?

5

1. Expand the types of violations eligible for streamline
2. Clarify when streamline is/is not available for each violation type
3. Authorize the Executive Director to enter streamlined settlement agreements without a Commission vote
4. Authorize use of diversion to resolve streamline cases

# ELIGIBLE VIOLATIONS

6

## Currently:

- Form 700 Non-Filer
- Form 700 Non-Reporter
- Campaign Statement Non-Filer
- Campaign Statement Non-Reporter
- Gift restrictions
- Form 301 Non-Filer

# ELIGIBLE VIOLATIONS

7

## Proposed additions:

- **Misuse of City Resources**
- **Campaign Contribution Limit**
- **Contractor Contributions**
- **Lobbyist Registration Non-Filer**
- **Lobbyist Report Non-Filer**
- **Lobbyist Report Non-Reporter**

# ELIGIBILITY CRITERIA

8

**Currently:**

“No aggravating factors” (vague)

**Proposal:**

- **More specific criteria for each violation type**

# APPROVAL PROCESS

9

## Currently:

- Requires Commission vote

## Proposal:

- Allow Executive Director to approve
- Report to Commission (but no vote)
- *Except* for cases involving:
  - Elected officials and chiefs of staff;
  - Department directors; or
  - Campaigns that have raised or will raise more than \$50,000

# AUTHORIZE DIVERSION

10

## Currently:

- Unclear if diversion is available in streamline cases

## Proposal:

- Clarify that diversion is available in most streamline cases, where Respondent quickly complies



# RECAP; QUESTIONS?

11

We are proposing:

1. Expand the types of violations eligible for streamline
2. Clarify when streamline is/is not available for each violation type
3. Authorize the Executive Director to enter streamlined settlement agreements without a Commission vote
4. Authorize use of diversion to resolve streamline cases



## Item 6a - Staff Memo

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

Nicolas Heidorn, Executive Director

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TO: Public Ethics Commission  
FROM: Nicolas Heidorn, Executive Director  
DATE: September 29, 2023  
RE: Proposed Per Diem Late Fee Waiver Guidelines

---

Under the Political Reform Act (PRA) and under the Oakland Master Fee Schedule (MFS), the Public Ethics Commission (PEC or Commission) is generally required to charge a \$10/day fee for late campaign finance and lobbyist statements. (This late filing fee is in addition to any other penalties the PEC's Enforcement Program may bring for missing filing deadlines.) The Executive Director, for good cause, may waive these late fees, subject to certain limitations in State or City law. The City Charter requires the PEC to establish guidelines for the waiver of per diem late fees, which must be posted on the PEC's website, and to establish criteria for a person to appeal the Executive Director's decision to the full Commission.

**Staff is recommending that the PEC adopt the attached "Oakland Public Ethics Commission Guidelines for Waiving Late Filing Fees." This report provides a summary and explanation of these guidelines.**

### Background

A. Charter Requirements. Section 603(f)(5) of the City Charter describes the PEC's responsibilities in imposing lobbying, campaign finance, and government ethics per diem late filing fees. Under the Charter:

- The PEC must establish waiver guidelines and post them online.
- The PEC must prescribe criteria for appealing the Executive Director's decisions to not waive a late filing fee.
- A late filing that triggers the assessment of a fee of \$1,000 or more by the Commission shall be placed on a Commission meeting agenda before issuance of the fee.

Presently, the PEC only imposes per diem late fees for late campaign finance statements. With recent amendments to the Master Fee Schedule, the PEC is now authorized to assess per diem late fees for late lobbying statements. Presently, the PEC does not assess per diem late fees for any other government ethics statements.

B. Campaign Finance Statements. Under state law, candidates and political committees are required to file periodic reports disclosing their campaign activities. For candidates, this generally includes at least two semi-annual reports and two pre-election reports in election years. The PEC is the local filing officer for campaign finance disclosure statements relating to Oakland elections. (OMC 3.12.240(A).) Under Section 91013(a) of the Government Code, a person who files a late campaign finance statement or report after a deadline is liable "in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed." (See also OMC 3.12.240(D).) The PEC is not required to enforce this

liability if “on an impartial basis the filing officer determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the” Political Reform Act (PRA). (GC 91013(a).)

However, the PRA prohibits a filing officer from waiving late filing fees a certain number of days after written notice has been sent to the non-filer, depending on the type of statement at issue. The PRA provides:

“no liability shall be waived if a statement or report is not filed within ... five days for a campaign statement required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.”

Because the PEC’s practice is to provide written notice to campaign statement non-filers on the second day that their statement is late, late fees for second pre-election statements may not be waived after day seven and late fees for other campaign finance reports may not be waived after day 12.

C. Lobbying Statements. Under the Lobbyist Registration Act (LRA), lobbyists are required to file quarterly disclosures of their lobbying activity, which is due 30 days after the end of a quarter. This year, the PEC proposed, and the City Council adopted, amendments to the Master Fee Schedule which imposed a \$10 “Late Fee per day until registration form or report is filed.” At its August meeting, the PEC proposed amendments to the LRA to:

- Incorporate this fee;
- Cap the total fee amount to \$1,000; and
- Permit the Executive Director to “reduce or waive a late filing fee under \$500 if the Executive Director determines that the late filing was not willful and that enforcement will not further the purposes of this Chapter. The Executive Director shall report any reductions or waivers of the late filing fee at the next regular meeting of the Public Ethics Commission.”

(Proposed OMC 3.20.225(B).) These proposed amendments are being considered by the City Council.

### Other Jurisdictions’ Guidelines

Staff has identified a number of jurisdictions that have adopted late filing fee waiver guidelines. Generally, jurisdictions have adopted a strict approach, only waiving fees where the late filing was largely outside of the control of the filer. For example, [San Francisco](#) only permits a fee waiver for late campaign finance reports in cases of “incapacitation for medical reasons, hospitalization, involvement in an accident, and death” or “other unique, unintentional factors beyond the filer’s control.” The [Fair Political Practices Commission](#) (FPPC) has adopted an almost identical standard for the late filing of Form 700 Statements of Economic Interest.

The California [Secretary of State](#), as to late campaign finance and state lobbying statements, and the [City of Laguna Beach](#), for PRA-required forms, have adopted a somewhat more lenient standard. Full waivers are only available if there is an “[u]nplanned medical incapacity or death of the filer or the filer’s immediate family” or for the “[u]navailability of records.” However, first-time filers may have 50% of their fee waived if “the filer was not using a professional or experienced treasurer at the time

## Item 6a - Staff Memo

of the filing obligation and the filer had a comparatively low level of activity that they failed to report in a timely manner” and the filer never filed statements previously.

### Proposed Oakland PEC Guidelines

Similar to the guidelines adopted by the Secretary of State, the FPPC, San Francisco, and Laguna Beach, the proposed PEC Guidelines would require that a filer demonstrate compelling reasons, beyond the filer’s control, to qualify for a good cause fee waiver. The proposed Guidelines include examples of good cause which expressly includes if the filer or their immediate family are medically incapacitated, hospitalized, or involved in a serious accident or are a victim of crime, or if the filer’s files are unavailable due to theft or destruction caused by a natural disaster, for example. The proposed Guidelines also include examples of reasons that would not constitute good cause, such as a filer not being aware of the deadline or being on vacation.

However, to alleviate some of the strictness of this standard, staff is also proposing that there be a presumption of good cause for a late filer who has no prior late filings and who is only 1-5 days late for a second campaign pre-election statement, and 1-7 days for all other campaign or lobbying statements. Where filings are only a few days late, and the filer has no prior record of late filings, it is unlikely that the violation was intentional; the harm to the public from the delayed reporting is likely to be small or non-existent; and the administrative cost of imposing and collecting a fee may exceed the value of the fee.

State law restricts the Executive Director’s ability to waive late campaign filing fees more than five days after written notice has been provided to the filer for second campaign pre-election statements and more than ten days after written notice for other campaign statements. As described above, because the PEC provides notice of a late filing on day two, the Director is unable to waive fees after day seven for second campaign pre-election statements and after day 12 for all other campaign statements. Those limitations are noted in the proposed Guidelines.

Under the proposed LRA amendments, recently recommended to the City Council by the PEC, the Executive Director may only waive late fees of less than \$500 (i.e. of less than 50 days). That proposed limitation is incorporated into these proposed Guidelines, prohibiting waiver after 49 days.

The chart below, reproduced in the proposed Guidelines, summarizes when the Executive Director may waive per diem late filing fees:

<b>2<sup>nd</sup> Pre-Election Statement</b>	<b>All Other Campaign Statements</b>	<b>Lobbying Statements</b>
<ul style="list-style-type: none"><li>• 1-5 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 6-7 days late: for good cause</li><li>• 8+ days late: no waiver</li></ul>	<ul style="list-style-type: none"><li>• 1-7 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 8-12 days late: for good cause</li><li>• 13+ days late: no waiver</li></ul>	<ul style="list-style-type: none"><li>• 1-7 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 8-49 days late: for good cause</li><li>• 50+ days late: no waiver</li></ul>

The Guidelines also adopt procedures for appealing the Executive Director’s decision not to waive filing fees to the full Commission. Under the proposed Guidelines, an appeal must be made within 14 days of being notified of the Executive Director’s decision. The appeal would be scheduled for the next

## Item 6a - Staff Memo

regular PEC meeting and the appellant would be required to appear in person to answer questions from the Commission. The PEC would review the Director’s decision under an abuse of discretion standard.

### **Adopting Late Filing Fee Guidelines**

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. It is unclear whether the adoption of waiver guidelines falls under this requirement. However, in an abundance of caution, staff plans to transmit these procedures to the City Council.

### **Staff Recommendation**

Staff recommends that the Commission adopt the attached “Oakland Public Ethics Commission Guidelines for Waiving Late Filing Fees.”

**Additional Attachment:** Oakland Public Ethics Commission Guidelines for Waiving Late Filing Fees

### Oakland Public Ethics Commission Guidelines for Waiving Late Filing Fees

The late filing of campaign finance and lobbying statements denies voters, the press, the public, and other stakeholders of important information that should be current and readily available. Under State and City law, the Public Ethics Commission (PEC) is generally required to charge a \$10/day fee for the late filing of campaign or lobbying statements. However, the Executive Director of the PEC may waive these per diem late fees for good cause, subject to certain limitations in State and/or City law.

#### A. Applying for a For Cause Waiver

Within 14 days of the PEC sending out a notice to a filer that they are required to pay a per diem late fee, the filer may request in writing that the Executive Director waive the fee for good cause. PEC staff may prescribe the form in which a waiver request shall be submitted.

The Executive Director shall only grant a waiver if the late filing was not willful and if there is good cause to waive the fee. The Director may require that the filer provide adequate supporting documentation that good cause exists.

The following are examples of reasons that **do constitute good cause** and are eligible for a waiver:

- ***The filer was incapacitated for medical reasons.*** Adequate documentation may include the filer providing a signed statement by a medical provider, such as a doctor or therapist, on the medical provider's letterhead identifying the filer, the nature of the filer's incapacitation, and the date(s) thereof.
- ***The filer was hospitalized.*** Adequate documentation may include the filer providing a copy of the hospital bill or physician's statement showing the filer's name and the date(s) of the hospitalization.
- ***The filer was involved in a serious accident or was the victim of a crime.*** Adequate documentation may include the filer providing a copy of a police report showing the filer's name, the date and time of the accident or incident, and, if applicable, whether or not the vehicle was disabled, in addition to a written statement by the filer explaining how the accident caused the late filing.
- ***The filer's records were lost or are unavailable due to fire, flood, theft, earthquake or similar reason.*** Adequate documentation may include a copy of a police, fire or insurance report indicating the date of the occurrence and the extent of the loss or damage.
- ***The filer was unable to file on time because they were assisting an immediate family member who was medically incapacitated, hospitalized, or involved in a serious accident or was the victim of a crime.*** Adequate documentation may include documents described above and documents indicating that the affected person(s) are an immediate family member. Immediate family is defined as the filer's spouse or registered domestic partner; sibling; sibling's spouse or registered domestic partner; child or stepchild; child or stepchild's spouse or registered domestic partner; grandchild; parent; spouse or registered domestic partner's parent; or grandparent.
- ***Other compelling reasons beyond the filer's control.***

## Item 6b - Draft Guidelines

The following are examples of reasons that **do not constitute good cause** and are not eligible for a waiver:

- ***The filer was not aware of the filing requirements.***
- ***The filer did not receive notice of the filing requirements.***
- ***The filer was not available to sign or verify forms in time for the submission of their report.***
- ***The filer sent the forms to the wrong official.***
- ***The filer did not know how to get forms or to submit their reports.***
- ***The filer did not have complete information by the filing deadline.***
- ***The filer was on vacation.***
- ***The filer was busy at work and unable to file.***

The Executive Director shall notify the PEC, at its next regular meeting, of any per diem late fees they have waived pursuant to these Guidelines.

### B. First-Time Late Filers

Notwithstanding Section A, if a filer is only 1-5 days late in filing the second campaign pre-election statement, or 1-7 days late for all other campaign or lobbying statements, and the filer has not been late filing any other statement in the prior six years for campaign statements and four years for lobbying statements, the Executive Director shall presume that the late filing was for good cause and automatically waive the late fee, without requiring the filer to apply for a waiver. For campaign statements that must be filed within a certain number of days of a qualifying contribution or expenditure, such as Form 496 or Form 497 reports, good cause will only be presumed if the statement was filed before the election.

For purposes of this Section, a prior late filing by a candidate's treasurer will preclude that candidate from receiving an automatic waiver, unless the treasurer can demonstrate that the prior violation was primarily due to the actions of others, and not the treasurer. In the absence of other proof, a treasurer may submit a sworn statement certifying that the prior violation was primarily due to the actions of others, and a description of the facts sufficiently detailed as to substantiate their claim. Knowingly filing a false statement will result in a reversal of any waiver granted, and may be used as an aggravating factor in any related Enforcement action.

### C. Non-Waiver

Notwithstanding Section A, the following late statements are not eligible for a waiver, even for good cause:

- Second pre-election campaign statements that are more than 7 days late.
- All other campaign statements that are more than 12 days late.
- Lobbyist statements that are more than 49 days late.

### D. Summary of Waiver Policy

## Item 6b - Draft Guidelines

<b>2<sup>nd</sup> Pre-Election Statement</b>	<b>All Other Campaign Statements</b>	<b>Lobbying Statements</b>
<ul style="list-style-type: none"><li>• 1-5 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 6-7 days late: for good cause</li><li>• 8+ days late: no waiver</li></ul>	<ul style="list-style-type: none"><li>• 1-7 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 8-12 days late: for good cause</li><li>• 13+ days late: no waiver</li></ul>	<ul style="list-style-type: none"><li>• 1-7 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 8-49 days late: for good cause</li><li>• 50+ days late: no waiver</li></ul>

### E. Limitations on Liability

Under the Political Reform Act, Government Code Section 91013, per diem late fees for late campaign statements shall not exceed \$10 per day up to a maximum of \$100 or the cumulative amount stated in the late statement, whichever is greater.

The PEC's policy under the Lobbyist Registration Act is to cap per diem late fees for late lobbyist statements to a maximum of \$1,000.

The per diem late fees described in these Guidelines are in addition to any other penalties or remedies established under State or City law, and do not preclude a separate enforcement action by the PEC or another enforcement entity for the late filing of campaign or lobbying statements, nor do these Guidelines limit the amount in fines that may be imposed under a separate enforcement action.

### E. Appeal

The Executive Director shall generally decide a waiver request and notify the filer within 14 days. If the Executive Director denies a filer's waiver request, the filer may appeal the Director's decision to the full Commission within 14 days. PEC staff may prescribe the form in which a waiver request shall be submitted. The appeal shall be scheduled for a public hearing before the full Commission no later than the Commission's next regular meeting that is at least 15 days after the appeal is received, and shall provide the applicant with 10 days notice of the hearing.

To submit an appeal, an applicant must:

- Pay the applicable fee prior to filing their appeal. If the fee is not paid, the appeal shall be automatically denied.
- Submit a written application, explaining why the Director's decision was in error.
- Appear in-person at the full Commission to answer questions. If the filer does not appear, the appeal shall be automatically denied.

In any appeal, the PEC shall review the Executive Director's decision not to waive late filing fees under an abuse of discretion standard.





## Item 7 - Staff Memo

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

Nicolas Heidorn, Executive Director

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TO: Public Ethics Commission  
FROM: Nicolas Heidorn, Executive Director  
DATE: September 29, 2023  
RE: Pursuing Grant Funding Opportunities to Support the Democracy Dollars Program

---

The Public Ethics Commission (PEC or Commission) will likely be invited by the Evelyn and Walter Haas, Jr. Fund (Haas, Jr. Fund) to submit an application for a grant to fund a Democracy Dollars community engagement and outreach specialist position at the PEC for one year. This position, if funded, will enable the PEC to build a robust outreach and education plan well before the distribution of Democracy Dollar vouchers and begin building relationships with community organizations and leaders that can help educate the public and diverse communities about the Program. The grant is intended to be a proof of concept, with a goal of the City permanently supporting the position in its next budget cycle, if the concept proved successful. The outreach specialist would be a City employee or contractor reporting to the Democracy Dollars Program Manager; the Haas, Jr. Fund would have no role in directing or supervising the outreach specialist's or the PEC's outreach activities.

**Staff is requesting the PEC's approval to submit an application and delegate to the Executive Director, in consultation with the Chair and the Vice Chair, the power to sign off and execute any necessary agreements to apply for and receive the grant.**

### Background

In November 2022, voters passed Measure W, to replace Oakland's existing, reimbursement-based public financing system with a voucher-based public financing system, modelled off of Seattle's system, called the Democracy Dollars Program. Under the Program, eligible Oakland residents will receive four, \$25 vouchers which they may contribute to any eligible candidate running for a City or Oakland School District office. Measure W required that the City provide a specified minimum budget and at least four staff positions to the PEC to administer the Program, which was intended to be implemented in the 2024 election cycle.

However, in light of the significant budget deficit the City was facing, the City Council voted to eliminate funding for Democracy Dollars in the 2023-2025 Budget, effectively postponing the Program to 2026, and provided the PEC with one staff position to begin Program implementation, instead of the four required under Measure W. Unless the City Council provides a mid-cycle adjustment, the soonest the PEC could be budgeted the three additional positions would be in July of 2025. If it takes several months to hire for these positions, which has been the PEC's experience in the past, these positions may not be filled until a few months before vouchers are mailed out to Oakland residents.

PEC staff has been exploring opportunities to find grant funding to enable earlier hiring of contractors or staff who can assist the PEC in preparing for Democracy Dollars implementation, with outreach and education being one crucial area that will require early planning and preparation. Measure W expressly provides that the City may accept voluntary donations to the Democracy

Dollars Fund, which is the fund the voucher contributions are paid out of. (OMC 3.15.060.) The City of Oakland, although not the PEC, also routinely applies for grant funding to support specific programs or operations.

### **Contemplated Outreach Position**

A core need of the Democracy Dollars Program will be preparing a robust outreach and education program to let the approximately 245,000 Oakland registered voters know that about the Program, and how to use their vouchers. As part of its commitment to equitable outreach, and in keeping with the goals of Measure W to “expand public participation in the local democratic process and empower all Oakland residents with an opportunity to engage meaningfully in the campaign process,” it is particularly important that this outreach and education encompass all of Oakland’s diverse communities and emphasize communities that have traditionally been underserved or that have lower levels of political engagement.

Staff is proposing to apply for a grant to contract for or bring on a community engagement and outreach specialist to assist with the development and implementation of an equity-centered Democracy Dollars engagement plan to build awareness of, and encourage broad participation in, the Program, including in traditionally underserved areas of Oakland. The community engagement specialist would assist with developing the PEC's community engagement infrastructure in the lead up to the launch of the Democracy Dollars Program and would assist in developing a communication strategy and comprehensive outreach plan for educating voters on the Program.

The PEC will seek grant funding to, at minimum, hire or contract with a specialist for one year, likely from at least July 1, 2024, to June 30, 2025. Because outreach and education will remain a critical component of the Program, if this specialist role is successful, staff anticipates requesting that the City Council continue the position permanently at the end of the grant.

### **Haas, Jr. Fund**

The Evelyn and Walter Haas, Jr. Fund is a San Francisco-based, 501(c)(3) nonprofit private foundation established by Evelyn D. Haas and Walter A. Haas Jr. in 1953. Today, the Fund’s board positions are held by the children and grandchildren of Evelyn and Walter Haas, including Board Chair Walter J. Haas. According to its mission statement, among other priorities, the Haas Jr. Fund seeks to “build a fair and inclusive democracy in which all Californians have equal opportunities for participation and representation.”

The Haas Jr. Fund has a long history of grantmaking in the Bay Area, including supporting the Bay Area Political Equality Collaborative’s (BayPEC’s) initial research into how to design a more inclusive public financing system, including the Democracy Dollars approach the Collaborative ultimately advocated for. The Haas, Jr. Fund also supported Maplight’s research into political giving in Oakland, and the work of the Oakland Fair Elections Coalition.

Current 2023 Bay Area grantees include \$100,000 to the East Bay Community Foundation for “the Fund for Multiracial Democracy to support City of Oakland leadership and community co-governance,” \$250,000 over two years for the Oakland Rising project “to support community engagement, leadership development, and alliance building in Oakland and Alameda County,” and \$115,000 over two years to Oakland Kids First “to support efforts to implement youth voting, activism, and leadership development in Oakland.” A list of past and current grantees may be found at the Haas, Jr. Fund’s website: <https://www.haasjr.org/grants/search>.

## Item 7 - Staff Memo

The Haas, Jr. Fund does not engage in or make grants in support of or opposition to political campaigns, including supporting or opposing candidates or ballot measures, and does not engage in or make grants to support lobbying.

### **Grant Approval**

The Executive Director is able to apply for and accept grants on their own authority. However, given the likely size of the grant, I am requesting the full PEC's input and authorization in this case.

According to the City Attorney's Office, the receipt of any grant over \$50,000 must be approved by the City Council. If the PEC receives this grant, staff will work with the City Council to finalize approval of the award.

### **Staff Recommendation**

Staff recommends that the PEC adopt a motion authorizing staff to apply for a grant to fund an outreach specialist position and, if successful, to take any necessary steps to execute the grant, in consultation with the PEC Chair and Vice Chair.

**Additional Attachment:** Haas Jr., Fund Mission Statement



## Item 8a - Staff Memo

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

Nicolas Heidorn, Executive Director

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TO: Public Ethics Commission  
FROM: Nicolas Heidorn, Executive Director  
DATE: September 29, 2023  
RE: Amendment to the PEC's Limited Public Financing Act of 2024 Proposal

---

Staff recommends that the Public Ethics Commission (Commission or PEC) adopt a minor amendment to its Limited Public Financing Act of 2024 (LPF) proposal, which is presently pending before the City Council, to remove the \$155,000 cap in the amount the PEC can spend on the proposed program.

### Background

At its August 9, 2023, meeting, the Commission adopted a proposal recommending that the City Council enact the LPF of 2024, or a substantively similar ordinance, which would establish a reimbursement-based public financing program for City Council District candidates for the 2024 election cycle only. That proposal is pending before the City Council, and will likely be heard by the full Council for its first reading on October 17, 2023.

The proposed LPF ordinance, as proposed by the PEC, provides that “The Public Ethics Commission shall finance the public financing program from its discretionary funds in an amount not to exceed \$155,000 over the 2023-2025 fiscal years.” \$155,000 is the amount that the City Council appropriated to the PEC in discretionary funding for the 2023-2025 Budget, and is consistent with the amount that has been budgeted to the PEC for its LPF program in the past.

However, it is possible that the PEC may receive additional “carry-forward” funds from the prior LPF program, or that the City Council may direct that these prior unexpended funds be made available to the PEC for the proposed LPF program. There are \$37,566.24 in unexpended candidate funds and \$21,522.39 in unexpended administrative funds from prior LPF programs. If these funds are allocated to the PEC, the PEC may not be able to use them for the proposed LPF of 2024, because of the \$155,000 cap to that proposed program.

### Staff Recommendation

**Staff recommends that the PEC adopt a resolution recommending to the City Council, as an *additional alternative to its prior proposal*, the adoption of the Limited Public Financing Act of 2024, but instead requiring the PEC to allocate a minimum of \$155,000 to the public financing program.**

The proposed change would only affect Section 3.13.060(B) of the proposed LPF of 2024 language that the PEC previously adopted. The proposed change would be as follows, or a substantively similar amendment:

The Public Ethics Commission shall allocate a minimum of ~~finance the public financing program from its discretionary funds in an amount not to exceed~~ \$155,000 over the 2023-2025 fiscal years from its discretionary funds to the public financing program.

While the PEC previously authorized the City Council to adopt a “substantively similar” ordinance to the language the PEC proposed for the LPF of 2024, it is possible changing the public financing spending cap to a floor may be deemed a substantive change, which would require that the PEC first recommend this change for the City Council to be able to enact it. Under Measure W, the City Council may generally only make amendments to the Democracy Dollars Program that “are consistent with its purpose and approved by a two-thirds ( $\frac{2}{3}$ ) vote of the Councilmembers, provided that the Commission has first approved specific findings and recommendations by a two-thirds ( $\frac{2}{3}$ ) vote of the Commissioners that the City Council amend the Act.”

The attached resolution is identical to the Resolution the PEC adopted at its August 9, 2023, meeting, except for the change to Section 3.1.3.060(B) described above.

**Attachments:** Draft Resolution; Exhibit A to the Draft Resolution

## CITY OF OAKLAND Public Ethics Commission



**RESOLUTION NO. 23-07**  
**[Proposed 10-11-23]**

RESOLUTION RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 3.13 (THE LIMITED PUBLIC FINANCING ACT OF 2024) TO TEMPORARILY RESTORE PUBLIC FINANCING, OR A SUBSTANTIVELY SIMILAR ORDINANCE

By action of the Oakland Public Ethics Commission:

**WHEREAS**, on November 8, 2022, Oakland voters passed Measure W, which repealed Oakland Municipal Code Chapter 3.13, the “Limited Public Financing Act of the City of Oakland,” and replaced it with Oakland Municipal Code Chapter 3.15, the “Oakland Fair Elections Act,” which establishes the Democracy Dollars Program; and

**WHEREAS**, Section 3.15.060(E) of the Oakland Fair Elections Act mandates a minimum budget set aside for the Oakland Democracy Dollars Fund (“Fund”) and for non-staff costs for the Public Ethics Commission (“Commission”) to administer the Fund, and allows the City Council to suspend the aforesaid minimum budget set-asides for a fiscal year or 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, provided that the suspension is part of a general reduction in expenditures across multiple departments; and

**WHEREAS**, the City of Oakland was experiencing the largest general purpose fund shortfall in its history prior to the balancing actions contained in the Fiscal Years 2023-2025 budget; and

**WHEREAS**, in light of the extreme fiscal necessity the City was facing, the Council determined it was necessary to suspend the Charter-mandated minimum budget set-asides for the FY 2023-2025 budget cycle for the Democracy Dollars Fund and non-staff costs for the Commission to administer the Democracy Dollars Program; and

**WHEREAS**, Measure W anticipated that the Commission may not be able to implement the Democracy Dollars Program in the first election cycle following the measure’s passage, and provided in Section 3.15.050 of the Oakland Fair Elections Act that: “In the first election cycle following voter approval of this ordinance, the Commission may, by a vote of at least five (5) of its members, delay the implementation of the Program in part or in its entirety if the Commission is not able to meet all of the requirements of the Program as provided by this ordinance. In making this determination, the Commission should consider all possible alternatives to avoid delaying Program implementation in its entirety, including but not limited to partial implementation by issuing only mailed Democracy Dollars, or limiting the Program to only certain races, or changing Program components.”; and

**WHEREAS**, the Commission considered all possible alternatives to avoid delaying Democracy Dollars Program implementation in its entirety, including but not limited to partial implementation by issuing only mailed Democracy Dollars or limiting the Program to only certain races, but determined it could not do even a partial implementation for the 2024 elections. Furthermore, on July 12, 2023, the Commission voted, by a vote of 6-0, to postpone the distribution and use of Democracy Dollars vouchers for the November 2024 election; and

**CITY OF OAKLAND**  
**Public Ethics Commission**



**RESOLUTION NO. 23-07**  
**[Proposed 10-11-23]**

**WHEREAS**, the Commission is working towards the full implementation of the Democracy Dollars Program for the 2026 elections; and

**WHEREAS**, Measure W anticipated that amendments to the measure may be appropriate to further the purposes of Democracy Dollars Program if they are recommended by the Commission. Section 3.15.230 of the Oakland Fair Elections Act provides that: “The City Council may make any amendments to this Act that: (1) are consistent with its purpose and approved by a two-thirds vote of the Councilmembers, provided that the Commission has first approved specific findings and recommendations by a two-thirds vote of the Commissioners that the City Council amend the Act”; and

**WHEREAS**, the City of Oakland has provided public financing to eligible candidates for City Council District office for over two decades; and

**WHEREAS**, the Commission finds that the elimination of all public financing for the 2024 election is contrary to the purposes of the Oakland Fair Elections Act; and

**WHEREAS**, the Commission finds that the temporary restoration of a limited public financing program for the 2024 election furthers the purposes of the Oakland Fair Elections Act by ensuring some type of public financing remains available while the Democracy Dollars Program is being established; and

**WHEREAS**, the Commission finds that the temporary restoration of a limited public financing program for the 2024 election furthers the purposes of building fairer elections, preventing corruption or its appearance, ensuring candidates can focus on communicating with all Oakland residents and considering policy issues rather than devoting excessive time to fundraising, ensuring that access to networks of wealthy contributors is not a prerequisite for candidates to run a competitive campaign, ensuring candidates participate in public debates, and ensuring candidates raise enough money to communicate their views and positions adequately to the public; and

**WHEREAS**, the Commission recommends that the City Council adopt an ordinance temporarily restoring a limited public financing program for the 2024 election ;

**Now, therefore be it:**

**RESOLVED**, that the Commission hereby recommends that the City Council adopt an ordinance temporarily restoring a limited public financing for the 2024 election; and be it

**FURTHER RESOLVED**, that, to implement this recommendation, the Commission hereby recommends that the City Council adopt an ordinance adding Chapter 3.13 of the Oakland Municipal Code, the Limited Public Financing Act of 2024, or a substantively similar ordinance, attached as Exhibit A.

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**CERTIFICATION RE: APPROVAL OF RESOLUTION**

**CITY OF OAKLAND**  
**Public Ethics Commission**



**RESOLUTION NO. 23-07**  
**[Proposed 10-11-23]**

The foregoing Resolution was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission held on October 11, 2023, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of \_\_\_\_ to \_\_\_\_.

- AYES: GAGE, HILL, PERTEET, STEELE, UPTON AND CHAIR MICIK
- NOES:
- ABSTAIN:
- ABSENT:

I hereby certify that the foregoing is true and correct.

\_\_\_\_\_  
Nicolas Heidorn, Executive Director  
Oakland Public Ethics Commission

\_\_\_\_\_  
Date



## **EXHIBIT A**

### **SECTION 1**

Chapter 3.13 is added to the Oakland Municipal Code, as follows:

#### **Chapter 3.13 LIMITED PUBLIC FINANCING ACT OF 2024**

##### ***Article I. Findings and Purpose***

#### **3.13.010 Title.**

This chapter shall be known as the "Limited Public Financing Act of 2024."

#### **3.13.020 Findings and declarations.**

The findings of this Act are as follows:

- A. The financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.
- B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions.
- C. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

#### **3.13.030 Purpose of this Act.**

The purpose of this Act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:

- A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.
- B. To reduce the influence of large contributors with a specific financial stake in matters under consideration by the city, and to counter the perception that decisions are

- influenced more by the size of contributions than by the best interests of the people of Oakland.
- C. To reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.
  - D. To encourage competition for elective office.
  - E. To allow candidates and office holders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.
  - F. To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of important issues involved in political campaigns.
  - G. To help preserve public trust in governmental and electoral institutions.
  - H. To prevent corruption or the appearance of corruption.

***Article II. Definitions***

**3.13.040 Interpretation of this Act.**

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the text, the definitions set forth in Chapter 3.12 of this Code and in Government Code Sections 81000 et seq. as amended govern the interpretation of this Act.

For purposes of this Act, "principal residence" shall mean the place in which a person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.

For purposes of this Act, "primary place of doing business" shall mean the street address of a corporation's or association's principal executive office as filed with the California Secretary of State or the street address of an unincorporated association's principal office as filed with the California Secretary of State.

***Article III. Election Campaign Fund***

**3.13.060 Establishment of public financing program.**

- A. The Public Ethics Commission shall establish a public financing program, consistent with this chapter, to fund all candidates eligible to receive public financing running for the office of district city councilmember in the 2024 general election.
- B. The Public Ethics Commission shall allocate a minimum of \$155,000 over the 2023-2025 fiscal years from its discretionary funds to the public financing program.

- C. Any unspent funds that the Public Ethics Commission allocated for the public financing program pursuant to subsection (B) at the end of the Fiscal Year 2023-2025 budget cycle shall remain in the Public Ethics Commission fund and accrue for disbursement to candidates eligible for public financing in future elections and for administrative costs.
- D. Up to seven and one-half percent of the amount allocated to the public financing program pursuant to subsection (B) may be utilized by the Public Ethics Commission to cover the anticipated cost of administering the provisions of this Act.

**3.13.065 Allocation of election campaign fund.**

No later than seven days after the city clerk has certified the names of all candidates to appear on the ballot, the public ethics commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the election campaign fund is adequate to provide the maximum amount to potentially eligible candidates. If the commission determines that the election campaign fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the commission shall order the disbursement of available funds on a pro rata or other equitable basis. The commission may at any time revise the disbursement plan consistent with these rules and prevailing law.

***Article IV. Eligibility for Public Financing***

**3.13.070 Application and withdrawal procedures.**

- A. Each candidate for district city council shall file a statement with the Public Ethics Commission on a form approved for such purpose indicating acceptance or rejection of the voluntary expenditure limits pursuant to Section 3.15.140(A).
- B. Each candidate for district city council shall file with the public ethics commission a statement of acceptance or rejection of public financing on a form approved by the public ethics commission no later than 14 calendar days after the date the city clerk has certified the names of candidates to appear on the ballot for the election in which public financing will be sought. The statement of acceptance or rejection of public financing shall advise and require that the candidate's decision to reject public financing is irrevocable for the election in which his or her name appears on the ballot. The failure to timely file a statement of acceptance or rejection of public financing shall constitute a rejection of public financing.
- C. If a candidate declines to accept the voluntary expenditure limits prescribed in Section 3.15.140(A), the candidate shall not be eligible for public financing.
- D. If a candidate agrees to accept the voluntary expenditure limits prescribed in Section 3.15.140(A), the candidate shall be eligible for public financing upon meeting the qualification requirements as provided in this Act.

- E. If a candidate declines to accept voluntary expenditure limits and receives contributions or makes qualified campaign expenditures equal to fifty (50) percent or more of the voluntary expenditure limit, or if any person makes one or more independent expenditures totaling more than \$30,000 on a district city council election, the applicable voluntary expenditure limit shall no longer be binding on any candidate running for the same office.
- F. In the event voluntary expenditure limits are lifted pursuant to Subsection (E), a candidate who accepted the voluntary expenditure limits shall be permitted to receive public financing but shall no longer be subject to the voluntary expenditure limits.

**3.13.080 Qualification procedures.**

A candidate shall be approved to receive public financing if the candidate meets all of the following requirements:

- A. The candidate has filed a timely statement of acceptance of the voluntary expenditure limits and acceptance of public financing.
- B. The candidate is certified to appear on the ballot for the election for which public financing is sought.
- C. The candidate has (1) received contributions in an aggregate amount of at least five percent of the expenditure limit for the office being sought from contributors whose principal residence or whose primary place of doing business is located within the city and which residence or business address appears on the written instrument used to make the contribution, and (2) made qualified campaign expenditures in an aggregate amount of at least five percent of the expenditure limit for the office being sought. Contributions from the candidate's own funds shall not be counted towards meeting this five percent requirement. The candidate shall provide copies of the contribution checks received and records of payments made to meet the five percent eligibility requirements.
- D. The candidate is opposed by another candidate for the same office.
- E. The candidate agrees to all conditions and requirements of this Act and to submit to any reasonable audit deemed appropriate by the public ethics commission or other civil authorities.
- F. The candidate or his or her campaign treasurer or designee attends a training program conducted or sponsored by the public ethics commission.
- G. The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time public financing is payable. All candidates receiving public financing shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received public financing.

- H. The candidate attests that he or she will personally participate in at least one public debate or forum. Only public debates or forums to which all other candidates accepting public financing for the office sought by the candidate are invited to participate shall be counted for the purposes of this section. Within five days of the candidate's participation in a qualifying public debate or forum, the candidate shall notify the Public Ethics Commission, in writing, of his or her participation in the debate or forum.

**3.13.090 Use of personal funds.**

A candidate who accepts public financing shall not receive contributions or loans from the candidate's own funds which aggregate total exceeds \$19,000 for the office being sought. If the voluntary expenditure limits for the office being sought are lifted, this provision shall not apply.

***Article V. Disbursement of Public Financing***

**3.13.100 Duties of the public ethics commission and office of the city auditor.**

- A. The public ethics commission shall develop any and all forms necessary to carry out the provisions of the Act. The public ethics commission may, in its discretion, require any document or form to be filed in an electronic format that is provided by the public ethics commission to the candidates free of charge.
- B. The public ethics commission shall review records submitted to determine a candidate's eligibility to receive public financing and requests for reimbursement promptly. For any candidate determined not to be eligible for public financing, the commission or its designee shall inform the candidate of the reasons why the candidate is not eligible and what actions, if any, the candidate may take to correct any insufficiencies.
- C. The City Auditor may conduct a discretionary audit of the Public Ethics Commission's disbursement of public financing funds to candidates or may conduct discretionary audits of the campaign committee of any candidate who receives public financing. The audit report shall be a public record and provided to the Public Ethics Commission. The City Auditor shall conduct all audits in accordance with generally accepted government auditing standards.

**3.13.110 Requests for public financing.**

- A. Public financing pursuant to this Act shall be provided solely by reimbursing eligible candidates for certain qualified campaign expenditures lawfully made by the candidate and his or her campaign committee.
- B. The qualified campaign expenditures eligible for reimbursement are:

1. Candidate filing and ballot fees;
  2. Printed campaign literature and production costs;
  3. Postage;
  4. Print advertisements;
  5. Radio airtime and production costs;
  6. Television or cable airtime and production costs; and
  7. Website design and maintenance costs.
- C. The following conditions and restrictions shall apply to any request for reimbursement:
1. All requests for reimbursement shall be made on a form authorized by the public ethics commission and shall include: (a) a copy of the billing invoice for which reimbursement is sought; (b) a copy of the check(s) by which the candidate's campaign committee made payment on the billing invoice; and (c) a copy, when applicable, of the campaign literature, advertisement, radio or television script, or website configuration.
  2. All requests for reimbursement shall include a sworn declaration by the candidate and his or her campaign treasurer that (a) the check(s) used to make payment on the billing invoice represents payment in full of the billing invoice submitted for reimbursement and that sufficient funds exist in the campaign account to provide payment, and (b) any money received from the election campaign fund has not been previously earmarked or specifically encumbered to pay or to secure payment of any loan, return of contribution or of any expenditure other than the one for which reimbursement was sought.
- D. Any decision made by the executive director to deny a request for reimbursement may be appealed to the commission whose decision shall be final. A request to agendize an appeal of the executive director's decision shall be made in writing and delivered to the office of the public ethics commission no more than ten calendar days after receiving written notice of the executive director's decision.
- E. The total amount of public financing allocated to each candidate shall not exceed 30 percent of the voluntary expenditure limit per election for the office being sought.

**3.13.120 Disbursement and deposit of public financing.**

- A. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement to the public ethics commission in minimum increments of \$1,000.00 or more.

- B. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement in minimum increments of \$500.00 or more ten calendar days before the election.
- C. The public ethics commission or its designee shall have ten calendar days to cause the review and approval or denial of the request for reimbursement and disburse funds from the election campaign fund to the candidate or candidate's controlled committee.
- D. All funds disbursed from the election campaign fund shall be made payable to the candidate's controlled committee and shall be deposited directly into the candidate's campaign checking account within thirty (30) calendar days of receipt.

### **3.13.150 Return of surplus funds.**

- A. Surplus campaign funds remaining at the end of the post-election reporting period following the election for which public financing was received shall be returned to the election campaign fund no later than 31 calendar days from the last day of the semi-annual reporting period following the election in an amount specified by this section. A candidate shall not be required to return any surplus funds in an amount greater than the amount of public financing received. The amount of surplus campaign funds to be returned to the election campaign fund shall be calculated by multiplying the amount of surplus campaign funds by the percentage that total public financing received represents of total monetary contributions received for the election period.
- B. For purposes of this Act, campaign funds shall be considered "surplus" campaign funds to the extent that the total amount of contributions (excluding the receipt of public financing) exceed the total financial obligations of the candidate's campaign committee (excluding unlawful or non-qualified campaign expenditures) as of the last day of the semi-annual reporting period following the election. A financial obligation includes (1) accounts payable billed, or (2) accounts payable for which bills may be expected, for goods or services received during the election.
- C. Public financing shall not be disbursed to the certified candidate from the election campaign fund following the day of the election or the candidate's withdrawal from the election, whichever occurs first, except that public financing may be disbursed to a certified candidate after the date of the election or withdrawal provided that the candidate submitted a properly documented request for reimbursement before the date of the election or the date of withdrawal from the election.

### **3.13.180 Enforcement.**

The public ethics commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the public ethics commission, the

commission shall promptly advise in writing the city attorney and the appropriate prosecuting enforcement agency.

**3.13.190 Criminal misdemeanor actions.**

Any person who knowingly or willfully (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is guilty of a misdemeanor. Prosecution shall be commenced within four years after the date on which the violation occurred.

**3.13.200 Enforcement actions.**

- A. Any person who intentionally or negligently (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is subject to enforcement proceedings before the public ethics commission pursuant to the public ethics commission general rules of procedure.
- B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.
- C. Any person alleging a violation of this Act shall first file with the public ethics commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The public ethics commission shall review, investigate and make determinations regarding any alleged violation consistent with the public ethics commission's general complaint procedures.
- D. The commission has full authority to settle any action involving public financing in the interest of justice.
- E. If the commission determines a violation has occurred, the commission is hereby authorized to administer appropriate penalties and fines not to exceed \$1,000.00 per violation and to order the repayment of public financing received or expended in violation of law.
- F. The public ethics commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.
- G. No complaint alleging a violation of any provision of this Act shall be filed more than four years after the date the violation occurred.

**3.13.220 Construction.**

The Act shall be liberally construed to accomplish its purposes.



**3.13.240 Applicability of other laws.**

Nothing in this Act shall exempt any person from applicable provisions of any other laws of the city, state or other appropriate jurisdiction.

**3.13.260 Severability.**

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable.

**3.13.265 Sunset.**

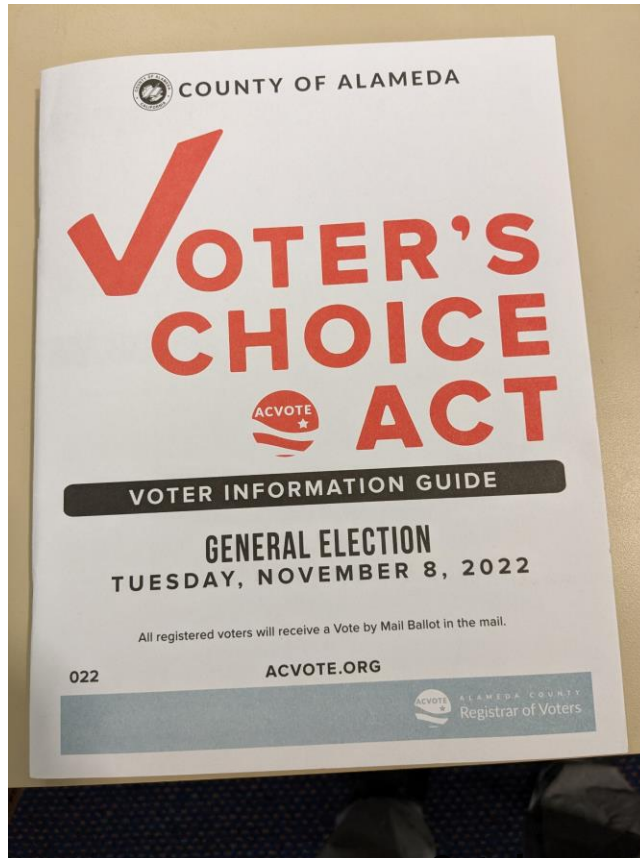
This Chapter shall be operative for the 2024 general election only.



## Item 9a - Director Heidorn's presentation

# Voter Guides Overview: Seattle, Alameda County, and Alternatives

10/11/23



# Seattle: “Candidate Introductions”

- Started after 2017 election; surveys show popular with voters/candidates
- Candidates submit 200-word max statement + picture
- Open to both participating and non-participating candidates
- Guide is posted online on DV webpage + sent to individuals/groups by request
- Translated into 17 languages

# Seattle – Example Intro



**Candidate Name:** [Rob Saka](#)

**Campaign Name:** [Friends of Rob Saka](#)

**Campaign website:** [www.voterobsaka.com](http://www.voterobsaka.com)

**City Position:** [Candidate for City Council District 1](#)

**Campaign Telephone Number:** [\(206\) 593 - 2203](tel:(206)593-2203)

**Candidate Introduction:**

My name is Rob Saka and I'm on a mission to serve you by going from former foster child to Seattle City Councilmember. I am a public school dad of three, attorney, justice reform advocate, and Air Force Veteran. I am the proud son of a Nigerian immigrant and former warehouse worker who rescued me from foster care and raised me as a single father. Now that I am a father myself, I am running because I want to make sure this city is the best it can be for my kids and other kids across this city.

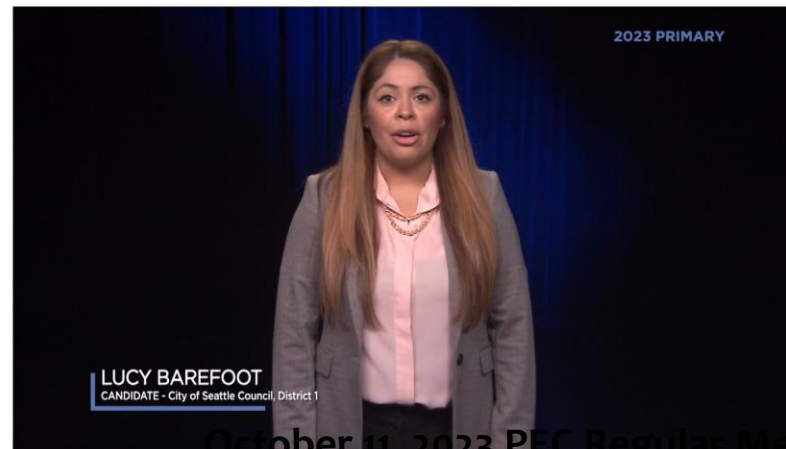
I am running to serve the people of District 1 with their best interests in mind first. I'm also running to work on real solutions to issues like public safety and homelessness, rather than play politics with it. At City Hall, I want to normalize collaborating across differences, finding common ground, and ultimately getting bold things accomplished that truly work for all. I know there is a better way forward for our city. And I couldn't be more energized at the opportunity we have to do it together!

*This candidate is participating in the Democracy Voucher Program.*

# Seattle: “Video Voter Guide”

- Videos are 2 minutes in length and unedited
- Hosted [online](#) and airs on the Seattle Channel
- All candidates must film at City public access
- Videos are produced and released closer in time to election

City of Seattle, Council District No. 1



# Oakland/County Voter Information Guide

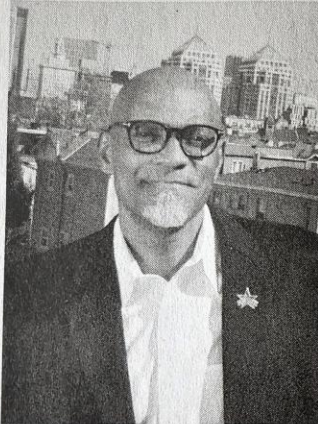
- Content:
  - Residency for last 5 years
  - Occupation for last 5 years
  - Public offices held
  - Max 150 words on qualification
- Sent around 1 month before election

# Oakland – Example Guide

Hampton Director Haidorn's presentation

## CITY OF OAKLAND FOR MAYOR

I, **GREGORY HODGE**, hereby declare that I am a candidate for an elective office in the City of Oakland, and make the following statement, to-wit:



1. My name is: Gregory Hodge
2. The office for which I am a candidate is: Mayor
3. My occupation for the past 5 years: Attorney and Nonprofit Executive
4. I have held the following elected public office (if any): Oakland Unified School District Board

5. **Statement of General Qualifications:** My leadership experience spans over four decades, serving various community development organizations, social justice collaboratives and spiritual communities. These include: 8 years as board member with Oakland Unified Schools and the Oakland Workforce Investment Board; over 15 years as a business owner, nonprofit executive and grantmaker; 25 years as a lead minister at a community church; 20 years as a strategist, retreat designer, facilitator and racial equity trainer with an emphasis on youth development for numerous foundations and nonprofits; 36 years as a licensed attorney; a cultural artist who creates art to inspire change through music, drumming and healing; and a parent of 5 children. During the pandemic, I worked with the City of Oakland's COVID-19 Task Force, served as co-chair for the Alameda County Advisory Group on COVID, and led the African American Response Circle in raising and distributing over \$1M to vulnerable communities. Hope, Healing, Hodge Greg
6. **The signatures of not more than twenty nor less than ten residents of the City of Oakland sponsoring my candidacy are as follows:**

Joseph Brooks  
Angela Glover Blackwell  
Kisha Grove  
Rodney Brooks  
Pamela Kirby  
Susan Lubeck  
Evelyn Torres  
Fred Blackwell  
Cecily Allmon  
Nedra Ginwright

Shawn Ginwright  
Marianne Glaser  
Mike Kirby  
Elizabeth Rankow

s/GREGORY HODGE

# Other Models

- Some guides take a more structured/comparative approach to presenting information. E.g.
  - *League of Women Voter's Voters Edge*
  - *Oakland LWV's Easy Voter Guide*
- Center for Civic Design user testing – voters prefer the structured approach



# Voter's Edge

## Candidates

You can vote for 1 of these 10 candidates.



**Loren Manuel Taylor**  
Oakland City Councilmember, Small...

**Top 3 Priorities**

1. Make Oakland's streets safer and lower city's crime...
2. End chronic homelessness and build affordable housing
3. Build an effective and efficient government Oaklanders...

 COMPARE

 PROFILE →



**Sheng Thao**  
Oakland City Councilmember

**Top 3 Priorities**

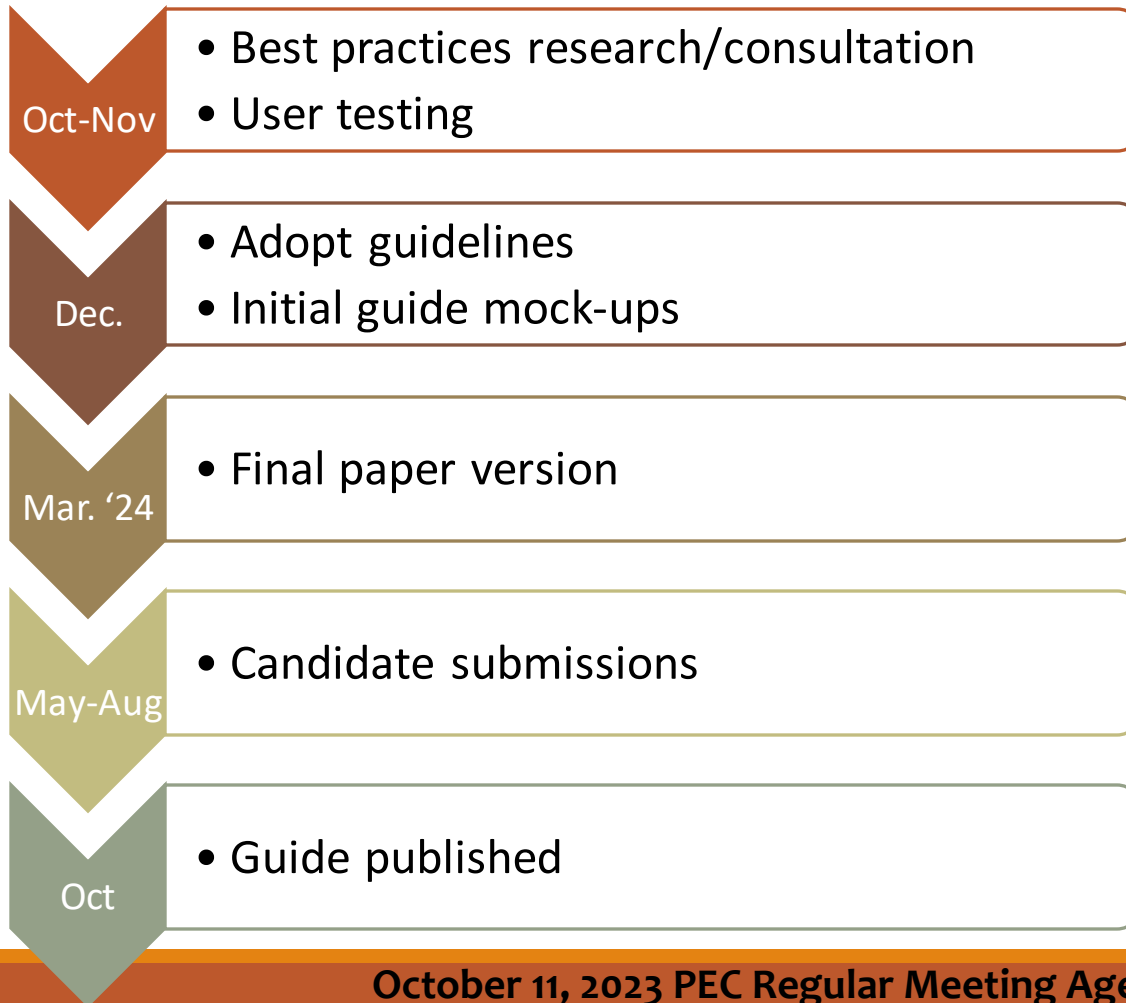
1. Public Safety - investing in getting to the root of...
2. Ending homelessness- as someone who experienced homelessness...
3. A cleaner, greener Oakland- continuing my work on...

 COMPARE

 PROFILE →

# PEC Guide – *Tentative* Timeline

- Start with paper design; explore digital



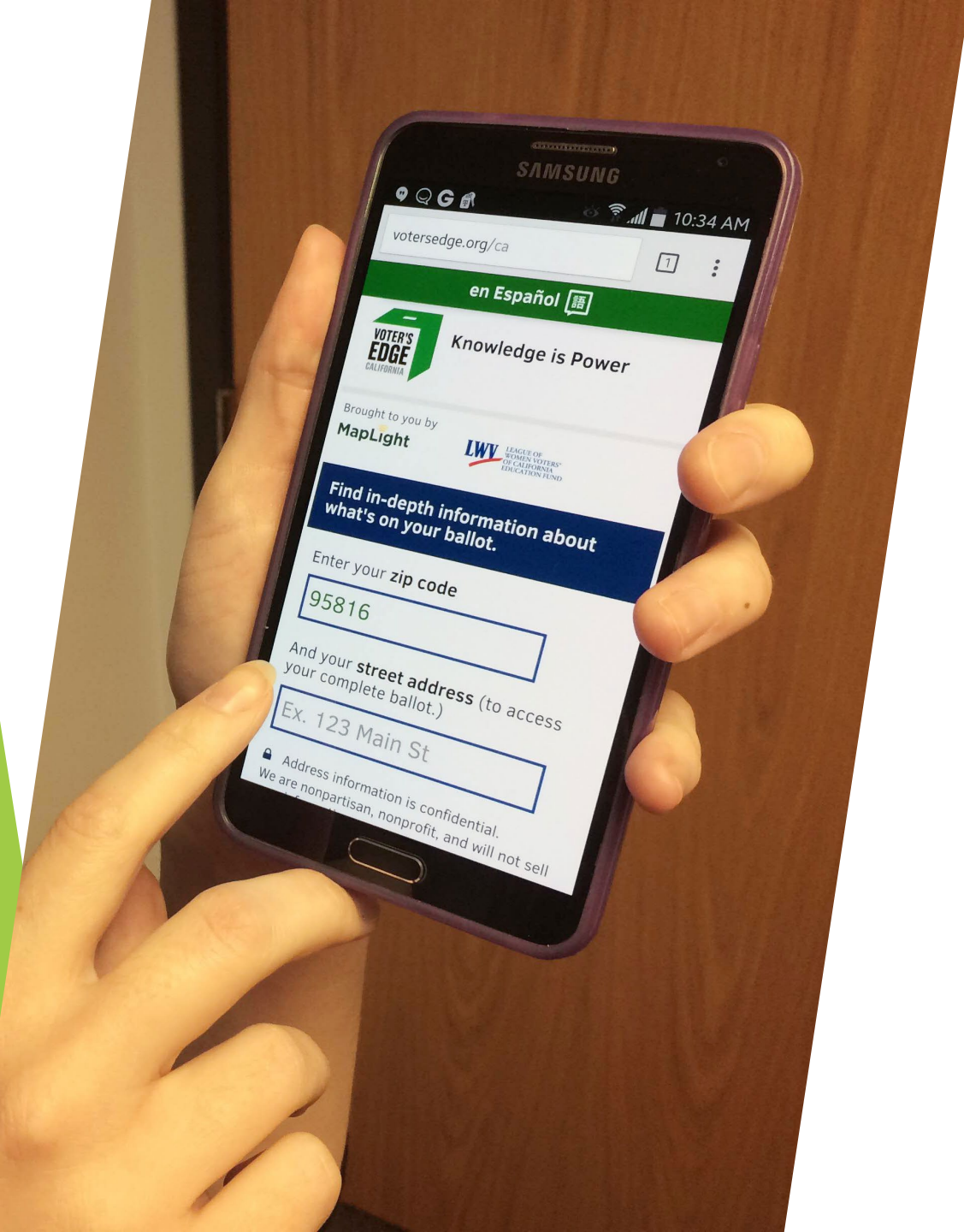




**SHARON STONE**

SSTONE@LWVC.ORG

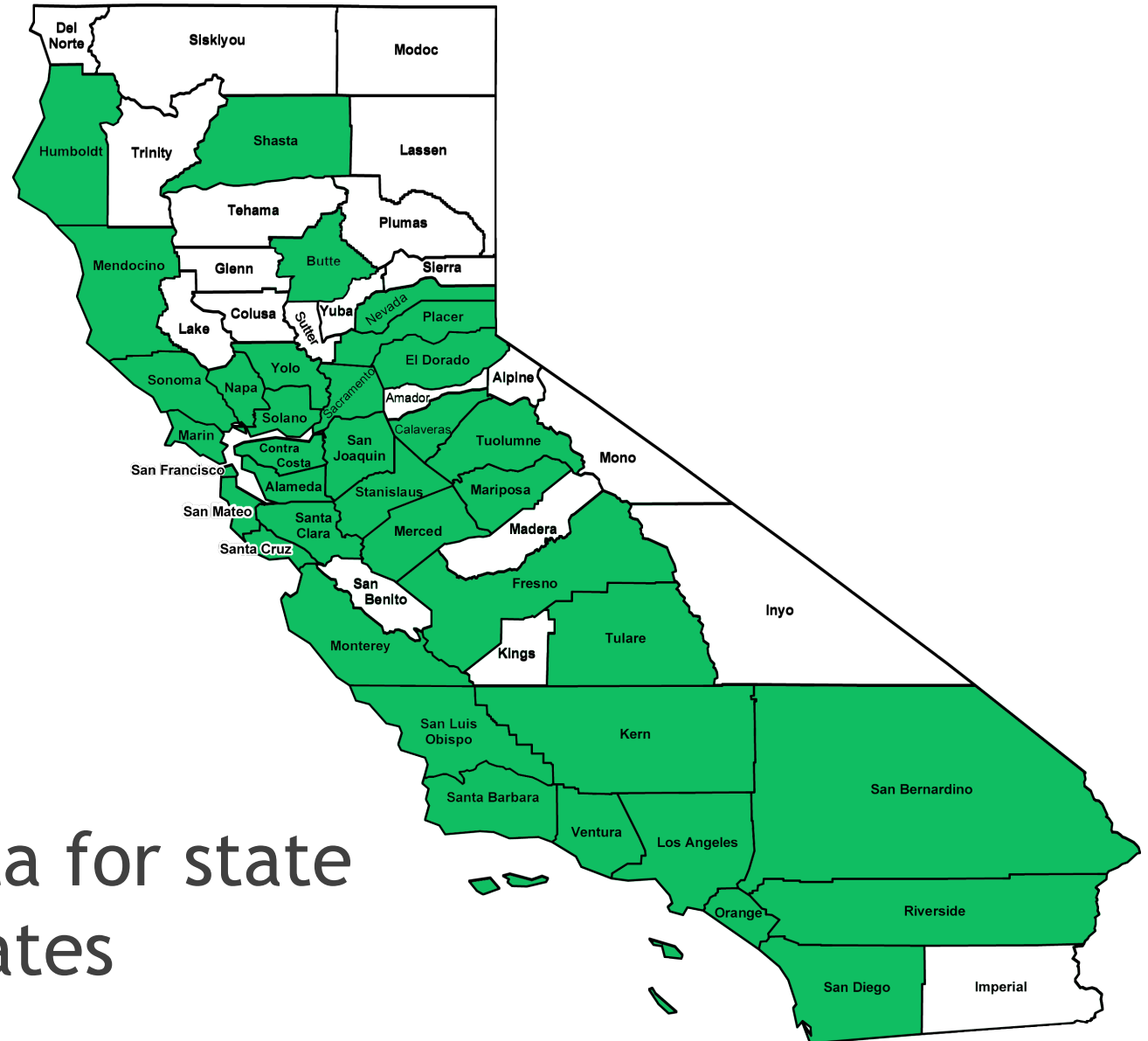
Membership & Technology  
Manager, League of Women  
Voters of California



Comprehensive resource to help you be better prepared to vote.

- ▶ Preview of what's on your ballot.
- ▶ Candidate populated content.
- ▶ Simplified ballot measure explanations.
- ▶ Ways to return your ballot.

- ▶ Full coverage that includes local elections in 37 counties
- ▶ Over 100 volunteers entering content and collaborating with candidates
- ▶ Campaign finance data for state measures and candidates



Tuesday November 8, 2022 — California General Election

Election Home Candidates Measures Voting Info My Choices

1 / 139

State of California - Attorney General

Next

## Attorney General — State of California

Get the facts on the California candidates running for election to the Attorney General — State of California Find out their top 3 priorities, their experience, and who supports them.

About this office

News and links

### Candidates

You can vote for 1 of these 2 candidates.

COMPARE



**Rob Bonta**  
Democratic  
California Attorney General

#### Top 3 Priorities

1. Protecting Public Safety
2. Taking illegal guns off our streets
3. Defending abortion rights

COMPARE

PROFILE

+ MY CHOICE



**Nathan Hochman**  
Republican  
General Counsel

#### Top 3 Priorities

1. Prevent Crime
2. End the Opioid Epidemic
3. Tackle the Homelessness Problem

COMPARE

PROFILE

+ MY CHOICE

Item 9b - Stone's presentation

Tuesday November 8, 2022 — California General Election

Election Home Candidates Measures Voting Info My Choices

United States Senate Candidate for **Senator** Full Term

Next Contest



**Alex Padilla**

Appointed United States Senator

Candidate has provided information.

Thank candidate for sharing their information on Voter's Edge.

My Top 3 Priorities

- To ensure every eligible voter has free and ready access to the ballot box through voting rights reform.
- To ensure every family has access to clean water and unpolluted air, including through passage of the Green New Deal.
- Reforming our immigration system to include pathways to citizenship, especially for our immigrant essential workers who courageously worked on the frontlines of the COVID-19 pandemic.

Experience

Who supports this candidate?

- Organizations (25)
- Elected Officials (52)

Who gave money to this candidate?

Contributions

Total money raised: \$10,199,125

Top contributors that gave money to support the candidate, by organization:

1	Employees of Hueston Hennigan LLP	\$123,800	
2	Edison International and employees	\$62,400	
3	Employees of E&J Gallo Winery	\$54,325	
4	Comcast Corporation and employees	\$45,300	
5	Employees of Cotchett, Pitre & McCarthy	\$37,150	

More information about contributions

Source: MapLight analysis of data from the Federal Election Commission.

Who else is running?

- Mark P. Meuser
- Alex Padilla

Item 9b - Stone's presentation



# Candidate content policies

- ▶ Volunteers cannot add or edit candidate content.
- ▶ Candidates cannot:
  - ▶ Use vulgar language
  - ▶ Mention an opponent by name or title
  - ▶ Say “I am the **only** candidate to do x, y, z....”

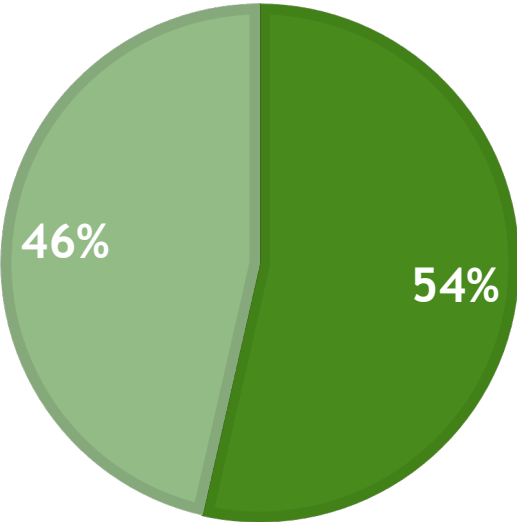
# Candidate photo policies

- ▶ Photos may be rejected if:
  - ▶ The image is not of sufficient quality to be used
  - ▶ The image is not a head shot of the candidate (contains other people or animals, features props or prominent text, is not sufficiently framed, etc.)
  - ▶ The image contains violent, sexually explicit, or other inappropriate content

# CANDIDATE PARTICIPATION November 2020 Elections

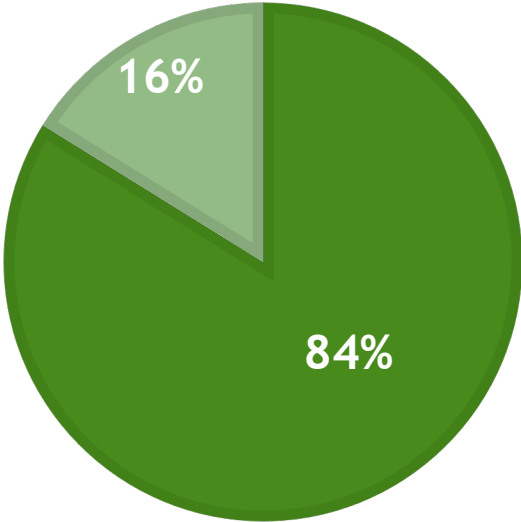
## State of California

▶ 3,365 out of 6,283 candidates (54%)



## Alameda County

▶ 244 out of 291 candidates (84%)

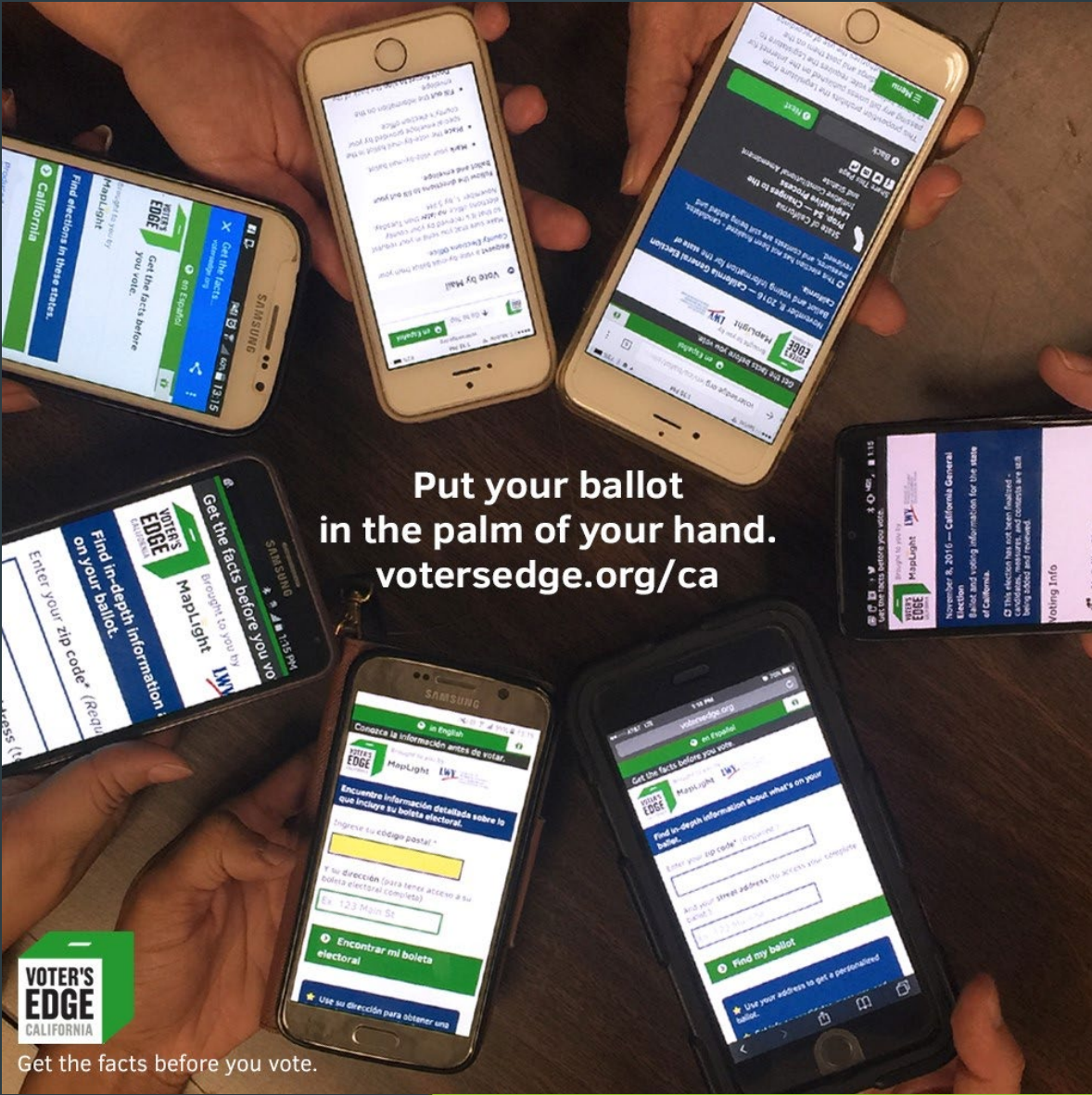


# ACQUISITION

Organic search is overwhelmingly the primary source of traffic to Voter's Edge.

	2016 General	2018 General	2020 General	2022 General
Organic Search	55%	74%	87%	83.9%
Direct	16%	18%	9%	10.6%
Referral	16%	5%	3%	5.2%
Social	8%	2%	1%	0.3%
Paid Search/Ads	8%	1%	0%	0%

# DEVICE USAGE



Put your ballot  
in the palm of your hand.  
[votersedge.org/ca](http://votersedge.org/ca)

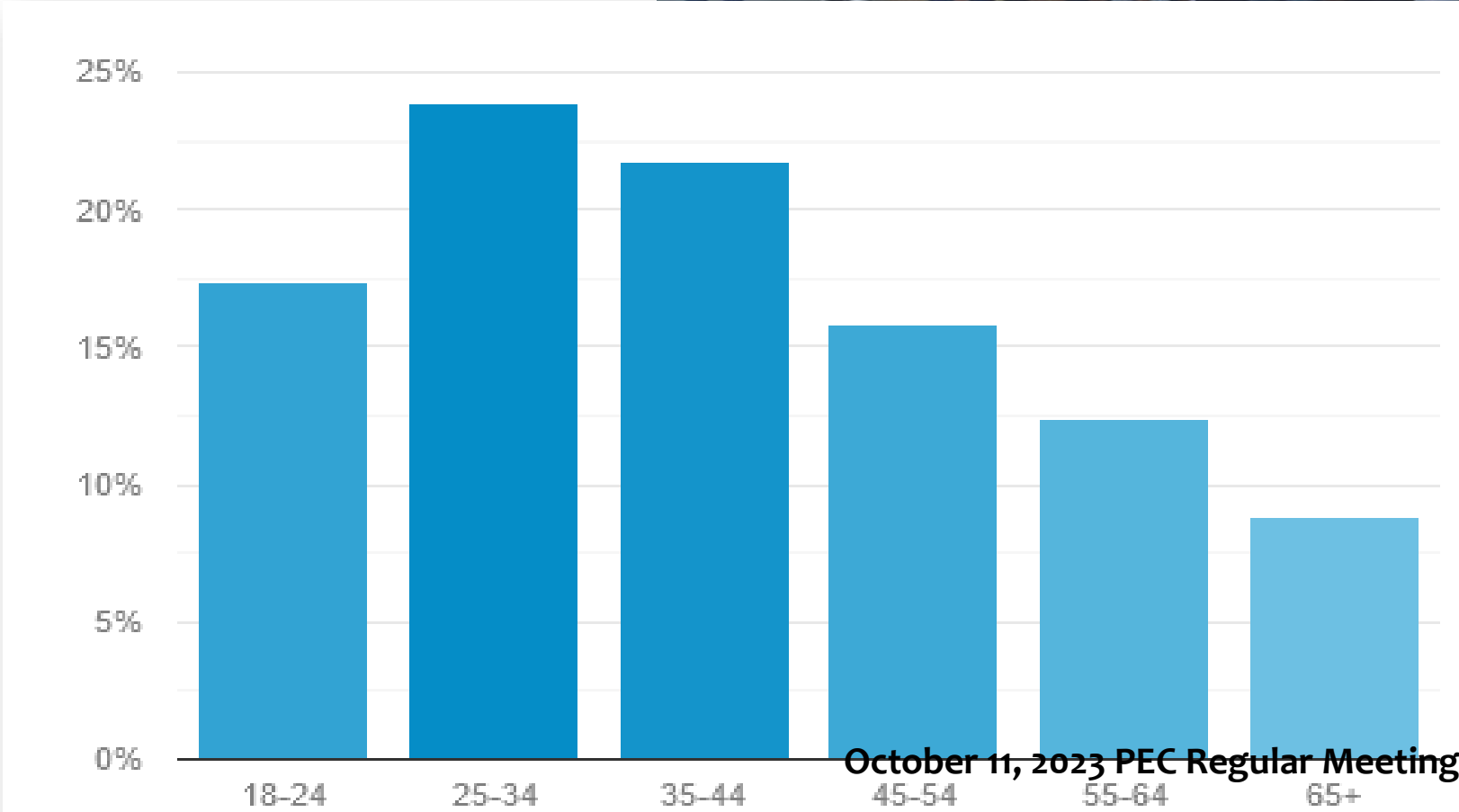
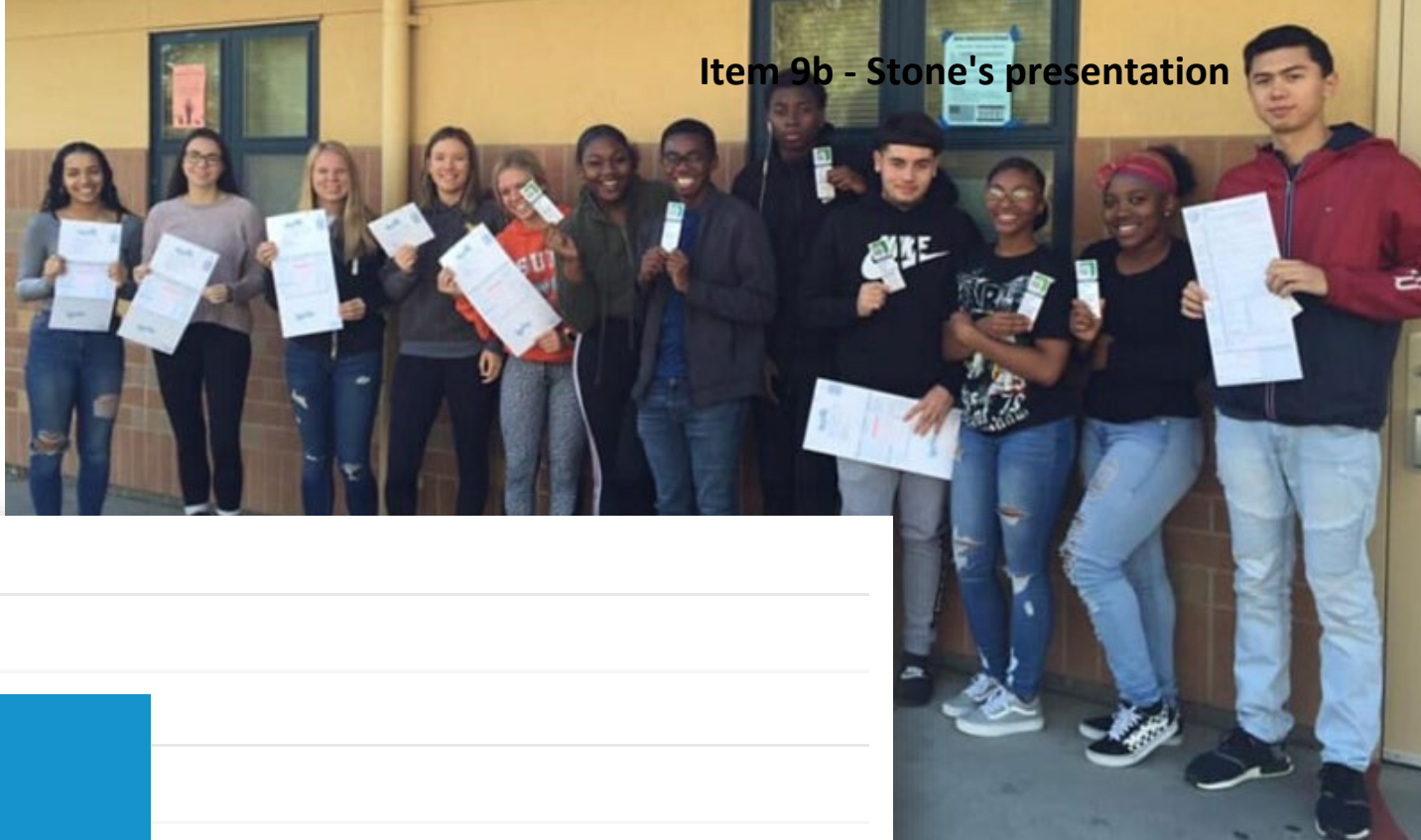


Get the facts before you vote.

Device Type	Users	% of Total
Mobile	536,939	63%
Desktop	300,721	35%
Tablet	14,926	2%

► The trend in mobile device usage continues upwards except for a slight dip during the 2022 primary (at 52%). In 2020, 57% used a mobile device, up from March 2020 (50%) and Nov 2018 (45%).

# DEMOGRAPHICS BY AGE



# VOTER'S EDGE SITE USAGE

	2016 General	2018 Primary	2018 General	2020 Primary	2020 General	2022 Primary	2022 General
<b>Total users</b>	1,046,420	430,711	1,673,391	489,577	1,549,545	914,281	1,226,699
<b>% of actual voters</b>	7.16%	6.66%	13.16%	5.07%	9.48%	13.50%	15.37%





# THANK YOU! QUESTIONS?

# Item 10a - Subcommittee formation memo

## Purpose Statement:

### Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

**Members:** Francis Upton IV (Chair), Arvon Perteet and Alea Gage.

#### **A) What is the specific goal of the committee?**

The goal of the subcommittee is to identify a long-term vision statement for government transparency in Oakland and short-term next steps to make progress towards that goal.

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

The subcommittee will draft a vision statement (or statements) and bring them back to the PEC for consideration.

The subcommittee will prepare near-term options for how to make progress towards that goal that it presents to the PEC. These will likely be proposals for staff to explore further and bring back, or proposals like having different departments come in and testify to the PEC on their transparency efforts or challenges.

**C) What level of staff vs Commissioner work is expected?** The work of this subcommittee will mostly consist of commissioner work, with some light staff work.

**Vision Statement:** Commissioners will take the lead on discussing and drafting the vision statement. Staff will participate in the discussion. Staff may do light research work, like if other cities have adopted a vision statement, in discussion with the Subcommittee and recognizing staff capacity.

**Proposals:** Commissioners will take the lead in discussing potential near-term options. Staff will assist with doing a very preliminary assessment of some of the options that the Subcommittee is most interested in.

If the PEC decides to pursue an option, this may entail significantly more staff work, which should be discussed by the PEC in recognition of our other priorities and commitments.



# Item 10b - September 26, 2023 Meeting Minutes

## Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

**Members:** Francis Upton IV (Chair), Arvon Perteet and Alea Gage.

### September 26, 2023 Minutes

**Attendees – Members:** Commissioners Upton IV, Perteet, Gage

**Attendees – Staff:** Director Nicolas Heidorn, Analyst Jelani Killings, Enforcement Chief Simon Russell

#### **Discussion:**

1. Discussion of Purpose statement:
  - a. Make sure we are not waiting on the vision statement to proceed. (Arvon)
  - b. Should do a workplan. (Alea)
  - c. Revised the purpose statement to give to the PEC.
2. Which departments should we ask?
  - a. Police department (Francis)
  - b. Planning – we should see what their progress is since the last time they were here. (Arvon/Alea?)
  - c. Make sure we are really briefed before bringing a department in (Alea)
3. Vision statement (some bullet points)
  - a. Transparency by default (Francis)
  - b. Systems to have the city people be successful (Francis)
  - c. Self service (Francis)
4. Goldman Students
  - a. Find best practices (overall City, systems, tech, attitude, self service)
  - b. Could be at a city or department
  - c. Could consider jurisdictions nationwide
  - d. Identify performance metrics that are useful, what does dashboard look like
  - e. Identify orgs/people they should talk with (cf. Nardi email to Francis – forwarded to subcommittee)

#### **Action Items:**

1. Create a location where subcommittee artifacts are kept (Nicolas) – can/should this be public?
2. Get data from Suzanne when she is back about volume and responsiveness to help us see who we want to talk with. (Nicolas)
3. Find out status of dashboard and possibly get presentation of it before or at the next meeting (Nicolas/Suzanne)
4. Vision statement:
  - a. Create initial draft of vision statement and circulate for comments before next meeting (Francis/Alea)
  - b. Consider Brown Act, Bagley-Keene text (Alea)
  - c. Consider previous PEC text and Oakland Sunshine Act (Francis)
5. Goldman – Nicolas/Francis work on drafting proposal
6. Start a list of questions we want to ask other jurisdictions (in conjunction Goldman work, or if Goldman work does not happen) (Francis/Alea)

# Item 10c - Subcommittee formation memo

**Purpose Statement:**

## **Outreach Ad Hoc Subcommittee**

**(ad hoc, created August 25, 2023)**

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

### **A) What is the specific goal of the committee?**

The purpose of the subcommittee is to help PEC commissioners and staff effectively develop and execute outreach plans related to recruiting new commissioners, securing necessary enforcement resources, increasing the knowledge and use of our campaign finance disclosure tools, and raising overall awareness of the PEC.

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

The subcommittee will exist through the end of 2024. Its deliverables will include building outreach plans for each of the previously listed priorities and developing and disseminating the resources necessary for commissioners to help execute these plans.

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

Staff will take the lead on developing and executing the PEC's outreach plans. This will include presenting draft plans to the subcommittee and soliciting and integrating feedback from members. Commissioners will take the lead on identifying opportunities for commissioner involvement, determining necessary resources for commissioners, developing (if necessary) those resources, helping disseminate plans and resources to the rest of the commission, and promoting and tracking commissioner outreach.

# Item 10d - September 8, 2023 Meeting Minutes

## Outreach Subcommittee

(ad hoc, created August 25, 2023)

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

### September 8, 2023 Minutes

**Attendees – Members:** Commissioners Hill, Gage, Steele

**Attendees – Staff:** Nicolas Heidorn, Executive Director; Jelani Killings, Ethics Analyst

#### *Discussion:*

The meeting began with a review of the current outreach plan for new commissioner recruitment. The plan includes targets for paid advertising in local media outlets, promotion partnership opportunities with other public agencies and community organizations, and ways for commissioners to promote openings to their own networks.

The subcommittee recommended spending the limited ad budget on outlets that are most likely to reach diverse communities across Oakland. They also discussed upcoming opportunities for commissioners to speak at community events and sourced ideas for additional community groups that PEC should partner with to promote vacancies and the application process.

Finally, the subcommittee developed a list of ways that commissioners could engage in outreach, including posting on social media, filming short testimonial outreach videos, and suggesting additional community partners.

#### *Action Items:*

1. Commissioners will speak at upcoming community events.
2. The PEC will partner with additional community groups to promote vacancies and the application process.
3. Commissioners will engage in outreach activities, such as posting on social media and filming short testimonial outreach videos.

#### *Next Steps:*

The subcommittee will meet again in October to review progress on action items and discuss additional outreach needs.



# Item 11a - Recruitment Report

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

Nicolas Heidorn, Executive Director

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TO: Public Ethics Commission  
FROM: Nicolas Heidorn, Executive Director;  
Jelani Killings, Ethics Analyst  
Ana Lara-Franco, Commission Analyst  
DATE: September 29, 2023  
RE: PEC Recruitment Efforts and Next Steps

---

The Public Ethics Commission (PEC or Commission) is currently recruiting to fill a Commission-appointed vacancy to the PEC that will occur in January 2024. The application period opened in August and will close on October 27, 2023. This memorandum provides background on the requirements for a person to be appointed to the Commission, the PEC's current recruitment efforts, and the process that will be used to review applications and select an applicant to fill the vacancy at the PEC's December meeting.

## Background

Under the City Charter, four of the seven PEC commissioners are appointed by the Commission (and the remaining three are appointed by the Mayor, City Attorney, and City Auditor, respectively). The PEC must engage in a public recruitment process to fill these vacancies and the appointment must receive the affirmative vote of at least four commissioners. While Mayor, City Attorney, and City Auditor appointees are required to have specified civic or professional backgrounds, PEC-appointed members "shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities." Charter Section 603(d)(2).

Under the Charter, a PEC Commissioner must be a resident of Oakland and registered to vote in Oakland elections, and must attest in their application to having attended at least one PEC meeting. In addition, no appointed member of the Commission shall:

- "(1) Have an employment or contractual relationship with the City during the member's tenure and for a period of one year after the date of separation.
- (2) Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for a period of one year after the date of separation.
- (3) Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, or participate in or contribute to an Oakland municipal campaign.
- (4) Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election."

Charter Section 603(e).

Commissioners serve a three-year term and can serve a maximum of two consecutive terms, with some exceptions relating to partial terms.

## Recruiting Efforts

## Item 11a - Recruitment Report

In consultation with the Outreach Ad Hoc Committee and staff Equity Team, the PEC has engaged in a broad and equity-focused recruitment process, including through posting on the PEC's website and social media, emailing the PEC's distribution lists, presenting or tabling at neighborhood events, using paid advertising, and sharing this opportunity through media channels.

- **Events:** The PEC has attended 14 events, including:
  - 12 National Night Out neighborhood meetings;
  - Purchasing a table with the City Auditor at Art & Soul
  - Presenting at a District 3 Town Hall
- **Paid Advertising:** Digital ads and/or print ads were run in the *East Bay Times*, *Oaklandside*, and *Oakland Post*.
- **Earned Media:** *Oaklandside* published an [article](#) about the PEC vacancy and the Oakland League of Women Voters is expected to do so as well in an upcoming newsletter.
- **Social Media:** The PEC has made six social media posts about this vacancy, including two Commissioner recruitment videos.
- **Email Distribution:** An email announcement was sent to individuals subscribed to the PEC's agenda, disclosure, and outreach distribution lists as well as all individuals that applied to the Commission over the past two years.
- **Equity Outreach:** An email was sent to local minority bar associations and community groups representing the African American, AAPI, Hispanic, and LGBTQ communities.

### Applications Received to Date

As of September 27, the PEC has received a total of 8 applications. To assess the PEC's efforts at inclusive recruitment, the PEC will be asking applicants to voluntarily share their demographics, including race, gender, and sexual orientation, for the first time. As of this report, the PEC has not yet collected any demographic responses.

### Next Steps

At the PEC's October 11 meeting, Chair Micik will appoint an Application Review Ad Hoc Subcommittee, consisting of two to three commissioners. The Subcommittee, along with the Executive Director, will review every application received by the October 27 deadline and interview the strongest candidates in November, likely over Zoom or a similar platform. The Subcommittee will then forward its recommended candidates, likely three to five applicants, to the full Commission for a final in-person interview and selection at the PEC's December 13 meeting.

**Additional Attachment:** Recruitment flyer.

## CITY OF OAKLAND PUBLIC ETHICS COMMISSION

Ryan Micik (Chair)  
Charlotte Hill (Vice-Chair)  
Alea Gage  
Arvon Perteet  
Vincent Steele  
Francis Upton IV  
Nicolas Heidorn, Executive Director



## Public Ethics Commission Commissioner Vacancy Announcement August 2023

The City of Oakland Public Ethics Commission (PEC) is now accepting applications to fill one PEC-appointed Commissioner position, as part of its seven-member volunteer citizen board. The vacancy starts January 22, 2024, and expires on January 21, 2027. **Application deadline: October 27, 2023.**

*Please note: All applicants must attest in their application that they have attended (observed in-person or via Zoom) at least one PEC meeting. To attend a PEC meeting for this application process please check the upcoming meetings on our [webpage](#) and contact [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov).*

### Background

The Public Ethics Commission is a seven-member board of volunteers dedicated to the City Charter goal of ensuring **fairness, openness, honesty, and integrity** in City government. Guided by duties and authority set out by City ordinance, the Commission works to achieve its goals through a three-pronged approach that focuses on prevention, enforcement, and collaboration. Specifically, the following local laws are the foundation of the Commission's responsibilities in three general areas – campaign finance, ethics, and transparency:

- Oakland Government Ethics Act
- Oakland Campaign Reform Act
- Conflict of Interest Code
- Sunshine Ordinance
- Oakland's Fair Elections Act (Democracy Dollars)
- Lobbyist Registration Act
- Oakland's False Endorsement in Campaign Literature Act

### Commissioner Requirements

A Commission member must be an Oakland resident and registered to vote in Oakland. Four Commissioners are appointed by the full Commission on a rotating schedule. Three Commissioners are appointed respectively by the Mayor, City Attorney, and City Auditor. All applicants must attend a PEC meeting (observed in-person or via Zoom) prior to their appointment. For upcoming meetings, visit [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec).

Commissioners serve a three-year term and are expected to participate in monthly meetings and occasional subcommittee meetings to provide guidance to staff in the conduct of the Commission's business, make final decisions on enforcement matters, and serve as a neutral judge in cases that require an administrative hearing. Commissioners typically volunteer five to ten hours per month. Commissioners receive no compensation and may serve no more than two consecutive three-year terms.

## Item 11b - Announcement and Application

### During their tenure a Commissioner may not:

- Have an employment or contractual relationship with the City during the member's tenure and for one year after the date of separation;
- Be a registered Oakland lobbyist, be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for one year after the date of separation;
- Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, or participate in or contribute to an Oakland municipal campaign;
- Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

### Desired Skills and Abilities

Commissioners should represent a variety of backgrounds and professions so that the Commission, as a whole, provides a well-rounded perspective on Oakland City government, law, community-building and engagement, leadership, program administration, enforcement, and policies related to campaign finance, ethics and transparency. Specifically, a Commissioner should be able to do the following:

- Read, analyze, and understand written information and make decisions based on the information;
- Listen to public input, assess community needs, and make decisions about how to best accomplish the Commission's goals;
- Understand the context in which the Commission operates within City government and the broader community;
- Communicate orally during a public, televised meeting;
- Collaborate effectively with other Commissioners, the public, City officials, and staff;
- Interpret rules, laws and policies and objectively apply a rule to a particular set of facts;
- Identify personal conflicts of interest or other factors that could lead to actual or perceived improper influence;
- Serve with fairness, openness, honesty, and integrity;
- Complete a Form 700 – Statement of Economic Interests annually, disclosing information such as one's financial interests in investments, property, income, and gifts;
- Adhere to all Commission-related laws and policies, including but not limited to the Oakland City Charter, Oakland Government Ethics Act, Oakland Sunshine Ordinance, Commission Complaint Procedures, and Commission Operations Policies (by-laws).

### Selection Process

New Commissioner appointments occur every year and are generally announced in the Fall. To apply for a vacancy, attend an upcoming Commission [meeting](#) in person or via Zoom and submit an application using the link below.

Apply online: <https://tinyurl.com/y6ejj4gm>

Following the application deadline, a subcommittee of Commissioners will review applications and conduct oral interviews of applicants. The top candidates will be forwarded for an interview and selection by the full Commission at the Commission's public meeting.

### For more information

For more about the Public Ethics Commission, visit us online at [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec). We also suggest you attend a City Council meeting in person or watch one on local television (Channel 10). For more information about the Commission or this position, contact us at [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) or (510) 238-3593.

DEADLINE: OCTOBER 27, 2023

Item 11c - Recruitment Flyer

# APPLY FOR A SEAT ON THE PUBLIC ETHICS COMMISSION

BE A PART OF ACCOUNTABLE  
GOVERNMENT!

Want to learn more?  
Visit: [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec)



Apply online at:  
<https://tinyurl.com/ysfx9fuv>

For inquiries, please contact:  
(510) 238-3593 or  
[ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov).

October 11, 2023 PEC Regular Meeting Agenda Packet 112





# PASSIONATE ABOUT GOVERNMENT INTEGRITY?

## JOIN OUR TEAM!



The Public Ethics Commission (PEC) is an independent commission made up of Oakland residents dedicated to ensuring Oakland government is open, honest, fair, and trustworthy. The Commission acts as a guiding light and a watchdog to safeguard compliance with government ethics, campaign finance, lobbying, and transparency laws. The Commission:

- Educates residents and City staff on ethics-related issues
- Conducts investigations, audits and public hearings
- Imposes fines and penalties as part of enforcement activities
- Provides policy direction to Commission staff

## HELP LEAD THE PUBLIC ETHICS COMMISSION TO EVEN GREATER IMPACT

Want to learn more?  
Visit: [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec)

Deadline: October 27, 2023

To apply online scan or visit:  
<https://tinyurl.com/ysfx9fuv>



For inquiries, contact: (510) 238-3593

or [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov)



Public Ethics | CITY OF  
**OAKLAND**



# Item 12 - 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  
Ana Lara-Franco, Commission Analyst  
DATE: September 29, 2023  
RE: Discussion of Options for Setting the Mayor’s Salary

---

At its July 18, 2023 meeting, the City Council passed a motion directing the City Administrator to bring back a proposal for a November 2024 ballot measure transferring the duties of setting the Mayor’s salary from the City Council to the Public Ethics Commission (Commission or PEC). At its August retreat, PEC commissioners indicated that, rather than wait for the Administrator’s proposal, they would prefer that the PEC recommend to the Administrator whether the PEC should take on this responsibility, and if so how.

This item was agendized to provide an opportunity for the public to provide comment, and for commissioners to discuss, what the Commission may wish to recommend. Based on this discussion, and any initial feedback, guidance, or request for additional information from commissioners, staff anticipates returning to the PEC this December with a proposal or proposals for the Commission’s consideration.

To further this initial discussion, this memorandum provides background information on how the Mayor’s salary is set; how the PEC sets salaries for other City elective offices; how other California jurisdictions set their mayors’ salaries; and policy questions the PEC may wish to consider as part of this discussion.

### **Background - Elected Official Salary-Setting in Oakland**

Under the City Charter, the PEC sets the salaries for the City Council, City Attorney, and City Auditor. Under Section 202 of the Charter, the PEC bi-annually adjusts city councilmember salaries by the increase in the consumer price index over the preceding two years, up to a total of five percent. Under Sections 401(1) and 403(1), the PEC must annually adjust the salaries for the City Attorney and City Auditor to “provide for competitive compensation and equitable alignment,” taking into account the highest paid employee in each office, other department head salaries, and salaries for comparable public officials in other California cities and counties. The PEC’s authority to set the salary for the City Attorney and City Auditor is recent; voters transferred this responsibility to the PEC with the passage of Measure X in 2022. The PEC set the City Attorney and City Auditor’s salaries for the first time in 2023.

The only elected City official that the PEC does not set the salary for presently is the Mayor. Under Section 300 of the Oakland City Charter, the City Council sets the Mayor’s salary in every odd-numbered year, which must be "not less than 70% nor more than 90% of the average salaries of City Managers!/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland.”

## Item 12 - Staff Memo

### Charter Provision for Elected Official Salary-Setting

**Mayor's Salary (Sec. 300).** *The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, and without any additional compensation or fees provided for in Section 202 of this Charter. The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers'/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, The Mayor's salary shall be reviewed by the City Council in odd-numbered years and may be adjusted by the Council as provided for herein.*

**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.*

Pursuant to the Charter, the City Council last set the Mayor's salary on July 18, 2023. At the time, the Mayor was earning a salary of \$202,999. According to a staff report prepared by the City Manager, the average salary for the city managers of Fresno, Sacramento, Long Beach, Bakersfield, Anaheim, and Stockton was \$308,860. Therefore, the available 70% to 90% salary range was between \$216,202 and \$277,974. The City Council adopted the lower range of that scale.

At that same meeting, Councilmember Fife also moved, and the City Council approved on a 6-2 vote, a motion to have the City Administrator "return to Council in a timely manner with proposed legislation to amend the City Charter in November of 2024 to move the responsibility for setting the Mayor's salary from the City Council to the independent Public Ethics Commission, as is now the case for other elected officials, including the City Attorney, City Auditor and Councilmembers." The City Administrator is likely to bring back his recommendation to the City Council in early 2024.

### How the Mayor's Salary is Set in Other California Jurisdictions

## Item 12 - Staff Memo

There are two types of cities in California: general law cities, which are subject to the state's general laws, and charter cities, which are cities that have adopted a city charter (akin to the city's constitution) and have some home rule autonomy from the state's general laws with regards to matters of municipal concern, including elected officials' salaries. Oakland, like most large cities, is a charter city.

For general law cities, state law sets mayoral compensation. In cities with a population of more than 250,000 residents, city councilmembers, including a mayor who is a member of the council, may be paid up to \$1,000 per month. That amount may be adjusted by no more than "5 percent for each calendar year from the operative date of the last adjustment of the salary in effect" when the salary ordinance was adopted. (Government Code Section 36516.) \$12,000 per year is very low, and likely reflects that, in most general law cities, the office of councilmember is a part-time position.

Charter cities like Oakland, however, are not governed by the State's general laws with regards to councilmember or mayoral salary. PEC staff surveyed the ten largest California cities (all of which are charter cities) and found many different approaches to mayoral salary-setting. In Fresno, the City Council has wide discretion in setting the mayor's salary. Other cities adopt a stricter approach, where there is very little discretion in salary-setting. For example, both Los Angeles and San Diego base their mayor's salaries on a superior court judge's salary. Anaheim follows the salary rules for general law cities. Other cities provide some discretion in salary amount, while setting standards for the types of factors that should be considered in setting compensation. For example, Sacramento and San Jose use appointed bodies to set salaries, while directing those bodies to take into account compensation provided in similar-sized cities.

The power and responsibilities of the mayor should also be considered in salary setting. Cities are generally described as having one of two forms of government (or a blend of both): the City Manager form of government, sometimes called the "weak mayor" form, where the city manager is the chief executive of the city and the mayor is a member of the city council, and the Mayor-City Council form of government, sometimes called the "strong mayor" form, where the mayor is the executive of the city and not a member of council. Because mayors in strong mayor cities have more power and responsibilities than mayors in weak mayor cities, they tend to have higher compensation. In California, five cities are commonly described as being either "strong mayor" cities or having "strong mayor" attributes: Fresno, Los Angeles, Oakland, San Diego, and San Francisco.

**Comparison – Mayoral Salary-Setting in the Ten Largest California Cities**

<b>Jurisdiction</b>	<b>Type of Mayor</b>	<b>Mayoral Salary Rule</b>
Anaheim	Weak	Follows rules for general law cities. <i>Charter Sec. 502.</i>
Bakersfield	Weak	Set at \$24,000/year. <i>Charter Sec. 20.</i>
Fresno	Strong	Salary set by City Council. <i>Charter Sec. 308.</i>
Long Beach	Weak	Set at \$67,500 + CPI (set in 1988). <i>Charter Sec. 203.</i>
Los Angeles	Strong	30% more than Councilmembers (who receive salaries equal to superior court judges). <i>Charter Sec. 218.</i>
Oakland	Strong	Council set salary to 70% to 90% of the average City Manager or CEO salary of 6 nearest-in-size cities. <i>Charter Sec. 300.</i>
Sacramento	Weak	Appointed Compensation Committee sets salaries that are “reasonable and consistent with other cities similar in size and structure.” <i>Charter Sec. 29.</i>
San Diego	Strong	Salary equal to salary of superior court judge. <i>Charter Sec. 24.1.</i>
San Francisco	Strong	Civil Service Commission sets salaries based on average of 5 Bay Area counties. Commission may reduce salaries if City and employee unions reduced their salaries. <i>Charter Sec. A8.409-1.</i>
San Jose	Weak	Appointed Salary Setting Commission sets salary taking “commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.” City Council may reduce salaries. <i>Charter Sec. 407.</i>

**Questions the PEC May Wish to Discuss**

In discussing how the mayor’s salary should be set, commissioners may wish to consider the following questions:

**1. Who should set the Mayor’s salary?**

Should the salary be set by the City Council (current law), the PEC (which sets all other City elected official salaries), or some other body (like the Civil Service Commission, as in San Francisco)?

- The City Council may provide political accountability to the voters for the process. However, it also risks politicizing the salary-setting process, where the mayor’s salary might depend significantly on whether or not his or her allies control the Council.
- A politically-insulated body, like the PEC, may lead to a fairer process where charter criteria, such as setting the salary based on compensation in peer jurisdictions, are more likely to be followed over political considerations. However, heightened scrutiny over the salary-setting process may pressure the PEC to make political decisions and subject the PEC to criticism that could undermine public trust in the PEC’s other mandates around campaign finance and government ethics compliance.

**2. How much discretion should the salary-setting body have?**

## Item 12 - Staff Memo

Should the salary-setting body have complete discretion to set the salary on whatever factors it deems relevant? Should the body have some discretion, while having to base its decision on certain charter-defined criteria, as the PEC does for the City Attorney and City Auditor? Or should there be very little to no discretion, similar to the PEC's limited role in adjusting the councilmembers' salaries for inflation or how San Diego ties mayoral pay to superior court judge compensation, or Los Angeles to a multiple of councilmember compensation?

- More discretion may enable a salary-setting body to better take into account unique circumstances, such as fiscal crises, in deciding whether to raise salaries and by how much. However, it may make the process more susceptible to abuse or accusations of abuse, and invite the salary-setting body to subjectively evaluate how well elected officials are performing, which is a political judgment.
- Conversely, less discretion narrows the opportunity for abuse, but reduces the salary-setting body's ability to address unique circumstances. If the salary-setting body has no discretion, it may not be necessary to assign salary-setting to an independent body.

### **3. What factors, if any, should or must the salary-setting entity consider?**

For the City Auditor and City Attorney, the PEC must provide for competitive compensation and equitable alignment and take into account:

- The salary for the highest paid professional employee in the official's office;
- The salary of other City department heads; and
- The salary for the same office in other California cities and counties.

Other considerations might include inflation, anticipated raises for represented employees, the financial condition of the City, or other factors.

The PEC may also wish to discuss, for the mayor, what might constitute a comparable office in other cities? Should the salary of weak mayor cities be considered, or only strong mayors? Should city manager pay be considered, or only elected official pay? Should jurisdictions outside of California be considered?

### **4. If the PEC sets the Mayor's salary, should the factors the PEC applies or considers be the same as those used for setting the salaries of the City Council, City Auditor, and/or City Attorney, or different?**

Using the same or a similar standard would likely be more administratively simple for staff and promote compensation fairness across elected offices. (This may mean recommending that the salary-setting process for the City Council, City Attorney, and City Auditor be adjusted in the same measure that reassigns mayoral salary-setting to the PEC.) On the other hand, there may be differences in the nature of the different offices that should require the application or consideration of different standards.

# Item 13 - Disclosure Report



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

Nicolas Heidorn, Executive Director

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TO: Public Ethics Commission  
FROM: Suzanne Doran, Lead Analyst  
Jelani Killings, Ethics Analyst  
Ana Lara Franco, Commission Analyst  
DATE: September 29, 2023  
RE: Disclosure and Engagement Monthly Report for the October 11, 2023, Meeting

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This memorandum provides a summary of major accomplishments in the Public Ethics Commission’s (PEC or Commission) Disclosure and Engagement program activities since the last monthly meeting. 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.

## Filing Officer – Compliance

**Campaign finance disclosure** – On August 18, the Oakland City Clerk certified the candidates for the local positions on Oakland’s November 2023 Special Election ballot. 2 candidates qualified for ballot status and 1 has a registered campaign committee. In addition, 15 candidates have submitted statements of intent to run for office in the November 2024 General Election.

July 31 marked the campaign statement deadline for all registered committees for activity between January 1 and June 30, 2023. All candidates on the November 2023 ballot required to file have filed their statements. The following 12 committees were assessed late fees:

Committee
COALITION TO ELECT VALARIE BACHELOR FOR SCHOOL BOARD 2022
Committee to Elect Allyssa Victory for Oakland Mayor 2022
Committee to Support Pecolia Manigo for Oakland School Director 2022
East Bay Community Foundation
Kenny Session for District 6 2022
Loren Taylor for City Council 2018 Officeholder Committee
Oakland Public School Action 2020
OROZCO MAX SCHOOL BOARD DIRECTOR DISTRICT 2 2022
Sheng Thao for Oakland Mayor 2022
Van Cedric Williams for Oakland Unified School Board Seat 3, 2020
Whitaker for Oakland City Council 2018
ZAZABOI FOR OAKLAND CITY COUNCIL DISTRICT 6 2022; YAKPASUA

## Item 13 - Disclosure Report

Disclosure and Engagement Report  
September 29, 2023

5 non-filers remain, 2 of which are long-term, non-responsive committees from prior elections previously referred to the FPPC for enforcement. PEC staff referred the following committees to the FPPC for enforcement:

Committee	Treasurer	Candidate
Annie Campbell Washington 2014 Officeholder Committee	CAMPBELL WASHINGTON, ANNIE	CAMPBELL WASHINGTON, ANNIE
Annie Campbell Washington for Oakland City Council 2018	CAMPBELL WASHINGTON, ANNIE	CAMPBELL WASHINGTON, ANNIE
LOWE FOR CITY COUNCIL 2022; HAROLD	LOWE, ANDREA	LOWE, HAROLD
OROZCO MAX SCHOOL BOARD DIRECTOR DISTRICT 2 2022	OROZCO, MAXIMINO	OROZCO, MAXIMINO
VELASQUEZ FOR OAKLAND SCHOOL BOARD 2022; JOEL	RASMUSSEN, KRISTIN	VELASQUEZ, JOEL

The first pre-election filing deadline for the November election was on September 28, 2023. All candidates on the November 2023 ballot were required to file. Candidates raising or spending \$2,000 or more file their campaign statements on FPPC Form 460. Candidates intending to keep their campaign under \$2,000 must file FPPC Form 470. Ballot measure committees and other recipient committees with fundraising or spending activity connected with the November ballot must also file for the pre-election deadline. After the September deadline, staff will screen campaign statements for untimely and un-reported late contributions and independent expenditures and assess late fees as required.

Campaign statements are available to view and download at the PEC's [Public Portal for Campaign Finance Disclosure](#).

**Lobbyist Registration and Reporting Program** – The Oakland Lobbyist Registration Act (LRA) requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. The next deadline for quarterly lobbyist activity reports is on October 30 and covers the period from July 1 through September 30, 2023.

Lobbyist registration and activity reports may be viewed online at the [PEC's Lobbyist Dashboard and Data webpage](#).



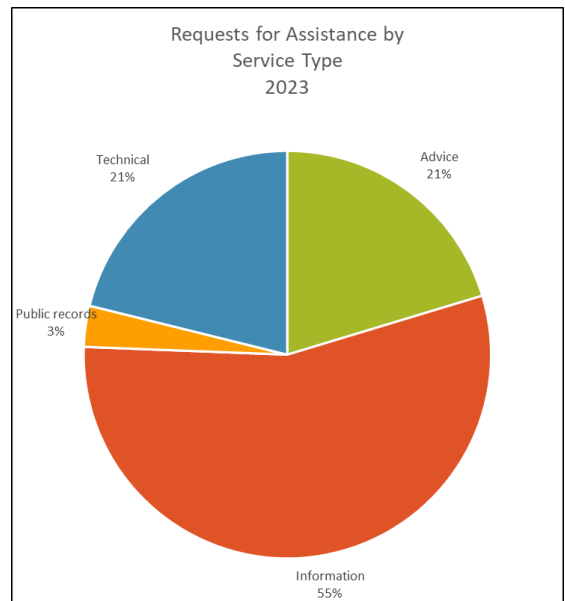
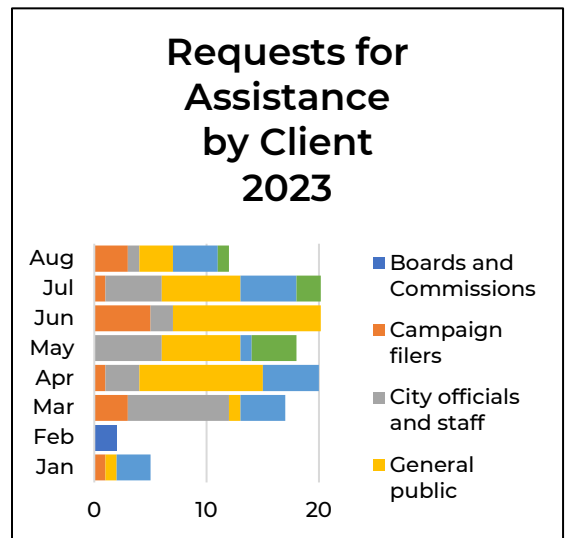
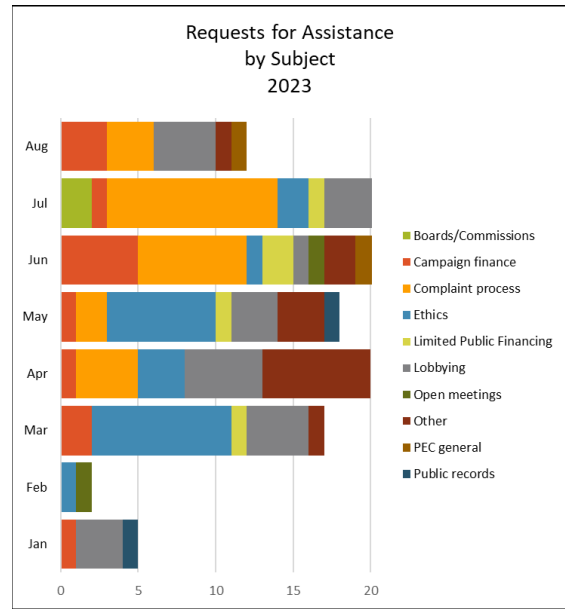
**Advice and Engagement**

**Advice and Technical Assistance** – In the months of August and September, Commission staff responded to 51 requests for information, advice, or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues, for a total of 172 in 2023 to date.

**Form 700 Compliance** – – On August 15, Staff met with representatives from the City Clerk’s Office and the Department of Human Resources Management to get an update on efforts 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. While progress is being made with departments updating their employee filer designations, there is still a need to synchronize City data systems across departments to ensure a single, accurate Form 700 list. The working group identified the Payroll Division as needed partner in the process to update the Oracle system to require the completion of an individual’s Form 700 designation. Next Steps include sending a joint letter to the City’s Oracle Steering Committee to prioritize updating the Form 700 Filer field in Oracle.

**Candidates and Campaigns** – As part of campaign education efforts, staff issues regular advisories to ensure that candidates and committees are aware of local rules during election time. In August, staff issued an advisory about new independent expenditure disclosure requirements and provided a link to an online form. In September, the advisory covered...

**Lobbyists** – On September 15, 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 but not 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



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September 29, 2023

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.

**New Employee Orientation** – Staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). On September 20, Staff trained a total of 40 new employees on GEA provisions. Employees required to file Form 700 were also assigned the PEC’s mandatory online Government Ethics Training for Form 700 Filers.

### **Illuminating Disclosure Data**

**Show Me the Money** – The [Show Me the Money](#) app is live with campaign finance data submitted by candidates running in the November 2023 Special Election and November 2024 General Election. [Show Me the Money](#) builds a map showing the geographic source of campaign contributions to candidates and totals donated from that location. Like the Commission’s other campaign finance projects, the app is updated daily with data exported directly from the city’s campaign finance database. Followers of Oakland elections can find the [Show Me the Money](#) application via links on the Public Ethics Commission website, [OakData portal](#), and [OpenDisclosure](#) candidate pages.

**Open Disclosure** – Commission staff continues to act as team leader for the campaign finance website [OpenDisclosure](#), produced in partnership with Open Oakland volunteers. Staff convened a meeting of the project team to plan site updates for the November 2023 Special Election and November 2024 General Election in August. Staff and volunteers began work in September to incorporate data from candidates for the upcoming elections, which will soon be live on [OpenDisclosure](#).

OpenDisclosure is a nonpartisan tool developed by volunteers from civic tech group OpenOakland in partnership with the Commission staff to give all Oakland residents equal access to campaign finance data. The site shows funds donated to both political candidates and ballot measure committees and provides clear summaries of money raised and spent as well as financial trends for each election.

**Ticket Use by City Officials (Form 802)** – Changes to the City Ticket Distribution Policy ordinance adopted in June 2022 require modifications to the Ticket Distribution (Form 802) database maintained by the IT department. In August and September, Commission staff met with Council and IT staff to review progress on the new database and provide feedback to ensure the new database meets disclosure requirements set forth in the new policy.

### **Online Engagement**

**Social Media** – Each month Commission staff posts social media content to highlight specific PEC policy areas, activities, or client-groups. Posts in August and September focused on Commissioner recruitment, PEC Annual Report, Lobbyist Registration Act amendments, the Limited Public Financing Act of 2024, and PEC meetings.

### **General Outreach**

**Commissioner Recruitment** – Distribution of the Commissioner recruitment announcement and application started in August and will continue through the application deadline on October 27.

## Item 13 - Disclosure Report

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September 29, 2023

Outreach channels include the Commission and City of Oakland websites, targeted email distribution lists, social media (Facebook, Twitter, LinkedIn, and Nextdoor), local newsletters and community publications, and as well as print and digital ads in local press outlets. Local news outlet Oaklandside also published an article on opportunities to serve on the Commission. Flyers are posted around City Hall offices frequented by the public and Oakland Public Library branches. The Commissioner recruitment webpage includes information about the Commissioner role, desired skills, links to the online application, as well as more information about the Commission. Staff and Commissioners also have attended community events including a District 3 Town Hall and Art & Soul.

# Item 14 - Enforcement Report with attachment



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

Nicolas Heidorn, Executive Director

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TO: Public Ethics Commission  
FROM: Simon Russell, Enforcement Chief  
DATE: September 27, 2023  
RE: Enforcement Unit Program Update for the October 11, 2023, PEC Meeting

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This report summarizes the PEC Enforcement Unit’s major activities since the most recent PEC meeting, to the extent permissible under our confidentiality requirements.

## 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 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

## Item 14 - Enforcement Report with attachment

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).

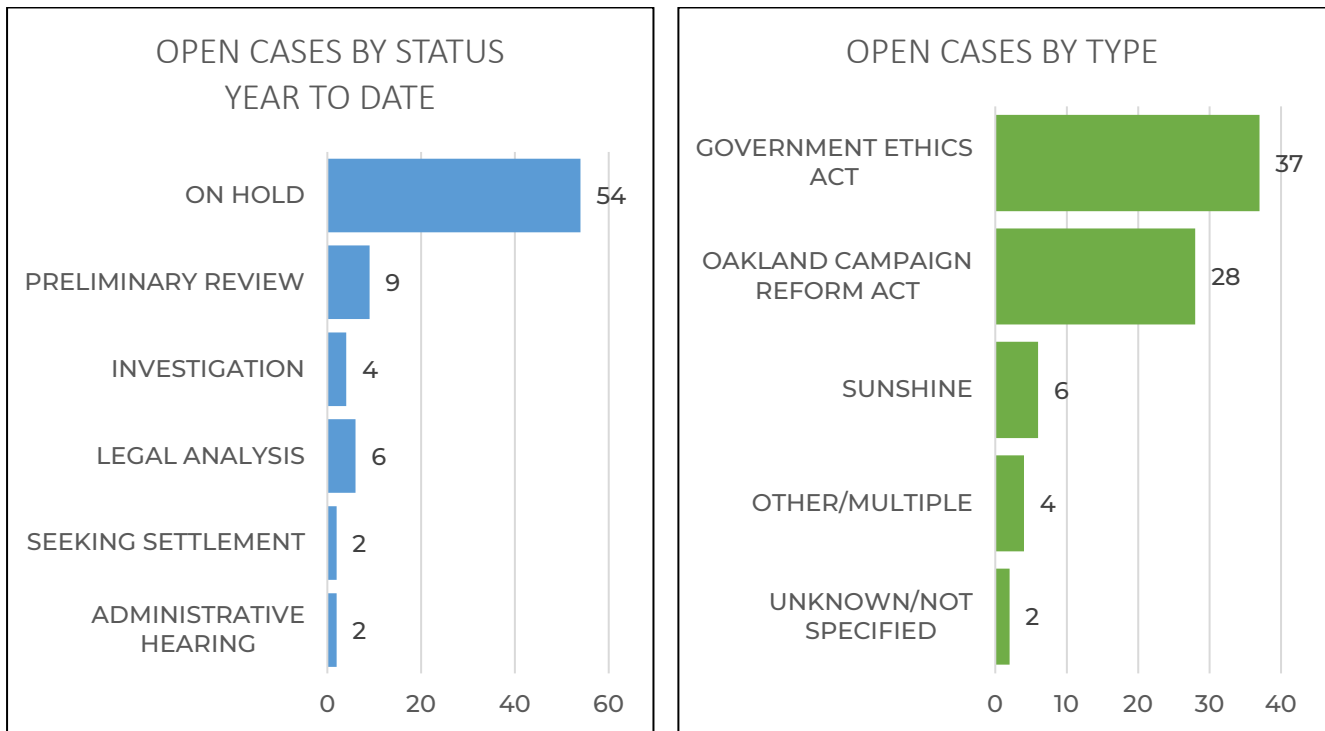
## Item 14 - Enforcement Report with attachment

The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

### Current Enforcement Caseload

Since the Enforcement Unit Program Update submitted to the Commission on July 27, 2023, Commission staff received 5 formal complaints, of which 2 are under preliminary review and 3 are on hold. Enforcement also received 30 informal complaints, of which 25 were rejected, 2 are under preliminary review, 1 was opened for investigation, and 2 are still in intake (i.e. awaiting a decision on whether to reject them or escalate them to preliminary review).

This brings Enforcement’s caseload to 77 matters at all stages, from preliminary review through to investigation, settlement negotiations or administrative hearing. That includes 54 matters that are now “On Hold.” It does not include informal complaints that are still in intake.



### Updates Coming to How Enforcement Presents Caseload Data

As mentioned by the Enforcement Chief during the August 2023 PEC retreat, this year Enforcement updated and refined our internal case management system, known as the Enforcement Database. Among other things, the Enforcement Database now includes data on the specific types of violations at issue in each case. Previously, we had only tracked this information in broad categories based upon the subject matter, e.g. “GEA” (Government Ethics Act violations) or “OCRA” (Oakland

## Item 14 - Enforcement Report with attachment

Campaign Reform Act violations). Now, we also track the particular types of violations at issue, e.g. “Bribery,” “Lobbyist Non-Filer,” “Contribution Limit,” etc. We also now track this data for each stage of a particular case, from preliminary review through to administrative hearing. (This is helpful because violations can be added or dropped at different stages, as new evidence comes in; whereas the previous version of the Enforcement Database only tracked the violation categories at issue in the initial complaint, even if these were later amended). We have also standardized our classification scheme for different violation types.

With this data, we will be able to provide more refined caseload reports to the Commission every month. In line with the Commissioners’ suggestions during the August 2023 retreat discussion on this subject, we will be revamping the caseload information in these reports in the following ways:

- Instead of reporting “Open Cases By Type” only by broad categories (e.g. “Oakland Campaign Reform Act,” “Government Ethics Act,” etc.) we will also be reporting the number of open cases involving a particular type of violation (e.g. the number of open cases involving allegations of “Bribery,” “Lobbyist Non-Filer,” “Contribution Limit,” etc.).
- In addition to total numbers, we will be breaking down how many types of violations are at each stage in the Enforcement process (e.g., how many matters involving “Bribery” are in Preliminary Review, under Investigation, under Legal Analysis, etc.).
- We will be eliminating the “Multiple/Other” category because our new database can individually account for each particular violation in a case involving multiple types.

It is hoped that this more refined data will give the Commissioners and the public a more informed sense of the types of cases Enforcement is currently working on, the scale of Enforcement’s caseload, and the most common types of violations being reported to us or identified by Enforcement staff.

### **Stepping Up Our Enforcement of Form 700 Non-Filers**

Most City elected officials, commissioners, candidates, and employees are required to file what is called a “Form 700” every year. Essentially, a Form 700 lists all of the sources of income (including gifts and real estate interests) that might impact someone’s impartiality on the job, either because the source of income is based in Oakland or because it conducts the type of business over which the Form 700 filer has some type of governmental authority. It is meant to be a safeguard against conflicts of interest and pay-to-play politics.

Form 700s are filed with the City Clerk, though the PEC has the authority to investigate and prosecute non-filers. In the wake of an Alameda County Grand Jury report that found serious levels

of non-compliance with the Form 700 filing requirements by City staff and officials, the City Clerk and the PEC have held a number of meetings with the goal of increasing collaboration on Form 700 enforcement.

As a result of this collaboration with the City Clerk, the PEC's Enforcement Unit now has access to the list of all known City officials and staff that have not filed their required Form 700. Enforcement plans to contact all non-filers and foster their compliance with the filing requirement, primarily through the use of our streamline and diversion programs. Our goal is to raise the Citywide compliance rate to at least 90% of all known, required filers by the end of 2024; and to report to the PEC with our analysis and recommendations should we be unable to reach that target.

### **Further Matters Put On "Hold" Pending New Hires**

Currently, the Enforcement Unit has no investigators on staff. Total Enforcement staff currently consists of the Enforcement Chief (who typically handles preliminary review of complaints, legal analyses of completed investigations, prosecution of cases, and administrative and policy matters, as well as supervising investigations) and an Enforcement Assistant (who typically assists with complaint intake and administrative tasks).

As stated in previous Enforcement Unit updates to the Commission, at our current caseload we would need a minimum of two full-time investigators just to keep pace with incoming complaints (which often need an investigator assigned for initial fact-finding prior to determining whether to open a full investigation), and a total of four investigators to resolve most preliminary reviews and investigations in a timely manner (to give a sense of scale, one major investigation alone can consume much of a single investigator's daily worktime; and we currently have at least half a dozen cases on our docket that we would consider "major" in terms of their complexity and potential public impact. This does not include lower-level and mid-level cases). We would also need another staff attorney (in addition to the Enforcement Chief) to keep pace with legal analyses of incoming complaints and completed investigations, as well as conducting settlement negotiations and prosecutions (as with investigators, one major case alone can consume much of an attorney's daily worktime). These minimum staffing levels are comparable to those of other Ethics Commissions that handle a similar caseload (e.g. San Francisco, or Los Angeles on a proportional basis relative to population).

In light of this severe under-staffing in Enforcement, the Enforcement Chief (in consultation with the Executive Director and the Commission) has decided to use our limited staff resources in the following manner:

- the Enforcement Chief will personally conduct only the most serious and high-impact preliminary reviews and prosecutions currently on our docket. Regarding the latter, we



## Item 14 - Enforcement Report with attachment

tentatively anticipate that these cases will be presented to the Commission (either as settlements, probable cause reports, or hearing findings) in the first half of 2024;

- the Enforcement Chief will personally conduct some of our most serious and high-impact, ongoing investigations (despite this not normally being the Chief's role), until we are able to hire more investigators; and
- the Enforcement Assistant will handle much of the work on the anticipated streamline cases described in the previous section of this report.

This means that, for the short- to medium-term, the following decisions have also been made to lighten staff's workload, in addition to those previously described in the Enforcement report of April 26, 2023:

- a greater number of ongoing matters have formally been placed on hold. In April we anticipated this would be about half of our cases; it is now approximately three-quarters of our open matters, and anticipated to grow as most new complaints are automatically put on hold. Most of the complaints and cases being placed on hold are matters that – though important on their own terms – we would consider to be of low- to mid-level seriousness when compared with other cases on our docket.
- we are automatically placing the preliminary review of all but the most serious incoming complaints on hold. All new complainants and respondents are being told to expect significant delays in the processing of complaints. The Enforcement Chief is conducting preliminary review of incoming complaints as time permits, but most of these will not be completed until we hire more staff and/or resolve the major cases on our docket.
- the Enforcement Chief is no longer meeting or corresponding with complainants on all but the most serious incoming complaints, due to time severe time constraints. (Typically the Chief and/or an investigator will correspond with complainants in order to gather evidence and respond to their inquiries re: complaint processing status, as well as to explain the reasoning behind any decision to dismiss their complaint). The Enforcement Assistant is handling the bulk of such meetings and correspondence.

We anticipate hiring a permanent, full-time Investigator by the end of October, with an anticipated start date sometime in November. We are also trying to use short-term salary savings to hire a temporary investigator, with an anticipated start date by the end of 2023. We also anticipate hiring at least one management intern (typically a law student or new lawyer) to assist with Preliminary Review and Legal Analysis. Once these hires are in place, we anticipate resuming work on some matters currently on hold; though it will take time to train and onboard any new hires.

### **No Enforcement Files Leaked During Ransomware Attack; New Measures Being Implemented to Prevent and/or Mitigate Such Attacks in the Future**

In February 2023, the City of Oakland suffered a “ransomware” attack, in which hackers obtained confidential records located on the City’s internal computer system and leaked them online. After learning that the City had recently finished accounting for all of the materials included in the leak, Enforcement staff contacted the City’s response team in order to determine whether any of our own files were included in the leaked materials. After a review of all the files known to have been released online, Enforcement has determined that none of the Enforcement Unit’s files were included in the leak.

We are instituting new practices and exploring options to guard against any such potential leaks in the future, and to minimize the potential impacts of any future cyberattacks. These include:

- Enforcement staff must now use two-factor authentication before they can access our internal file-sharing system.
- We have begun making our own weekly backups of our electronic case files (in addition to any other backups made by the City) in order to mitigate any potential data loss or downtime if the City’s server ever gets taken offline again. These backups are maintained separately from the City’s server.
- Budget permitting, we are exploring the possibility of migrating Enforcement’s electronic case files from the City’s internal server to an external cloud service.
- As part of a larger, comprehensive review of Enforcement’s record-retention policies, we have begun purging older case files (e.g. those closed more than seven years ago) of sensitive data which we are no longer legally required to maintain, such as personal contact information or financial records not used as evidence. We are also organizing newer case files in a manner which will make the separation and purging of such records much easier in the future (for example, by requiring all records used as evidence during an investigation to be marked and maintained in a consistent manner across all case files, and kept separate from records not ultimately used as evidence). As part of our ongoing revision of our Complaint Procedures, we will be presenting the Commission with proposed changes to Enforcement’s records retention policy in order to clarify and mandate the purging of sensitive information not required to be retained by law.

## Item 14 - Enforcement Report with attachment

### Legal Actions/Litigation Update

Since the last litigation update included with the Enforcement Unit Program report on July 27, 2023, the following public court actions have been submitted or scheduled by or on behalf of the Enforcement Unit:

1. *City of Oakland Public Ethics Commission v. Silvia Zhang* (Alameda County Superior Court case no. 2RG20051424). On September 19, 2023, the PEC filed a “Request For Dismissal.” There is no hearing scheduled in the matter.

Except where otherwise noted, no allegations have yet been proved or admitted in any of the above matters, and the existence of these cases and associated litigation should not be taken as an indication that the potential respondent(s) necessarily violated any laws. This information is being provided for the PEC’s informational purposes only.

### Case Resolutions

Since the last litigation update included with the Enforcement Unit Program report on July 27, 2023, the following matters have been resolved by way of dismissal or closure:

1. **In the Matter of Christopher Scyphers (PEC No. 23-30).** On August 30, 2023, Enforcement staff received a formal complaint alleging that Planning and Building inspector Christopher Scyphers misused his City position when he attempted to conduct an inspection at a business without proper authority. Enforcement conducted a preliminary review and determined that there was insufficient evidence of any irregularity in the scheduling of the inspection, nor that Scyphers had attempted to procure any type of personal gain for himself or others in the course of the inspection. As such, we have dismissed the complaint with no further action.



## Item 14 - Enforcement Report with attachment

ENFORCEMENT UNIT  
1 FRANK H. OGAWA PLAZA, #104  
OAKLAND, CA 94612  
(510) 238-3593  
TDD (510) 238-3254

September 28, 2023

Yuan Lin  
[REDACTED]  
[REDACTED]

Via email: [REDACTED]

### Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-30

To Yuan Lin:

On August 30, 2023, the City of Oakland Public Ethics Commission (PEC) received your complaint (# 23-30) alleging that building inspector Christopher Scyphers had violated one or more laws under our jurisdiction.

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.

Your complaint alleged that Inspector Scyphers attempted to conduct an inspection of your business without proper authority. The PEC does not have the authority to enforce any internal rules or procedures at the Building Department, including whether a particular inspection was conducted properly. We take no position on whether Inspector Scyphers followed departmental procedures during the inspection in question. If you believe Inspector Scyphers may have violated an internal rule or procedure at the Building Department, you should make your complaint to either of the following people:

- David Miles (Principal Inspections Supervisor), (510) 238-6214, [DMiles@oaklandca.gov](mailto:DMiles@oaklandca.gov);
- William Gilchrist (Director of Planning and Building), (510) 238-2229, [WGilchrist@oaklandca.gov](mailto:WGilchrist@oaklandca.gov).

The only law the PEC enforces that might be applicable to your complaint is section 2.25.060(A)(2) of Oakland's Government Ethics Act. That section prohibits City employees from using their official position, or the power or authority of that position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain.

## Item 14 - Enforcement Report with attachment

However, for someone to violate that law, they must have acted outside the scope of their ordinary duties and/or made some sort of threat or solicitation in order to get a private benefit (for example, demanding cash in order to pass an inspection). Our preliminary fact-finding found that Inspector Scyphers was assigned the inspection by his department, therefore he was not acting outside the scope of his duties in carrying out the inspection. And in a phone call with me, you stated that Inspector Scyphers did not make any kind of private threat or solicitation during the inspection. You said that he threatened to obtain an order that would allow him to enter your property without your consent, but even if that is true, it may be a lawful order and would be for the purpose of carrying out his City duties rather than getting some kind of private benefit. As such, no violation of section 2.25.060(A)(2) occurred.

As for the allegation that Inspector Scyphers misled you by incorrectly citing the “City Attorney’s Office” as the agency requesting the inspection, it is doubtful that this allegation, even if true, would constitute a violation of section 2.25.060(A)(2). It is not a misuse of position to make a good-faith mistake. Inspector Scyphers told us that he simply misspoke and meant to say the “City Administrator’s Office.” Our initial fact-finding found that the inspection in question was indeed initiated by the Special Activity Permits office, in coordination with the Planning and Building Department. Both of those agencies are under the supervision of the City Administrator’s Office, which lends credibility to Inspector Scyphers’ explanation that he misspoke.

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 October 11, 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 Inspector Scyphers, as required under our Complaint Procedures.

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: [rusSELL@oaklandca.gov](mailto:rusSELL@oaklandca.gov) | he/him/his  
[www.oaklandca.gov/pec](http://www.oaklandca.gov/pec)

*Enclosure: Copy of dismissal letter to C. Scyphers*



## Item 14 - Enforcement Report with attachment

ENFORCEMENT UNIT  
1 FRANK H. OGAWA PLAZA, #104  
OAKLAND, CA 94612  
(510) 238-3593  
TDD (510) 238-3254

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September 28, 2023

Christopher Scyphers  
Department of Planning and Building  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612

Via email: [CScyphers@oaklandca.gov](mailto:CScyphers@oaklandca.gov)

### **Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-30**

To Christopher Scyphers:

On September 8, 2023, the City of Oakland Public Ethics Commission (PEC) sent you a letter stating that it had received a complaint against you (# 23-30) alleging that you had violated one or more laws under our jurisdiction.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint. We will also be notifying the complainant of this.

Specifically, we reviewed whether the allegation in the complaint – that you attempted to conduct an inspection of a business without proper authority – violated section 2.25.060(A)(2) of the Government Ethics Act. That section prohibits City employees from using their official position, or the power or authority of that position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain. We found that the inspection in question was conducted in the ordinary course of your City duties and that there was no evidence or allegation that you attempted to procure any type of private benefit from the inspection. As such, no violation of section 2.25.060(A)(2) occurred.

As for the allegation that you misled the property owner by incorrectly citing the City Attorney's Office as the agency requesting the inspection, it is doubtful that this allegation, even if true, would constitute a violation of section 2.25.060(A)(2). It is not a misuse of position to make a good-faith mistake, and we also found your explanation credible that you simply misspoke and meant to cite the City Administrator's Office. Our initial fact-finding found that the inspection in question was indeed initiated by the Special Activity Permits

## Item 14 - Enforcement Report with attachment

office, in coordination with the Planning and Building Department. As these are both under the supervision of the City Administrator's office, we find your explanation to be credible.

The PEC does not have the authority to enforce any internal rules or procedures at the Building Department regarding the conduct of inspections, and we take no position on whether you followed those procedures during the inspection in question.

No further action is necessary on your part; this letter is just a courtesy notice. A copy has also been provided to the complainant, as required under our Complaint Procedures.

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 take place on October 11, 2023, at 6:30 PM, 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  
**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](mailto:srussell@oaklandca.gov) | he/him/his  
[www.oaklandca.gov/pec](http://www.oaklandca.gov/pec)



# Item 15 - 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

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TO: Public Ethics Commission  
FROM: Nicolas Heidorn, Executive Director  
DATE: September 29, 2023  
RE: Executive Director's Monthly Report for the October 11, 2023, PEC Regular Meeting

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This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2023 for each program area.

## PEC Priorities and Roadmap for 2023-25

At its August retreat, the PEC discussed near and mid-term project priority setting over the next one to two years in three non-enforcement program areas, relating to public policy and executive priorities, disclosure priorities, and outreach priorities. In discussion, Commissioners identified the following priorities and approximate time period for working on and completing those priorities:

### Executive/Policy Priorities

- Near Term (2023), in order of priority:
  - Work with the City Council to adopt the Limited Public Financing Program of 2024 (In Progress – High Priority)
  - Work with the City Council to adopt Lobbyist Registration Act Amendments (In Progress – High Priority)
  - Pilot a Voter Guide in the 2024 Election (High Priority)
  - Recommend whether the PEC should set the Mayor Salary (Medium)
  - Review City Charter provisions relating to the PEC with (Medium)
- Mid/Long Term (2024-25), in order of priority:
  - Bi-Annual Policy Review: LRA (High)
  - Strengthen Public Records/Mediation (High)
  - Build Ethics Commission Network (Low – begin with regular meetings)
- For Future Consideration, unordered:
  - Contributor Certification
  - Regular Auditing Program

### Disclosure Priorities

- Near Term (2023), in order of priority:
  1. Update the Lobbyist Registration and Reporting Database (Not Started – High Priority)
  2. Publish a Public Records Performance Dashboard (In Progress – High Priority)
- Mid Term (2024), in order of priority



## Item 15 - Executive Director's Report

1. Update the Open Disclosure Portal for 2023 and 2024 (In Progress – High Priority – Medium Effort)
2. Update the Show Me the Money Application for 2023 and 2024 (In Progress – High Priority – Low Effort)
- Mid/Long Term (2024 – 2025), as higher priority projects are completed and/or increased staff capacity allow, in order of priority:
  1. Digitize Schedule O Form/Searchable Contractor Database
  2. Create a Ticket Distribution (Form 802) Database/Improved Transparency Portal

### Outreach Priorities

- Near Term (2023)
  1. Recruit for the PEC Vacancy
  2. Highlight the Need of Additional Enforcement Resources
- Mid Term (2024)
  1. Increase Awareness of the PEC's Campaign Finance Applications
  2. Increase Awareness of how to File Complaints/Anonymous Complaints with the PEC
- Additional considerations:
  1. Increase Awareness of the PEC and its Role

These priorities have been added **in bold** to the Programs & Priorities tracker (attached).

### **LPF and LRA Legislation**

At its August meeting, the PEC adopted recommendations to the City Council to (1) reinstate a limited public financing (LPF) program for the 2024 election only and (2) make changes to the Lobbyist Registration Act (LRA), including codifying in the LRA recent changes adding a lobbyist registration fee and lobbyist reporting late fees adopted in the Master Fee Schedule, proposing a fee waiver and fee reduction program for certain lobbyists, and making other administrative changes to the LRA.

The two proposals, which were co-sponsored by Council President Bas, were heard by the City Council's Rules Committee on September 28, 2023, which approved both recommendations. The proposals will be heard by the full City Council ("first reading") on October 17.

### **Staffing**

The PEC has experienced a number of staffing changes over the past few months and is actively engaging with Human Resources to use salary savings to bring on additional limited duration staff assistance.

In September, Lead Analyst Suzanne Doran was promoted to Acting Democracy Dollars Program Manager. Manager Doran has been leading the PEC's Measure W implementation work and has a wealth of experience with developing and administering complex data projects. Congratulations Suzanne! The Program Manager appointment is temporary until the completion of an open civil service recruitment and selection process for hiring a permanent Program Manager.

## Item 15 - Executive Director's Report

In September, Commission Analyst Ana Lara-Franco accepted a position with another department in the City of Oakland. Analyst Lara-Franco served seven years with the PEC, assisting with the PEC's finances, compliance with City administrative requirements, review of regulatory filings, constituent services, and more. We are grateful for Ana's service, and congratulate her on her next chapter! We have begun the process with HR for hiring a new Commission Analyst.

The PEC is also making progress on hiring for its permanent investigator position. Thirty-two candidates qualified and completed applications for the position. As part of the civil service process, those applications are now being screened by a panel of experts. We expect the applicant review and subsequent Department interview process to be complete around the end of October, with a hire likely occurring in November.

To address capacity issues within the Enforcement Program, the PEC is also actively pursuing a number of temporary hires using salary savings within its budget. The PEC has submitted requests through Human Resources to hire a full-time second investigator and two part-time law clerks through the end of this fiscal year (June 30, 2024). If the PEC is budgeted a second permanent investigator as part of the mid-cycle Fiscal Year 2024-25 budget, the temporary investigator could apply for that position.

Finally, the PEC is also exploring grant funding options to hire temporary staff to assist with the development of the Democracy Dollars Program, as discussed further in Item 7.

### Lobbying Rules Disclaimer

As part of its education work, the PEC updated its Lobbyist Registration Act (LRA) informational flyer and distributed 20 copies of the flyer to the offices of the Mayor and each councilmember. The PEC also drafted and submitted to Council President Bas a possible notice that could be added to City Council meeting agendas that would flag for people engaging in paid advocacy that they may be required to register as a City lobbyist. The suggested notice is as follows:

**IMPORTANT NOTE:** If you are being paid to communicate with City staff or officials to influence a government action, or lobbying is part of your duties as a salaried employee, you may first have to register as a lobbyist with the City of Oakland. To find out if you are required to register and for more information about lobbying rules and reporting requirements, consult Municipal Code Chapter 3.20 or visit the Public Ethics Commission's lobbying webpage: [www.oaklandca.gov/topics/lobbyist-rules](http://www.oaklandca.gov/topics/lobbyist-rules).

The Council President is presently reviewing the City Council's Rules and Procedures for potential updates, and will consider incorporating such a notice requirement in the Rules.

### Equity Team

Under Administrative Instruction 580 (2021), City Departments are supposed to establish a Department Equity Team consisting of department staff to "support and expand development of department capacity for equity action." In August, the PEC established its Equity Team, which met for the first time on August 31. The Team discussed future goals and reviewed and suggested additions to the PEC's commissioner vacancy recruitment plans.

**\$1,000+ Late Fees**

## Item 15 - Executive Director's Report

Under City Charter Section 603(f), any assessment of a per diem late fee of \$1,000 or more must be placed on the PEC's agenda. Pursuant to that requirement:

- **Kenny Session for District 6 2022** received a \$1,320 late fee for filing their October 23, 2022 to December 31, 2022, semi-annual campaign statement (Form 460) 132 days late. Because the statement was filed more than ten days after the PEC notified the committee that its report was late, under state law the fee cannot be waived.

### Late Fee Waivers

Under City Charter Section 603(f), if the Executive Director waives any per diem fees for the late filing of campaign finance report, he or she must notify the Commission at their next regular meeting. Pursuant to that requirement:

- The **East Bay Community Foundation (EBCF)** received a \$10 late fee for filing their July 1 – December 31, 2022, semi-annual campaign statement (Form 460) one day late and requested a fee waiver. Because this was EBCF's first violation, the late filing was inadvertent and quickly corrected, and there was unlikely to have been significant public impact from the delayed disclosure, I granted the request and waived the per diem fee. Granting this waiver was also consistent with the PEC's proposed new waiver policy (Item 6).

### Director Presentation

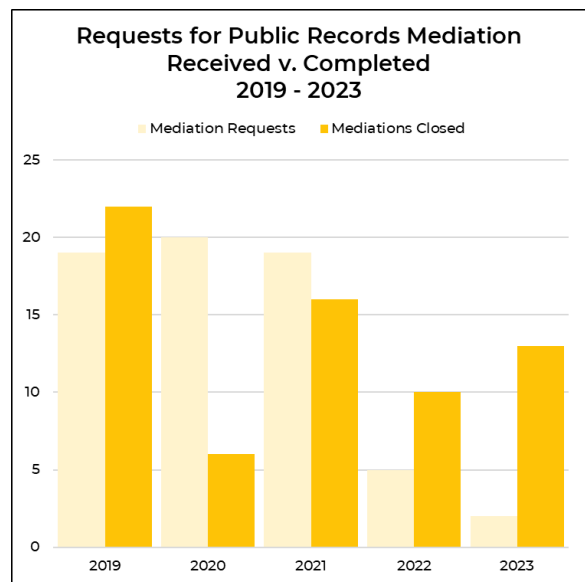
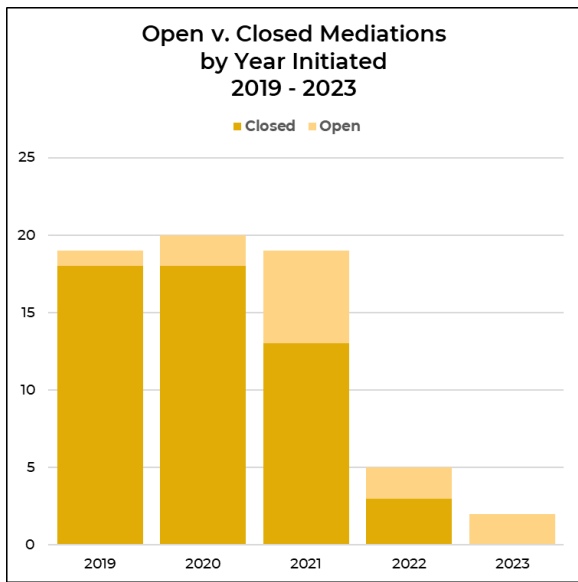
On September 9, 2023, Executive Director Heidorn took part in a panel discussion of local ethics commissions (San Diego, Los Angeles, and Oakland were represented) at a conference held by the California Political Attorneys Association (CPAA). Heidorn explained some of the PEC's upcoming priorities and enforcement practices.

### Mediation Program

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 PEC currently has 13 open mediations. No new mediation requests were received and none completed since the last regular meeting.

# Item 15 - Executive Director's Report

**Additional Attachment:** Commission Programs and Priorities.



# Item 15 - Executive Director's Report

## PUBLIC ETHICS COMMISSION

### Programs and Priorities 2023/24 (*new additions in bold*)

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
<b>Lead/ Collaborate (Policy, Systems, Culture)</b>	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"> <li>○ Lead Measure W implementation</li> <li>○ Engage in review of laws PEC enforces</li> </ul>	<ul style="list-style-type: none"> <li>○ Lobby Registration Act amendment to incorporate new fees and waiver policy</li> <li>○ Ordinance for one-time LPF for 2024 elections</li> <li>○ <b>Voter Guide Pilot</b></li> <li>○ <b>Mayor Salary Setting Guidance</b></li> <li>○ <b>Charter Review Options</b></li> <li>○ <b>Policy Review: Lobbyist Registration Act</b></li> <li>○ <b>Ethics Commission Network</b></li> <li>○ <b>Strengthen Records/Mediations</b></li> </ul>
<b>Educate/ Advise</b>	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"> <li>● Regular ethics training</li> <li>● Information, advice, and technical assistance</li> <li>● Targeted communications to regulated communities</li> <li>● New trainings as needed for diversion</li> </ul>	<ul style="list-style-type: none"> <li>○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance</li> <li>✓ Public Records training</li> </ul>
<b>Outreach/ Engage</b>	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"> <li>● Public Records mediations</li> <li>● Commissioner-led public outreach</li> <li>● Outreach to client groups – targeted training and compliance</li> <li>● PEC social media outreach</li> </ul>	<ul style="list-style-type: none"> <li>○ Update guides and trainings to reflect Measure W and LPF changes</li> <li>✓ Update public and stakeholders on Democracy Dollar postponement</li> <li>✓ Update Lobbyist Registration Act educational materials and share with Council</li> <li>✓ <b>Recruit for PEC vacancy</b></li> <li>○ <b>Publicize Enforcement Needs</b></li> <li>○ <b>Publicize PEC campaign finance tools</b></li> <li>○ <b>Publicize how to file complaints</b></li> </ul>

## Item 15 - Executive Director's Report

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
<b>Disclose/ Illuminate</b>	<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"> <li>• Monitor compliance (campaign finance/lobbyist/ticket use)</li> <li>• Proactive engagement with filers</li> <li>• Technical assistance</li> <li>• Assess late fees/refer non-filers for enforcement</li> <li>• Maintain data assets</li> </ul>	<ul style="list-style-type: none"> <li>○ Democracy Dollars admin system development/issue RFP</li> <li>○ Updates to Ticket Distribution (Form 802) database</li> <li>○ <b>Lobbyist App Updates</b></li> <li>○ <b>Public Records Performance Dashboard</b></li> <li>○ <b>Update Open Disclosure 2024</b></li> <li>✓ <b>Update Show Me The Money</b></li> <li>○ <b>Digitize Schedule O Form</b></li> </ul>
<b>Detect/ Deter</b>	<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"> <li>• Process and investigate complaints</li> <li>• Initiate proactive cases</li> <li>• Collaborate/coordinate with other government law enforcement agencies</li> </ul>	<ul style="list-style-type: none"> <li>○ Digital complaint form/ mediation request</li> <li>○ Improve Enforcement database</li> </ul>
<b>Prosecute</b>	<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"> <li>• Prioritize cases</li> <li>• Conduct legal analyses, assess penalty options</li> <li>• Negotiate settlements</li> <li>• Make recommendations to PEC</li> </ul>	<ul style="list-style-type: none"> <li>○ Resolve 2016 and 2017 case backlog</li> <li>○ Review/revise policies for release of public information and election-related complaints</li> <li>○ Develop internal Enforcement staff manual</li> <li>○ Expand streamline and diversion program</li> </ul>
<b>Administration/ Management</b>	<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"> <li>• Annual Report</li> <li>• Budget proposal</li> <li>• Ongoing professional development and staff reviews</li> <li>• Fill staff vacancies</li> <li>• Commissioner onboarding</li> </ul>	<ul style="list-style-type: none"> <li>✓ 2023 – 2025 strategic plan preparation/retreat</li> <li>✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council</li> <li>○ Increase enforcement capacity</li> </ul>