



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

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

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Chris Gonzales, Commission Assistant; Simon Russell, Enforcement Chief.

City Attorney Staff: Trish Shafie, Deputy City Attorney.

PUBLIC ETHICS COMMISSION SPECIAL MEETING AGENDA

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

ACTION ITEMS

- 4. Approval of Commission Meeting Draft Minutes.**
 - a. October 11, 2023, Regular Meeting Minutes ([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. **PEC Meeting Schedule for 2024.** The Commission will consider and adopt its regular meeting schedule for 2024. ([Staff Memo](#))

DISCUSSION ITEMS

7. **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. In addition to its regular update, the subcommittee will discuss its proposal to invite select Department heads to present before the PEC and to answer general and Department-specific questions regarding their department's performance and practices for releasing public records. A list of planned general questions, which would go to each selected department, is attached. ([Department Questions; October 24, 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.

8. **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.](#))

INFORMATION ITEMS

9. **Disclosure and Engagement.** Program Manager 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](#))
10. **Enforcement Program.** Enforcement Chief Simon Russell provides a summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals. ([Enforcement Report](#))



11. **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. ([Executive Director's Report](#))
12. **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.

The following options for public viewing are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland's KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on "View"
- **Online video teleconference (via ZOOM):** Click on the link to join the webinar: <https://us02web.zoom.us/j/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://us02web.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 or visit our webpage at www.oaklandca.gov/pec.

Nicolas Heidorn

10/27/23

Approved for Distribution

Date

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Hearing Room 1
Wednesday, November 8, 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 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 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 or 或致電 (510) 238-3593 或 711 (電話傳達服務)。

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

PEC Item 4 - Regular Meeting Minutes

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.

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; Simon Russell, Enforcement Chief.

City Attorney Staff: Farrah Hussein, Deputy City Attorney.

PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

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

Members present: Micik.

Members absent: Hill, Gage, Upton IV, Perteet and Steele.

Staff present: Nicolas Heidorn and Chris Gonzales

City Attorney Staff: Farrah Hussein.

Public Comment: None.

Chair Micik noted the absence of a quorum and cancelled the meeting.

The meeting adjourned at 6:34 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

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

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):

Violation Type	Criteria Making a Case Eligible For Streamline Settlement
Form 700 Non-Filer	The form in question is no more than six months late. ¹
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) ²	The form in question is no more than ninety (90) calendar days late.

¹ 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.

² 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.

Item 5b - Redline of Amendments to PEC Complaint Procedures

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.¹ 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.²
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.³
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.⁴
4. Statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.⁵
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.⁶ Participation in mediation is satisfied when the complainant was responsive to the mediator and willing to take action to complete the mediation.

¹ OMC 2.20.270(C)(1).

² OMC 2.20.270(C)(1).

³ OMC 2.20.270(C)(2).

⁴ OMC 2.20.270(C)(3).

⁵ OMC 2.20.270(C)(3).

⁶ 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.⁷
5. This mediation process constitutes the administrative process for review and enforcement required by the Oakland Sunshine Ordinance.⁸ 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.⁹ A requestor must complete the administrative process before seeking court action.¹⁰

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.

⁷ OMC 2.20.270(C)(3).

⁸ OMC 2.20.270(A)(3).

⁹ OMC 2.20.270(B).

¹⁰ OMC 2.270(B)(1).

Item 5b - Redline of Amendments to PEC Complaint Procedures

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.

Item 5b - Redline of Amendments to PEC Complaint Procedures

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.¹¹ 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.

¹¹ 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.¹²

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

¹² 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 15th 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~~

Item 5c - Redline of Amendments to PEC Penalty Guidelines

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

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

Item 5c - Redline of Amendments to PEC Penalty Guidelines

<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>

Item 5c - Redline of Amendments to PEC Penalty Guidelines

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.

Item 5c - Redline of Amendments to PEC Penalty Guidelines

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

Violation	Compliance prior to or in response to first PEC enforcement contact	Compliance prior to publication of PEC investigation report
<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 6 - Staff Memo

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

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: October 26, 2023
RE: Adjusting the PEC Meeting Schedule for 2024

For the 2023 calendar year, the Public Ethics Commission (PEC or Commission) held or scheduled a regular meeting for every second Wednesday of the month at 6:30 pm. This memorandum discusses options for the for the PEC's 2024 calendar year regular meeting schedule. Once the Commission has settled on a preferred meeting schedule, staff will work with the appropriate City staff to secure meeting space for next year aligning as closely as possible with Commission preferences.

Based on a survey of commissioner availability, staff recommends that regular PEC meetings continue to be held on a Wednesday beginning at 6:30 pm. However, because the current meeting schedule presents workload challenges for staff, staff recommends that the PEC schedule be adjusted to two regular meetings per quarter (i.e., 8 regular meetings per year, with additional special meetings to address time-sensitive matters as required), rather than continuing with a monthly meeting schedule.

Meeting Day and Time

Currently, PEC meetings are held on the second Wednesday of each month at 6:30 pm. PEC staff surveyed commissioners as to whether they would prefer to keep meetings on Wednesdays, or move meetings to Tuesday or Thursday, and whether they would prefer starting meetings at 6 pm or 6:30 pm. Five commissioners responded to the survey. The only day of the week that all commissioners could make is Wednesday. All commissioners indicated that they could make a 6:00 pm start time, but only one commissioner preferred that time, whereas three commissioners preferred a 6:30 pm start time.

Staff recommends that Commission meetings remain on Wednesdays at 6:30 pm. Staff will attempt to secure the same meeting day the PEC presently uses, i.e. the second Wednesday of the month, but if that is not available will request a different Wednesday.

Meeting Regularity

Currently, the PEC holds monthly regular meetings, although one regular meeting per year is generally cancelled as a Commission recess. In addition, a special meeting is generally called each year for the PEC to hold a planning retreat. Frequent regular meetings are critical to the functioning of the PEC and provide an opportunity for the Commission to stay up to date on staff activities, consider and act on policy change proposals, and consider and act on enforcement items.

However, each meeting entails a substantial amount of staff time, and the fast turnaround between meetings can sometimes make meeting preparation challenging for staff. Staff must prepare relevant reports or draft policies for each meeting, upload and post the information at least 10 days in advance of the meeting under the City's Sunshine Ordinance, and present or answer questions about their

Item 6 - Staff Memo

items at the meeting. Because the PEC meets monthly but must post materials 10 days in advance (in actuality, 12 days in advance, as the 10th day falls on a Sunday), staff generally only have two to three weeks after a meeting before the next meeting agenda posting is due.

Staff surveyed the meeting schedule of the three closest “peer” (in terms of resources) city ethics commissions in the state: Los Angeles, San Diego, and San Francisco. The PEC holds significantly more regular meetings than either Los Angeles’s Commission (6 regular meetings) or San Diego’s Commission (8 meetings), although about as many as San Francisco’s Commission (12). Significantly, the PEC is the only commission to post materials 10 days in advance; other commissions only follow the 3-day posting requirement of the Brown Act although some, like Los Angeles and San Diego, have a goal of posting 5 or 6 days before their meeting, respectively.

Regular Meeting Schedule of Ethics Commissions

City	Regular Meeting Schedule	Notes
Oakland	Monthly (11/year*)	*Traditionally the PEC takes a one month recess per year.
Los Angeles	Every other month (6/year)	
San Diego	Monthly (8/year**)	**San Diego Ethics cancelled 4 regular meetings in both 2022 and 2023.
San Francisco	Monthly (12/year)	

Staff recommends that the PEC move to a schedule of holding two regular meetings per quarter (8/year), instead of monthly meetings (11/year, including a recess). Staff believes this schedule will enable the PEC to stay up to date on staff’s work and take action on Commission priorities in a timely manner, while also freeing up staff resources to work on larger Commission projects and priorities. Eliminating one meeting per quarter will also add staff capacity to assist with the more specific work of the PEC’s subcommittees. For time-sensitive matters falling on an “off” month, the PEC would always retain the discretion to call a special meeting, which requires less advanced notice. One negative to this proposal, which the Commission should consider, is that there will likely be more items at each regular meeting as a result, so these meetings may take longer than is currently the case.

Based on a review of PEC activity in prior years, staff would recommend the following schedule (with strikethrough indicating the proposed “off” month):

<ul style="list-style-type: none"> • January 10: regular meeting • February 14: no meeting • March 13: regular meeting • April 10: regular meeting • May 8: no meeting • June 12: regular meeting 	<ul style="list-style-type: none"> • July 10: regular meeting • August 14: no meeting • September 11: regular meeting • October 9: regular meeting • November 13: no meeting • December 11: regular meeting
---	---

Alternatively, the PEC could continue to schedule monthly meetings, but cancel meetings more frequently, perhaps with a goal of cancelling one meeting per quarter. This is the approach San Diego’s Ethics Commission has taken (as opposed to Los Angeles, which only schedules 6 meetings). However, staff recommends regularly scheduling off months, which would better enable staff to plan out their work and vacation schedules than if meeting cancellations are done in an ad hoc fashion.

Item 6 - Staff Memo

Item 7a - Department Questions



(These Department questions were agreed at a Transparency Subcommittee meeting in mid-2023.)

General Department Questions for PEC Public Records Request Review

1. What is the department's existing process for responding to public records requests? How do requests typically come to your department and who handles the initial contact, ongoing communications and response to the requester, and who supervises and supports the public records liaison when challenges arise?
2. Roughly how many requests come into your department each week/month/year? How does the department categorize the requests that are received for data and reporting purposes?
3. What challenges does your department face in responding to records requests? What changes, if any, have you made to improve retention or response to records requests?
4. What is the department's process for ensuring that the legal requirements are met before withholding any requested documents or redacting any information?
5. What training and support do you provide to the various individuals that play a role in the department's records retention and public records response process?
6. What is the department's experience using the NextRequest platform to manage and respond to public records requests? Is it working? How can it be improved?

Item 7b - October 24, 2023 Meeting Minutes

Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

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

October 23, 2023 Minutes

Attendees – Members: Commissioners Upton IV, Perteet

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Department Interviews.** Commissioners discussed inviting departments to speak before the full Commission about their practices for responding to records requests.
 - a. The Executive Director would send a letter with questions to departments to answer beforehand.
 - i. This would include a common set of questions asked of all departments, and a customized set specific to the department receiving the letter.
 - ii. The common set of questions previously approved by the subcommittee (which are substantially similar to those asked of the Planning Commission in 2021) will be the base questions.
 - iii. The subcommittee will share that common set of questions with the full Commission at the November meeting.
 - b. The goal is for the PEC to invite one department to present for each quarter in 2024:
 - i. Police - Jan (Q1)
 - ii. Fire - Q2
 - iii. Planning department follow up (Q3)
2. **Ad Hoc next steps.** The subcommittee will finish its work in March of 2024. After that, and once the departments have presented to the PEC, a new ad-hoc committee could be formed to look at the data gathered from those quarterly presentations.
3. **Goldman proposal.** The subcommittee discussed submitting a proposal to the Goldman School to request student researchers to help with its research on records request best practices. The focus of the proposal would be on finding jurisdictions that have innovated in providing responsive and self-service access to records, exploiting the fact that most government records are computerized. Students would identify model jurisdictions and identify what challenges were overcome to implement these solutions and how could it be implemented in Oakland? The subcommittee discussed the need to provide a definition for “self-service”. The subcommittee agreed that Commissioner Upton would draft an application.
4. **Vision Statement.** No vision statement text was done. Commissioner Upton will work on a draft.

Action Items

Item 7b - October 24, 2023 Meeting Minutes

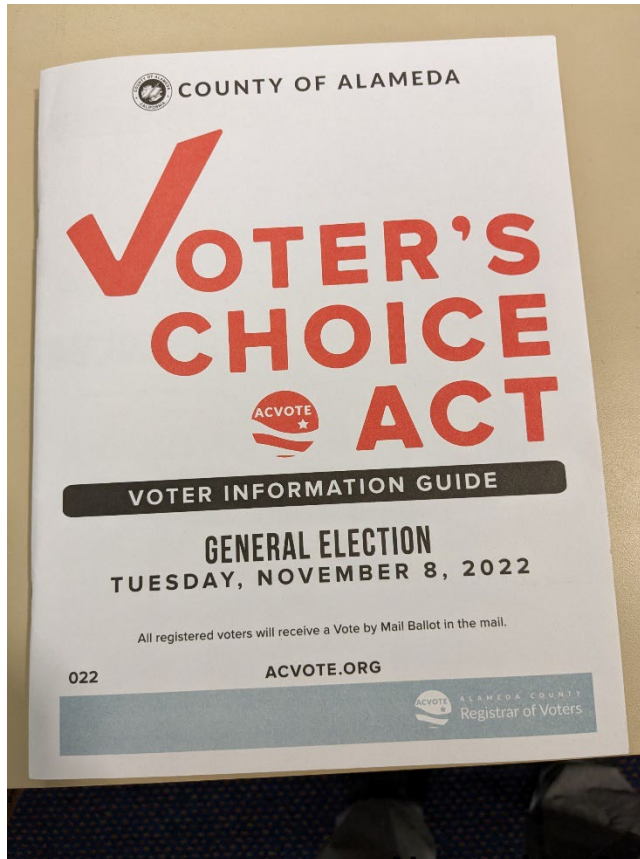
1. Find more information about the OPD settlement and reporting that the settlement required (Nicolas, Francis)
2. For the agenda of the November PEC meeting, provide the general list of questions (Francis)
3. Write Goldman proposal draft by Friday (27 Oct) for Nicolas to review. (Francis)
4. Write a draft for the vision statement for the next subcommittee meeting (Francis)



Item 8a - Director Heidorn's Presentation

Voter Guides Overview: Seattle, Alameda County, and Alternatives

10/25/23





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

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

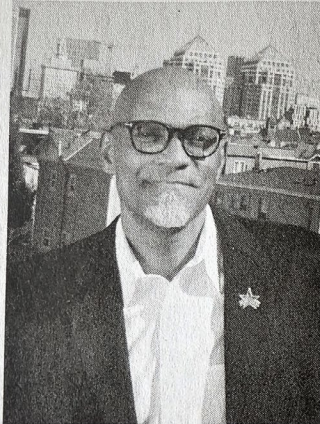
- Content:
 - Residency for last 5 years
 - Occupation for last 5 years
 - Public offices held
 - Max 150 words on qualification
- Sent around 1 month before election

Oakland – Example Guide

Item 8a - 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 →

Easy Voter Guide

MAYOR

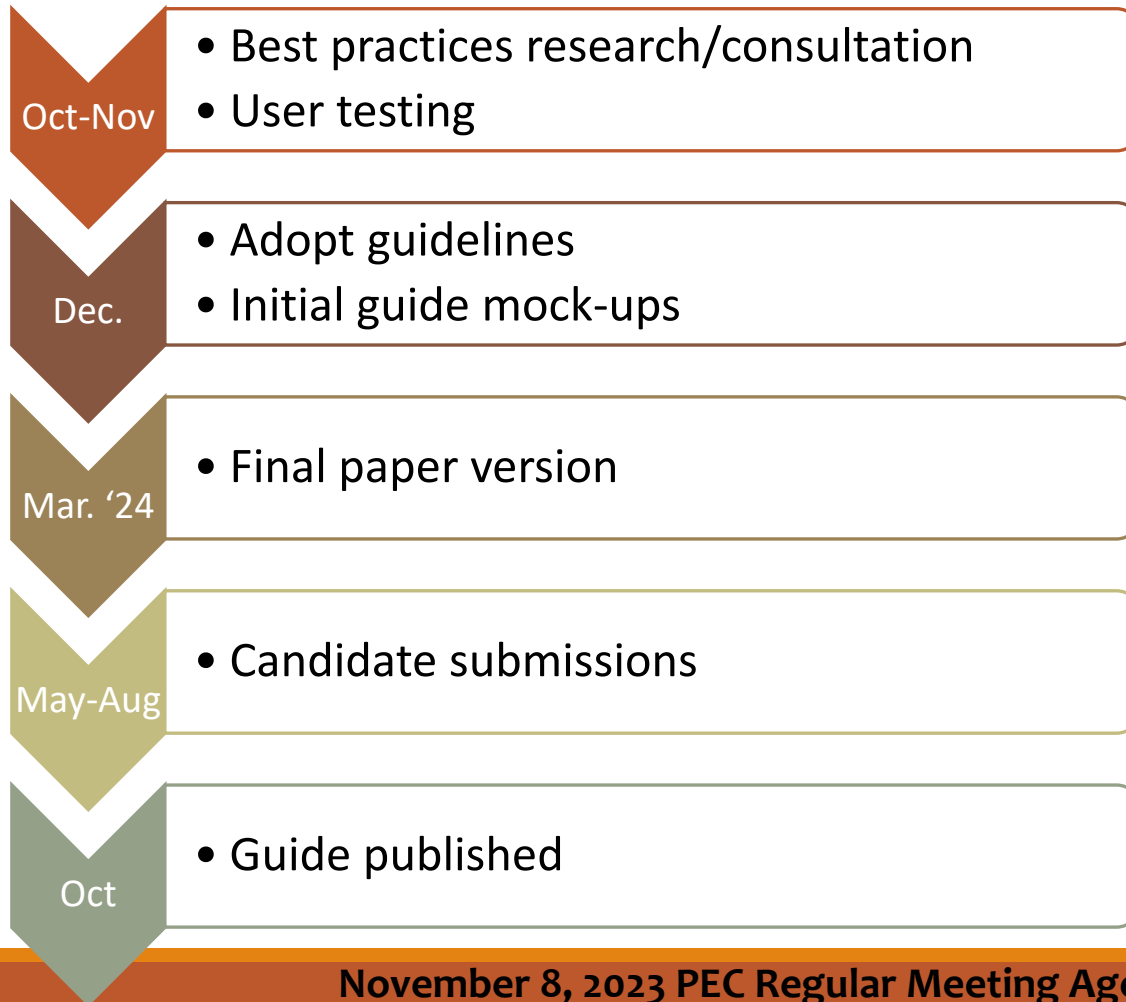
The Mayor is elected for a four-year term and can only serve two terms. The Mayor appoints the City Administrator, a government employee who oversees services like police, fire, parks, recreation centers, libraries, and city streets. The Mayor's choice for City Administrator must be approved by the City Council. The Mayor recommends programs, laws, and a budget to the City Council. The Mayor nominates residents to various commissions that help oversee important services.

Ten Candidates for Mayor	Qualifications	Top Priorities
 <p>Ignacio De La Fuente Occupation: Business Solution Strategist Website: delafuenteformayor.com</p>	<p>I'm an immigrant from Mexico, a community leader, former President of the Union, and served over 20 years on the City Council fighting crime, revitalizing schools, parks, and neighborhoods — Fruitvale Village, Glenview Business District, and Jingtowntown. Experience Matters!</p>	<p>Tackle Crime, Address Homeless Encampments, and Get Back to the Basics of Quality City Services.</p>
 <p>Gregory Hodge Occupation: Nonprofit Executive Website: hodgeforoakland.com</p>	<p>A community uniter, an Oaklander for 40 years, public school parent, grandparent. Experienced Executive Leader, Longtime Advocate For All Oaklanders, Intergenerational Bridge Builder, Artist, Healer.</p>	<p>Community Safety Housing and Shelter Thriving Neighborhood Schools</p>
 <p>Tyron C. Jordan Occupation: Legal Administration Website: tyronjordanforoakland.com</p>	<p>I am a military veteran, and former labor union organizer. I am a former Oakland Mayoral appointee (Oakland Library Advisory Commission), board member of a nonprofit addressing food insecurity. I served as a delegate to the 2020 Democratic National Convention.</p>	<p>Diligently ensure public safety. Crime in Oakland has risen significantly. Revitalize small businesses. I support the proposed Progressive Business Tax. Work with a coalition of public and private-sector organizations to develop a comprehensive plan to permanently house the unhoused.</p>



PEC Guide – *Tentative* Timeline

- Start with paper design; explore digital



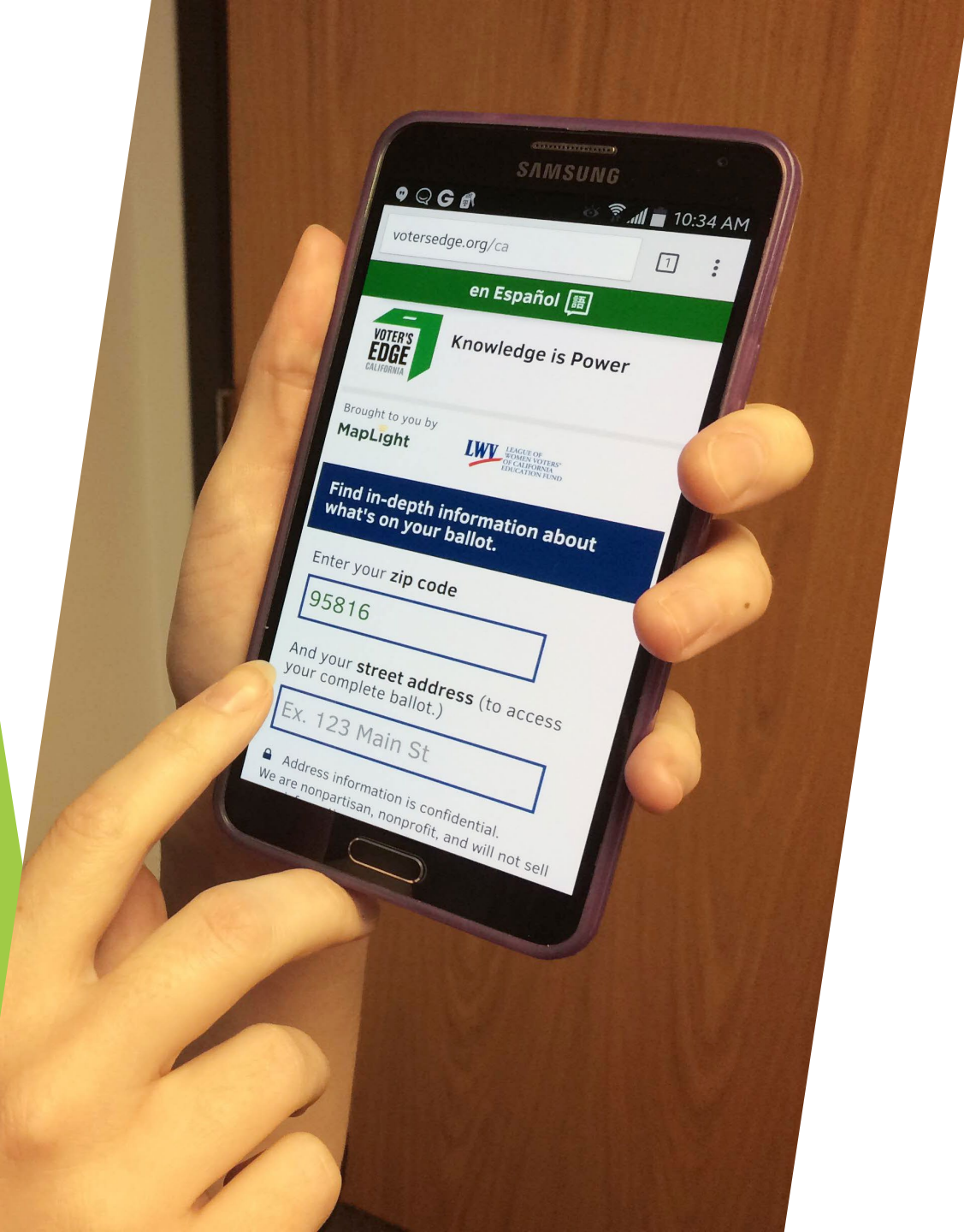




SHARON STONE

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.



► 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 8b - Stone's presentation

Tuesday November 8, 2022 — California General Election

Election Home Candidates Measures Voting Info My Choices 1 / 139

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 8b - Stone's presentation

Candidate content policies

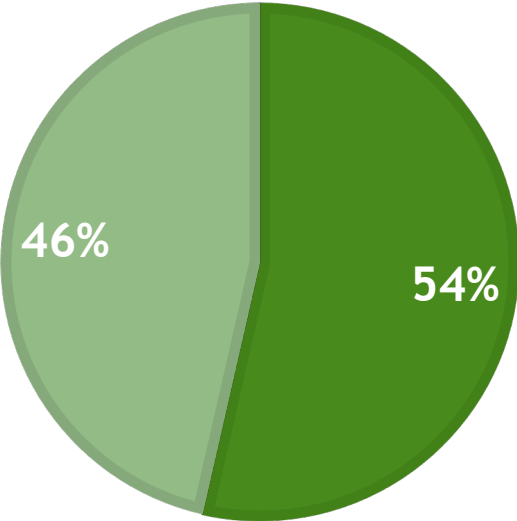
- ▶ Volunteers cannot add or edit candidate content.
- ▶ Candidates cannot:
 - ▶ Use vulgar language
 - ▶ Mention an opponent by name or title
 - ▶ Say “I am the **only** candidate to do x, y, z....”

- ▶ 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

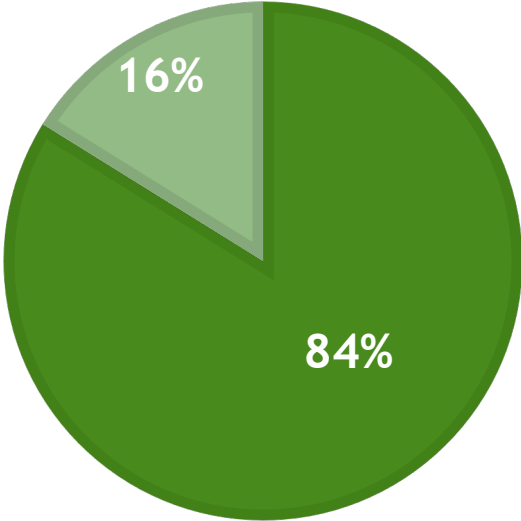
State of California

▶ 3,365 out of 6,283 candidates (54%)



Alameda County

▶ 244 out of 291 candidates (84%)

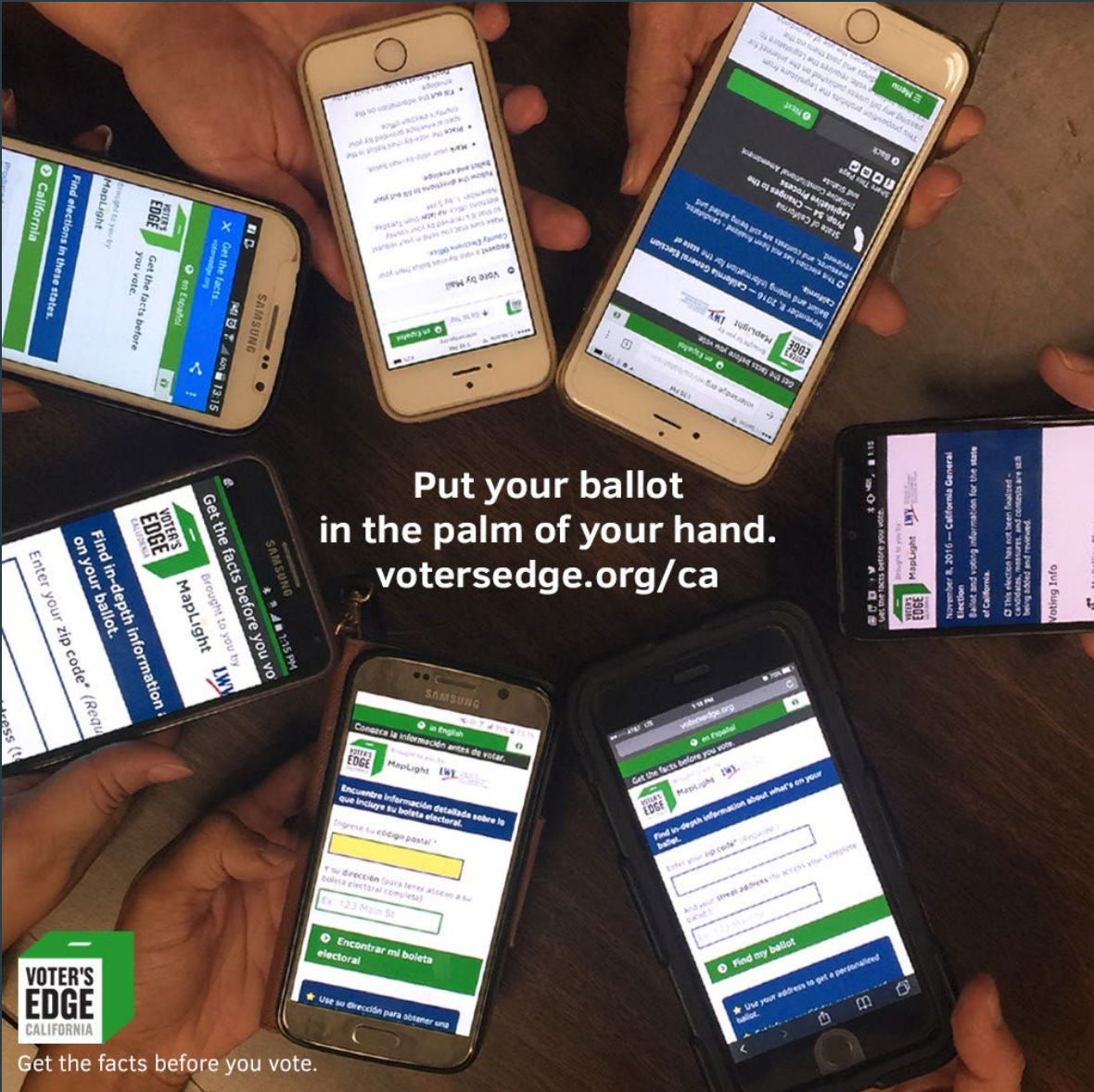


ACQUISITION

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%

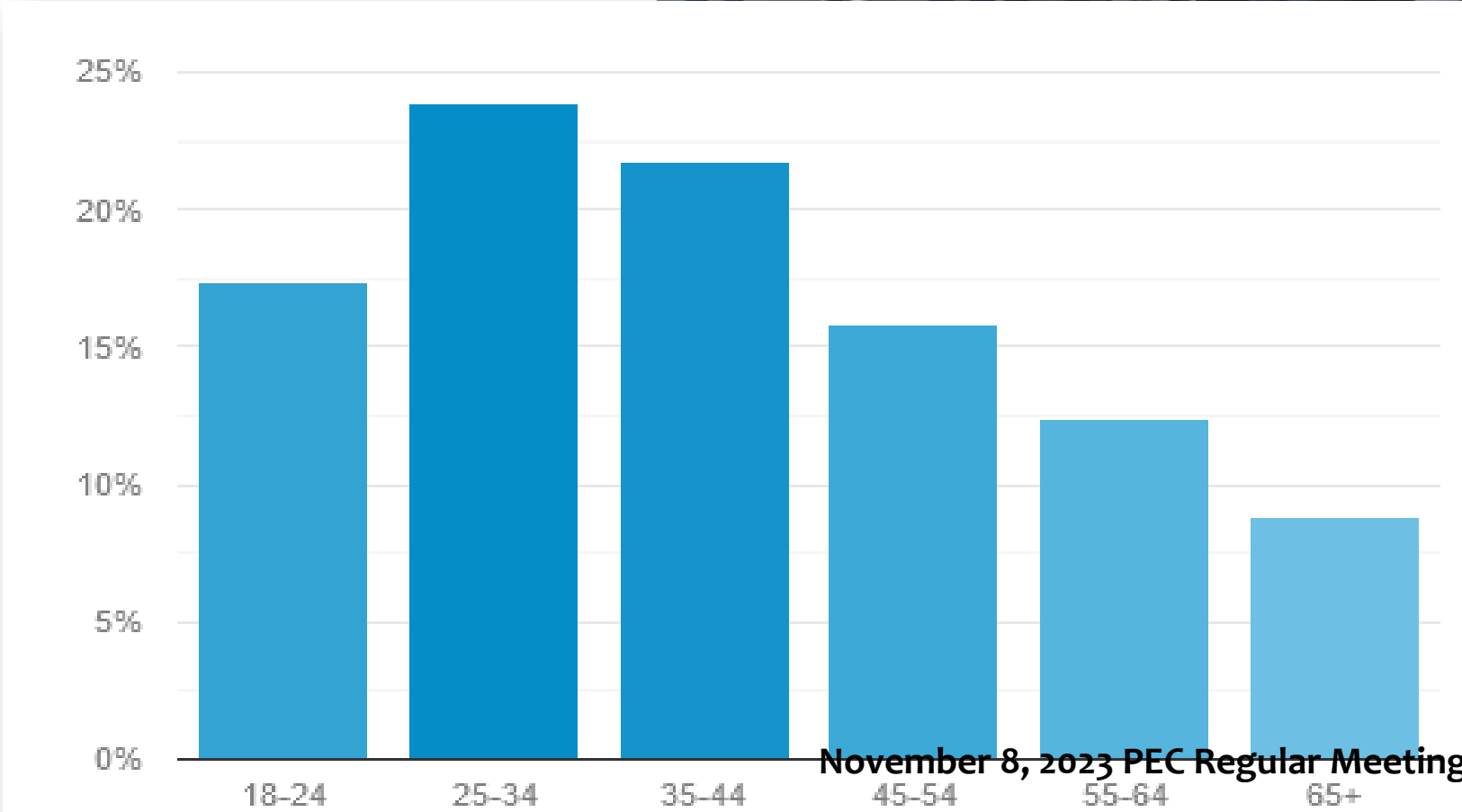
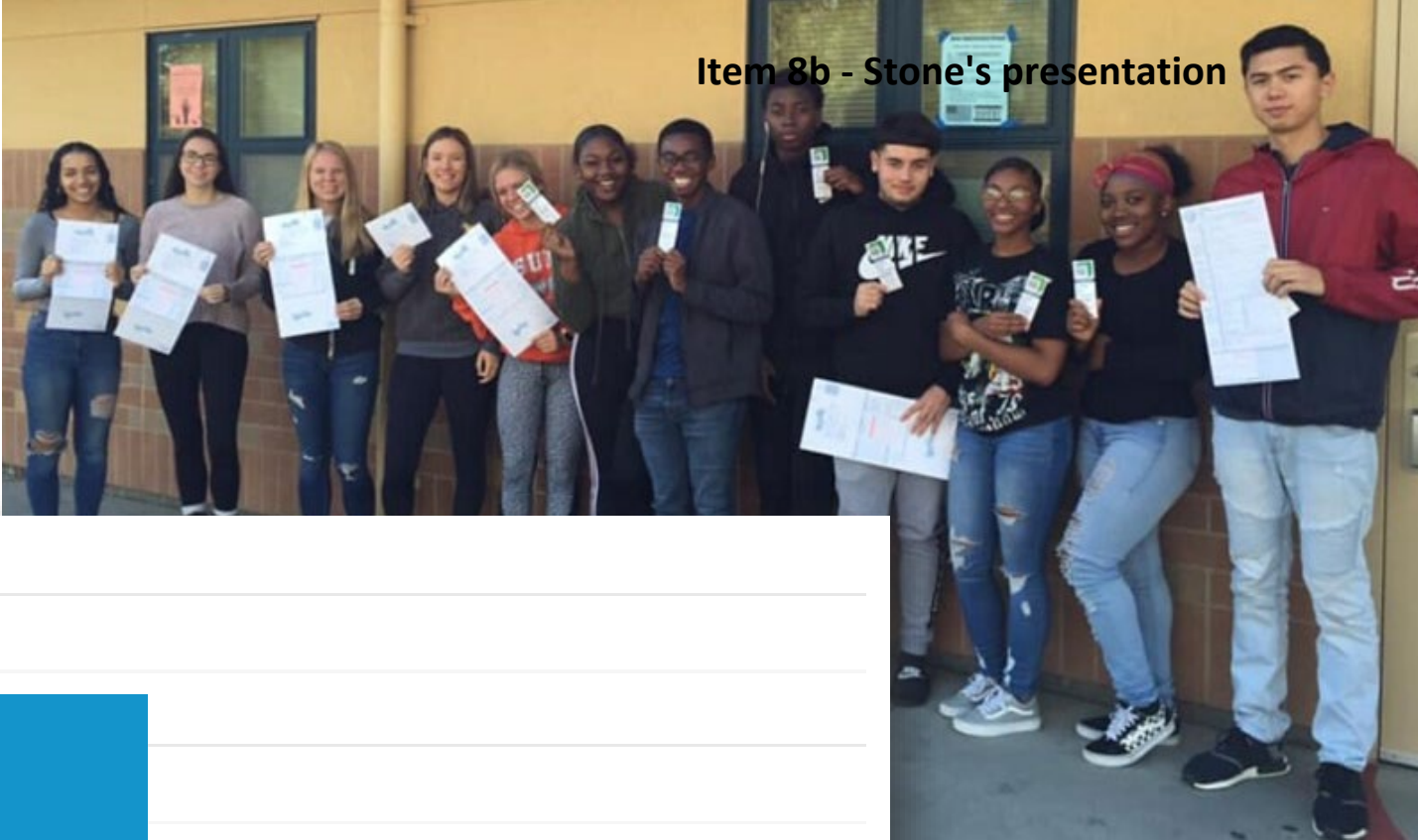
DEVICE USAGE



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
Total users	1,046,420	430,711	1,673,391	489,577	1,549,545	914,281	1,226,699
% of actual voters	7.16%	6.66%	13.16%	5.07%	9.48%	13.50%	15.37%





**THANK YOU!
QUESTIONS?**

Item 9 - Disclosure Report



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

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Program Manager
Jelani Killings, Ethics Analyst
DATE: October 25, 2023
RE: Disclosure and Engagement Monthly Report for the November 8, 2023, Regular Meeting

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. Two candidates qualified for ballot status, and both have registered campaign committees. 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. Additionally, other recipient committees with fundraising or spending activity connected with the November ballot were also required to file. Both candidates filed their pre-election statements.

The following committees were assessed late fees:

Filer Name	SOS ID	Type	Treasurer
Jorge Lerma for Oakland School Board 2023	1463520	Candidate	Dorado, Jose
Jorge Lerma for Oakland School Board 2020	1463520	Candidate	Dorado, Jose
Oakland Education Association Political Action Committee	1345259	General Purpose	Stephen, Laura Ann

In addition to candidate activity, \$22,289 in independent spending to support candidates has been reported by third-party committees. Measure W amended the Oakland Campaign Reform Act to require that any committee or person required by state law to file a 24-hour or 10-day Late Independent Expenditure Report (FPPC Form 496) with the Public Ethics Commission also submit a supplemental independent expenditure disclosure information, including a copy of the content of the communication.

Disclosure and Engagement Report
 October 25, 2023

The November Special Election triggered this new disclosure requirement in August, and Commission staff acted quickly to develop a new online form, [webpage](#), and campaign advisory so that 2023 campaign filers were made aware of the new requirements and could easily submit their supplemental information. In addition, staff monitored incoming independent expenditure reports and contacted committee treasurers to encourage compliance. Currently, the supplemental information has been received for all independent expenditures reported for the November 2023 election.

Campaign statements, including 24-hour independent expenditure reports, are available to view and download at the PEC’s [Public Portal for Campaign Finance Disclosure](#).

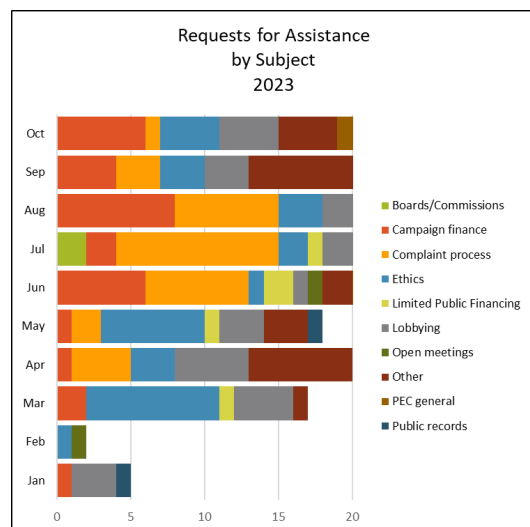
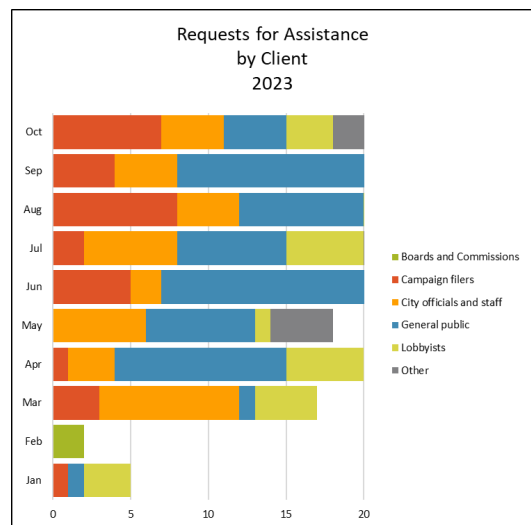
Lobbyist Registration and Reporting Program – The Oakland Lobbyist Registration Act (LRA) requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. The next deadline for quarterly lobbyist activity reports 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 month of October, Commission staff responded to 21 requests for information, advice, or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues, for a total of 186 in 2023 to date.

Form 700 Compliance – On October 11, Staff met with representatives from the Department of Human Resources Management (DHRM) 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. Moving forward, DHRM will provide the PEC and City Clerk with monthly reports including a list of starting/leaving employees, the list of active employees and who needs to file a Form 700, and the list of new employees assigned the PEC’s online Government Ethics Training. PEC staff was also provided administrative access to the City’s learning management platform NEOGOV to assign and track employee completion of ethics-related trainings.

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 October 18, Staff trained a total of 39 new employees on GEA provisions. Employees



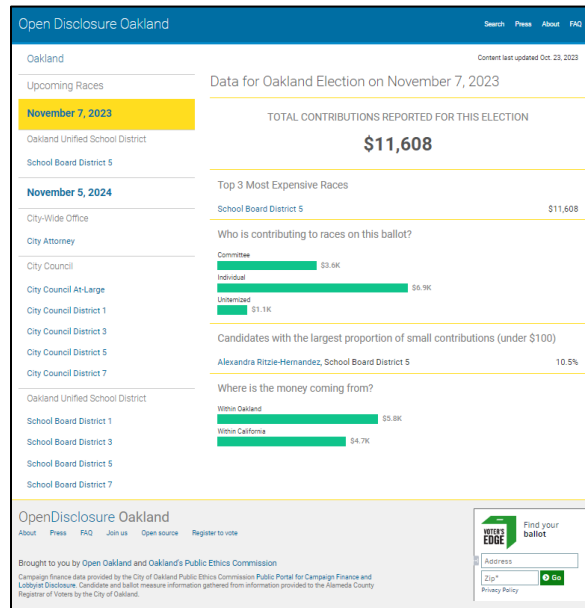
Disclosure and Engagement Report
October 25, 2023

required to file Form 700 were also assigned the PEC's mandatory online Government Ethics Training for Form 700 Filers.

Illuminating Disclosure Data

Campaign Finance – [OpenDisclosure](#), the campaign finance website, is now live with data for the November 2023 Special Election and November 2024 General Election. OpenDisclosure is a nonpartisan tool developed by volunteers from civic tech group OpenOakland in partnership with Commission staff to give all Oakland residents equal access to campaign finance data. With three local elections scheduled in the next 12 months, the project team implemented modifications allowing visitors to the website to view data for multiple upcoming elections.

The Commission's [Show Me the Money](#) app is also 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. Followers of Oakland elections can find the [Show Me the Money](#) application via links on the Public Ethics Commission website, [OakData portal](#), and links on [OpenDisclosure](#) candidate pages.



Online Engagement

Social Media – Each month Commission staff posts social media content to highlight specific PEC policy areas, activities, or client-groups. Posts in October focused on Commissioner and Law Clerk recruitments, lobbying and campaign finance late filing fee guidelines, and PEC meetings.

Item 10 - Enforcement Report



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

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: October 26, 2023
RE: Enforcement Unit Program Update for the October 11, 2023, PEC Meeting

This report summarizes the PEC Enforcement Unit’s major activities since the most recent report, 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 informal complaints to the Commission. Commission staff may also initiate its own “pro-active” complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called “Preliminary Review,” in which Enforcement determines whether there are sufficient legal and

evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If Enforcement is unable to settle a case within a reasonable time or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting evidence. A majority of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

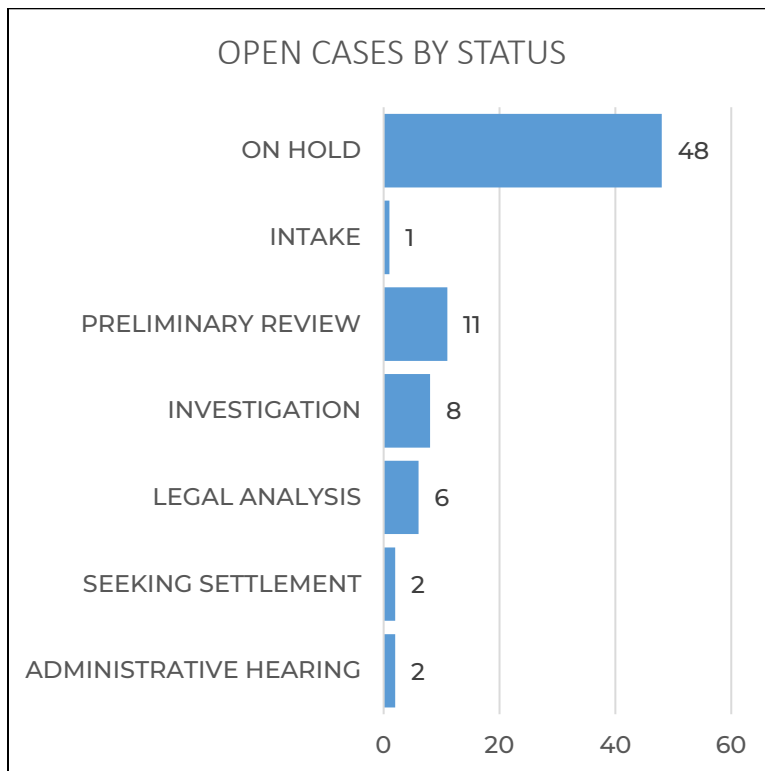
The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

Current Enforcement Caseload

Since the Enforcement Unit Program Update submitted to the Commission on September 27, 2023, Commission staff received 1 formal complaint which has been opened for an investigation. Commission staff also received 3 informal complaints, of which 1 was opened for investigation and 2 were rejected. Commission staff also filed 2 proactive complaints, of which 1 is under investigation (consolidated with a formal complaint that we received containing similar allegations) and 1 is under preliminary review.

This brings Enforcement’s caseload to 78 matters at all stages, from preliminary review through to investigation, settlement negotiations or administrative hearing. That includes 48 matters that are now “On Hold.” It does not include informal complaints that are still in intake.

See Appendix 1 for a breakdown of open matters by violation type.



Appendix: Current Caseload by Violation Type

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than our number of total cases, since one case can involve multiple types of violations.

	On Hold	Intake	Preliminary Review	Investigation	Legal Analysis	Seeking Settlement	Administrative Hearing	Grand Total
Campaign Finance	19		7	16	9	7	1	59
Campaign Using Multiple Bank Accounts				2				2
City Contractor Making Campaign Contribution	5			2	2		1	11
Coordination Between Candidate And "Independent" Campaign			2	2		1		5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")			2	1	1			4
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	5		2	2	3		1	13
Late Filing Of Campaign Finance Report	4			3				7
Making/Receiving Campaign Contribution Over The Legal Limit	1			2	2		1	6
Misuse Of Campaign Funds For Personal Purposes	1						1	2
Inaccurate or Missing Disclaimer On Campaign Ad	2		1	1	1		2	7
Government Ethics	44		18	3	3		2	70
Bribery	1		4	1	1		1	8
Financial Conflict Of Interest	3		1		1			5
Holding Incompatible Public Offices	1							1
Inaccurate Reporting On Financial Disclosure Form 700	2		2					4
Late or Non-Filing Of Financial Disclosure Form 700	1			1				2
Misusing Official Powers For Private Gain (Coercion/Inducement)	19		8	1			1	29
Misuse Of City Resources For Personal Or Campaign Purposes	9		1		1			11
Receiving An Improper Gift Based On Amount	3		1					4
Receiving An Improper Gift Based On Source	3							3
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")	1							1
Awarding City Contract To Oneself ("Self-Dealing")	1		1					2
Lobbyists							1	1
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Miscellaneous	4	1	3	1	3	1		13
Failure To Produce Records To Police Commission Investigators	1							1
Lying Or Providing False Information To PEC Investigators		1		1	3		1	6
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower	2		3					5
Open Meetings & Public Records	8			1				9
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	5							5
Grand Total	75	1	28	21	15	8	4	152



Item 11 - Executive Director's Report

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

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
 FROM: Nicolas Heidorn, Executive Director
 DATE: October 26, 2023
 RE: Executive Director's Report for the November 8, 2023, PEC Regular Meeting

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 2023-24 for each program area.

Commissioner Recruitment Update

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. The Application Review Ad Hoc Subcommittee will review applications in November and forward its recommended applicants, likely three to five applicants, to the full Commission for a final in-person interview and selection at the PEC's December 13 meeting.

As of October 25, 2023, the PEC has received 13 applications. Applications were received from residents in each of Oakland's 7 council districts. Most applicants heard about the opportunity to serve on the PEC from the Commission's website or email listserv, followed by media coverage or advertising. The PEC plans to survey applicant demographics at the close of the application period.

Applicant District Residency

District	Count	Percent
District 1	3	23%
District 2	2	15%
District 3	2	15%
District 4	2	15%
District 5	1	8%
District 7	3	23%
Grand Total	13	100%

How Candidates Heard About the Vacancy

How did they hear about the PEC vacancy?	Responses	Percent
City of Oakland/PEC website/email subscriber	6	40%
Ethics Commissioner/Staff Outreach	3	20%
Newspaper article/ad	5	33%
Word of mouth	1	7%

Item 11 - Executive Director's Report

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 approved by the City Council on October 17 ("first reading") and are scheduled for adoption on November 7 ("second reading").

Measure W / Voter Guide

In October, PEC staff continued to work on developing an RFP for the Democracy Dollars database that will be used to distribute, process, and track Democracy Dollars vouchers.

PEC staff are also pursuing several potential partnerships on projects related to outreach, user research, and website design to add capacity and enhance our Democracy Dollars implementation work in the upcoming year. In October, PEC staff sought feedback on its voter guide concepts from the Center for Civic Design, a nonprofit which focuses on improving usability and accessibility of elections materials, and the Oakland League of Women Voters. The PEC plans to do user testing of guide concepts in November or December.

Staffing

The PEC has experienced a number of staffing changes over the past few months and is actively engaging with Human Resources to fill vacant positions and use salary savings or apply for grant funding to bring on additional limited duration staff assistance:

- The PEC is hiring a permanent Commission Analyst and has extended an offer to a candidate. We anticipate filling this position in November or December.
- The PEC hopes to hire two part-time law clerks and is currently reviewing applications. We anticipate filling one position in November or December and an additional position in January.
- The PEC hopes to hire a permanent Investigator and a limited duration Investigator and is currently reviewing applications. We anticipate filling both positions in November or December.
- The PEC will be hiring a limited duration Ethics Analyst to fill the role temporarily vacated by Suzanne Doran when she was appointed interim Democracy Dollars Program Manager. The position has not yet been posted.
- With PEC approval at the October 25, 2023, staff will apply for grant funding from the Haas, Jr. Fund to hire a limited duration outreach specialist and a graduate student to assist with the implementation of the Democracy Dollars Program.

Item 11 - Executive Director's Report

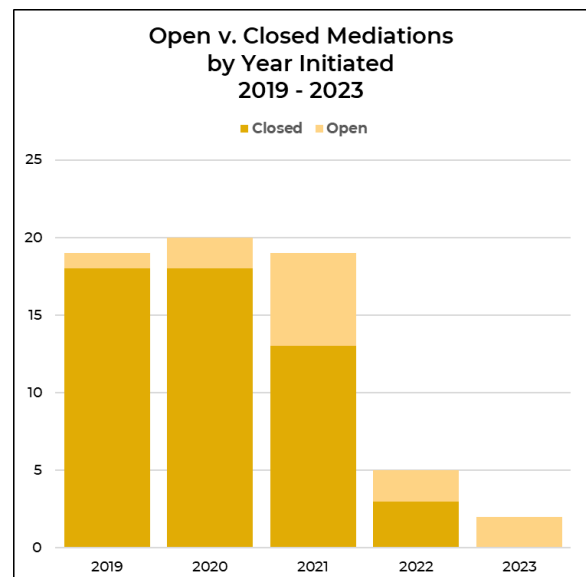
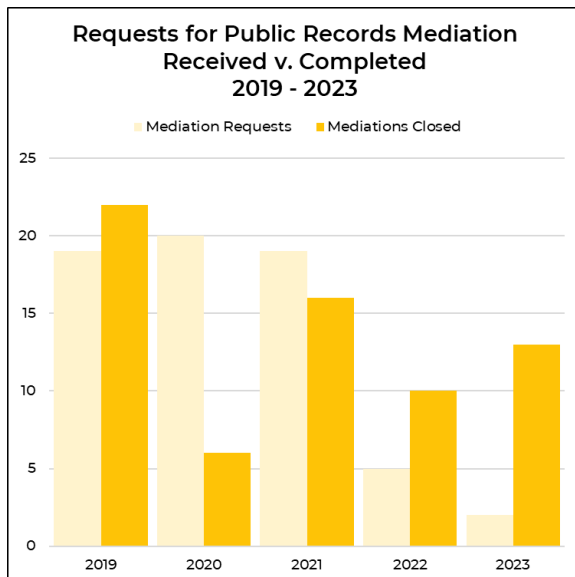
\$1,000+ Late Fees / Late Fee Waivers

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. The PEC did not issue any late fees exceeding that amount since the last reporting period.

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. I have not waived any late fees since the last reporting period.

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.



Additional Attachment: Commission Programs and Priorities.

Item 11 - 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
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity, and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ul style="list-style-type: none"> ○ Lead Measure W implementation ○ Engage in review of laws PEC enforces 	<ul style="list-style-type: none"> ○ Lobby Registration Act amendment to incorporate new fees and waiver policy ○ Ordinance for one-time LPF for 2024 elections ○ Voter Guide Pilot ○ Mayor Salary Setting Guidance ○ Charter Review Options ○ Policy Review: Lobbyist Registration Act ○ Ethics Commission Network ○ Invite Department Presentations on Records Request Responses
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ul style="list-style-type: none"> ● Regular ethics training ● Information, advice, and technical assistance ● Targeted communications to regulated communities ● New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance ✓ Public Records training
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ul style="list-style-type: none"> ● Public Records mediations ● Commissioner-led public outreach ● Outreach to client groups – targeted training and compliance ● PEC social media outreach 	<ul style="list-style-type: none"> ○ Update guides and trainings to reflect Measure W and LPF changes ✓ Update public and stakeholders on Democracy Dollar postponement ✓ Update Lobbyist Registration Act educational materials and share with Council ✓ Recruit for PEC vacancy ○ Publicize Enforcement Needs ○ Publicize PEC campaign finance tools ○ Publicize how to file complaints

October 26, 2023

Item 11 - Executive Director's Report

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ul style="list-style-type: none"> • Monitor compliance (campaign finance/lobbyist/ticket use) • Proactive engagement with filers • Technical assistance • Assess late fees/refer non-filers for enforcement • Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars admin system development/issue RFP ○ Updates to Ticket Distribution (Form 802) database ○ Lobbyist App Updates ○ Public Records Performance Dashboard ○ Update Open Disclosure 2024 ✓ Update Show Me The Money ○ Digitize Schedule O Form
Detect/ Deter	<p>PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.</p>	<p>Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.</p>	<ul style="list-style-type: none"> • Process and investigate complaints • Initiate proactive cases • Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/ mediation request ○ Improve Enforcement database
Prosecute	<p>Enforcement is swift, fair, consistent, and effective.</p>	<p>Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.</p>	<ul style="list-style-type: none"> • Prioritize cases • Conduct legal analyses, assess penalty options • Negotiate settlements • Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual ○ Expand streamline and diversion program
Administration/ Management	<p>PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.</p>	<p>PEC staff model a culture of accountability, transparency, innovation, and performance management.</p>	<ul style="list-style-type: none"> • Annual Report • Budget proposal • Ongoing professional development and staff reviews • Fill staff vacancies • Commissioner onboarding 	<ul style="list-style-type: none"> ✓ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council ○ Increase enforcement capacity