



Item 11 - Charter Review

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TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: February 28, 2024
RE: Charter Review – Recommendations for Reforming the Ethics Commission’s Governance Structure

The Oakland Public Ethics Commission’s (PEC’s or Commission’s) core governance features are established in Section 603 of the City Charter, which defines the Commission’s organizational structure, key responsibilities and procedures, and staffing. Section 603 was adopted in 2014, when the voters approved Measure CC to significantly strengthen the independence and capacity of the Commission. However, in the ten years since Measure CC passed, there have been only minor revisions to that Charter section, and no significant re-examination of whether these provisions still reflect best practices for organizing an ethics enforcement body or meet the staffing and institutional needs of the modern Commission.

In late 2023, the Commission adopted a goal of reviewing City Charter provisions affecting the PEC, in anticipation of a possible ballot measure affecting the PEC later in 2024. In early 2024, a Charter Review Subcommittee (Commissioners Micik, Hill, and Tilak) was formed to review and recommend potential charter changes. The Subcommittee’s ten recommendations, presented below, would update Section 603 to reflect the PEC’s expanded scope and mission since the passage of Measure W (2022), establishing the Democracy Dollars Program; strengthen the PEC’s staff capacity, to better meet its expanded caseload and the new responsibilities added to the Commission by the City Council and voters; and strengthen the PEC’s independence, to ensure that, as the PEC takes on a larger role in protecting and enhancing the City’s governance and democratic process, the public and stakeholders continue to trust that the Commission is a fair and impartial body.

Staff and the Subcommittee recommend that the Commission discuss and adopt the recommendations below and direct staff to return with potential charter amendment language for a future meeting.

BACKGROUND & CHARTER REFORM GOALS

In 2014, the City Council unanimously proposed and the voters overwhelmingly (73.9% in favor) adopted Measure CC, which added Section 603 to the City Charter. For the first time, Measure CC guaranteed minimum staffing for the Commission and adopted other reforms to significantly strengthened the Commission’s independence. Measure CC also incorporated several ethics commission best practices to ensure the Commission would be a fair, effective, and impartial watchdog over, and enforcer of, Oakland’s ethics, campaign finance, lobbying, and transparency laws. In significant part due to the success of those reforms, the PEC’s workload and assigned responsibilities have expanded significantly in the decade since Measure CC’s passage. However, there have been only minor amendments to Section 603 since then; after ten years, the provisions in Section

603 no longer reflect the Commission's actual staffing and budgetary needs and have not kept pace with best practices for ensuring ethics commission independence.

At its August 25, 2023, retreat, the PEC set a goal of reviewing the City Charter provisions establishing the Commission as one of its 2023-2024 priorities. In January 2024, Chair Micik formed the Charter Review Subcommittee, which included himself (Chair), Commissioner Hill, and Commissioner Tilak, for the purpose of reviewing and proposing to the full Commission potential amendments to Charter Section 603 (and OMC Chapter 2.24) to recommend to the City Council. The Subcommittee met three times on February 9, February 16, and February 21.

In addition to examining each provision of City Charter Section 603, the Subcommittee also looked at the organizational structure and procedures of:

- Other City of Oakland independent commissions created after the PEC, including the City's Independent Redistricting Commission and Police Commission;
- The State Fair Political Practices Commission (FPPC);
- Other California local ethics commissions, and especially Oakland's closest peer commissions in Los Angeles, San Francisco, and San Diego;
- Select non-California local ethics commissions, including Seattle and New York; and
- Best practices for ethics commissions as identified by good government organizations such as the Campaign Legal Center or City Ethics.

To focus its work, the Subcommittee identified three primary principles to guide the types of reforms it would consider and propose, which build off of the important foundation set by Measure CC. Amendments should:

- I. **Strengthen PEC Staffing.** For the PEC to fulfill its functions, it must be adequately staffed. Traditionally, the PEC's staff has almost entirely grown by ballot measure. Minimum staffing/budget helps to ensure the PEC's independence when/if the Commission investigates or prosecutes current officeholders.
- II. **Strengthen PEC Independence.** The PEC plays a unique, important, and sensitive role in maintaining the integrity of Oakland's government and political process. It is vital that the PEC be perceived to be and actually be impartial and not beholden to any elected official or political faction.
- III. **Align the Charter with the PEC's New Mission of Building a More Inclusive Democracy.** The PEC's current mission is focused primarily on the Commission being an enforcement agency. However, the PEC's role has expanded with the passage of Measure W to encompass supporting a more inclusive, representative, and accountable democracy. The Charter should reflect that mission.

Guided by these principles, the Subcommittee adopted ten proposed charter reforms for the full Commission's consideration.

PROPOSALS

I. Strengthen PEC Staffing and Administration

These recommendations would strengthen the PEC staff capacity and independence to better fulfill the PEC’s mission.

1. Executive Director Selection

Current law: The Board interviews and nominates candidates to be the PEC’s Executive Director (ED). The City Administrator appoints the ED from those candidates.

Subcommittee proposal: To ensure the ED is solely selected for their alignment with the Commission’s mission and priorities, the Commission should directly appoint its ED.

Rationale: The Commission is an independent agency of the City. It is important that its ED, the chief executive officer for the Commission, be perceived to be and actually be independent from the City’s overall administration. The duties of the ED include providing oversight over the Commission’s policy implementation and enforcement work. Giving final hiring authority to the City Administrator, even from a list of candidates selected by the PEC, could create the risk or the appearance that an ED was selected who may be less aggressive in enforcing Oakland’s laws or, worse, that they are aligned with a current administration rather than independent.

Notably, of its primary peer jurisdictions (Los Angeles, San Diego, San Francisco), Oakland is the only jurisdiction that does not have the Commission select its own ED. Having the Commission appoint the ED is also a best practice in the field, recommended, for example, by the nonprofit [City Ethics](#), which promotes local government ethics best practices. Oakland also followed this practice in establishing its Police Commission, which was created more recently than the PEC, and authorizes that Commission to directly hire the Community Police Review Agency (CPRA) Director.

Other Jurisdictions – Executive Director Selection Process

	Executive Director Appointment Process	Citation
Oakland	PEC reviews applications and nominates 2-3 candidates for ED to the City Administrator, who appoints the ED	C s603(g)(4) & (6)
Oakland Police Commission	Police Commission hires the Agency Director and Inspector General	C s604(e)(6)
FPPC	Commission appoints ED	GC s83107
Los Angeles	Commission appoints ED	C s701(a)&(d)
San Diego	Commission appoints ED, subject to confirmation by the Council	MC s26.0411
San Francisco	Commission appoints ED	C s15.101

2. Commission Enforcement Staffing

Current law: The City Charter mandates that the PEC have two enforcement staff: an Enforcement Chief and one Ethics Investigator. The Council may reduce this staffing set-aside by declaring that the City is facing an extreme fiscal necessity.

Subcommittee proposal: To ensure the PEC has sufficient staffing to fulfill its enforcement and watchdog role, the PEC's minimum staffing should provide two *additional* non-administrative enforcement staff, which could include an investigator, auditor, or staff attorney.

Rationale: The PEC must have sufficient staff to fulfill its core responsibility of ensuring the fair, effective, and timely enforcement of Oakland's ethics laws. The PEC's current enforcement staffing minimums of one Chief and one Ethics Investigator were set a decade ago, in 2014, with the passage of Measure CC.¹ Those staffing levels were based on the Commission's caseload at the time; however, over the past ten years the PEC's caseload has vastly increased, and these staffing minimums – which have not been increased through the discretionary budget process – are no longer sufficient to meet the Commission's caseload demands. Caseload now vastly exceeds staff capacity and, as of January 1, 2024, 60% of the PEC's cases had to be placed on hold. The PEC has also fallen far below the staffing levels of peer jurisdictions: for example, Oakland's PEC has an untenable staff to caseload ratio of one enforcement staffer per 44 cases, compared with San Francisco's more manageable ratio of one staffer per 14 cases. The Enforcement Program estimates that a bare minimum of two additional investigators are required to keep up with the PEC's current caseload, although the PEC's actual full staffing needs are significantly higher.

Increasing the charter-mandated minimum staffing is also important for preserving the PEC's independence. The Commission, as contrasted with every other City department or Board, regulates the conduct of Oakland's elected officials. Public confidence in the Commission is diminished if the PEC's ability to fulfill its core watchdog role through adequate staffing is perceived to depend on receiving the approval and funding of the very officials it regulates. Moreover, unlike other City programs, the PEC has no natural constituency to argue for increased funding for its services, which places the Commission at a disadvantage in the budget process; in fact, of the PEC's current 8 positions, all but one were created through the City charter, and not the biannual discretionary budget process.

3. Measure W Funding

Current law: To implement the Democracy Dollars Program, Measure W required that the PEC be provided with \$700,000 in startup funding; \$350,000 in ongoing administrative funding; \$4 million per two-year cycle for Democracy Dollars candidate funds; and four staff positions. However, these minimum budget and staffing set-asides may be reduced if the Council finds that the City is facing an extreme fiscal necessity. For this two-year budget, the Council declared a fiscal emergency and these minimums were reduced to \$525,000 in startup funding and one staff position.

¹ Prior to that, the PEC as a whole had only two staff total, none dedicated solely to enforcement. Measure CC originally provided for a "Deputy Director" rather than an Enforcement Chief, although that role was envisioned as being the chief prosecutor for the Commission.

Subcommittee proposal: To ensure that Measure W is properly implemented, and cannot be cancelled for political reasons, the Charter should provide that the PEC’s minimum staffing and budget for the Democracy Dollars Program may only be reduced in the same general *proportion* as any general budget reduction.

Rationale: Measure W allows the Council to cut Measure W funding where there is an extreme fiscal necessity, but “only as a part of general reduction in expenditures across multiple departments.” While the clause “part of a general reduction” was likely intended to ensure that a budget deficit was not disproportionately balanced using Measure W funding, this is in effect what occurred. For the current two-year cycle, the PEC budget was cut 58% compared to the baseline funding required under Measure W, likely a larger proportional cut than any other department. Because Measure W has yet to be implemented, the cut this cycle (while re-establishing the Limited Public Financing Program) largely preserved the status quo for public financing in Oakland; however, this disproportionate cut may have set a dangerous precedent that cancelling Democracy Dollars will be the first fix to balance future difficult budgets, undermining the will of Oaklanders in adopting this transformational program, and potentially making this program vulnerable to incumbent veto for political reasons. Under this proposal, the Charter (or City Code) would clarify that any cuts to Measure W must be in proportion to the general budget reduction, so that the PEC is contributing a fair but not disproportionate share to resolving the City’s fiscal challenges.

4. Legal Capacity

Current law: The City Attorney is the designated legal counsel for the Commission. If the City Attorney determines that the office may have a conflict in representing the PEC, the City Attorney may select an outside counsel to advise the Commission. None of the PEC’s staff, including the Enforcement Chief, are required to be attorneys.

Subcommittee recommendation: Because Oakland’s City Attorney is elected and subject to regulation by the PEC, they should not be the exclusive legal counsel to the Commission. The Charter should specify that:

- A. The Enforcement Chief is required to be an attorney.
- B. The PEC may hire legal staff, including outside counsel in its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual or perceived conflict in the City Attorney representing the Commission.
- C. The City Attorney should continue to provide legal advice and assistance to the Commission.

Rationale: The PEC administers and enforces a sometimes complex body of law, especially when applied to nuanced fact patterns. For reasons of capacity and independence, the Commission should have in-house staff with the specialized legal expertise to interpret, apply, and enforce these laws, including appearing in court when necessary (e.g., for an injunction or to enforce subpoena). The need for in-house legal expertise is especially true of the Enforcement Chief, who is the chief prosecutor for the Commission, and needs a firm understanding of the laws the Commission enforces as well as a general legal grounding in administrative law and substantive due process. Because the Commission regulates the City Attorney’s Office, the Commission should not be solely reliant on that office for legal

advice or services, which may create the appearance of a conflict; this is especially true in Oakland, where the City Attorney is an elected official who must campaign for office.

Other established ethics commissions in California either have attorneys on staff or the ability to hire outside counsel, which is generally considered to be a best or essential practice for ethics commissions. For example, the FPPC and Los Angeles Ethics Commissions are expressly authorized to employ attorneys, whereas San Diego and Sacramento require their commissions hire outside counsel to avoid the appearance that these boards are relying on the city attorney. “A commission should have its own independent experts, including investigators, auditors, general counsel, and trainers,” explains the Campaign Legal Center. “By relying on these independent experts, a commission can not only obtain independent advice and analysis of facts and law in specific cases, but also avoid the appearance that it depends on an elected official or appointee of an elected official, such as a secretary of state or city attorney.” In Oakland, likely for similar reasons, the more recently-established Police Commission is authorized to hire attorneys and outside counsel.

Under this proposal, the PEC would not exclusively rely on its own or outside counsel and would in fact continue to use the City Attorney for legal advice and services in most instances, especially for all issues outside of the Commission’s subject matter expertise. In rare cases where the City Attorney may be legally conflicted out of providing legal advice or services to the Commission, the Commission should select its outside counsel, to avoid any allegation that the Attorney may select a counsel sympathetic to their interests.

Other Jurisdictions – Legal Capacity

	Role of City Attorney	Commission Legal Staff Positions?	Commission Can Hire Outside Counsel?	Citation
Oakland	- City Attorney appoints one Commissioner - City Attorney is Commission’s counsel - PEC consults with City Attorney on oral advice and written opinions	None	City Attorney may retain outside counsel for Commission if there is a conflict	C. s603(b)(3) & OMC 2.24.060
Oakland Police Commission (PC); CPRA		PC: may hire attorneys CPRA: Requires minimum of 3 attorneys	PC: yes CPRA: not specified	C. s604(b)(12), (e)(1), (e)(4)
FPPC	May request legal advice from the Attorney General	May employ legal counsel	Can contract for services that can’t be performed by staff	GC s83117
Los Angeles	City Attorney provides legal services to commission	May employ or contract for staff counsel to give advice to the commission and to take action on matters involving the City Attorney	Yes, see previous column	C s708

San Diego	City Attorney nominates appointees	Must retain own legal counsel outside of City Attorney	Must retain own legal counsel outside City Attorney (also has attorneys on staff)	MC s 26.0411 C s41(D)
San Francisco	- City Attorney is legal advisor to Commission - Commission reports findings to City Attorney when appropriate - Commission transmits some advisory opinions to City Attorney	Commission can employ individuals who have graduated from a law school to assist with advice and opinions	None Provided	C s15.102 MC s3.699-11 MC s3.699-12
Sacramento	- City Attorney assists Commission with its investigatory procedures - Commission advises City Attorney on law firms to use to investigate sexual misconduct allegations	None Provided	Yes - required for all investigations	MC 2.112.030

II. Strengthen PEC Independence.

These recommendations would strengthen the Commission’s independence to promote public trust in the Commission’s work.

5. Commissioner Qualifications

Current law: To be eligible for appointment to the Commission, an applicant:

- **must** be a registered voter;
- **must** have attended one prior meeting of the PEC;
- for Mayor, City Attorney, and City Auditor appointees, **must** have a specified professional experience or background; and
- for Mayor, City Attorney, and City Auditor appointees, **cannot** have been paid during the past two years for work by a committee controlled by the appointing official.

Subcommittee recommendation: To avoid the appointment of a Commissioner who may appear biased in favor or against of a candidate, incumbent, or political faction, the Charter should **prohibit*** the appointment of an applicant who, at any point in the two years prior to the start of their term on the Commission, was:

- A. an elected official, or the partner or spouse of an elected official;
- B. a candidate for City or OUSD office;
- C. a paid staffer or paid consultant to a City or OUSD campaign;
- D. an officer or employee of a political party political party; or
- E. a substantial local campaign donor, defined as someone who has contributed in the aggregate more than two times the City contribution limits (2 x \$600 in 2024) to candidates for a City or OUSD office or to a campaign committee making independent expenditures in City or OUSD campaigns.
- F. **These new qualifications would apply only prospectively to new Commissioners.*

Rationale: Commissioners serve in a quasi-judicial role where they will adjudicate whether or not incumbents, candidates, and City officials have violated city ethics or campaign finance laws, among other laws. Commissioners also have the sensitive responsibility of administering the Democracy Dollars Program beginning in 2026, which will likely become the largest source of funding for candidates running for City office. The selection of a Commissioner who appears to be strongly biased in favor of an official, candidate, or political faction could undermine public trust in the Commission, its adjudications, and its implementation of critical programs like Democracy Dollars. In structuring an ethics commission, the [Campaign Legal Center](#), a good government nonprofit, advises putting up minimum qualification guardrails to protect against this so that it is “clear to the public that the ethics commission serves the public interest and not the interests of those groups subject to the commission’s oversight.” [City Ethics](#), a nonprofit that advocates for local ethics reform best practices, similarly advises prohibiting the appointment of commissioners who in the prior three years have been “party officials, recent government officials, individuals who have done substantial work in local political campaigns, large contributors, or political advisers.”

Oakland’s current Ethics Commissioner qualifications are fairly similar to, and in some ways stronger than, those of other established ethics commissions, like the Fair Political Practices Commission (FPPC), Los Angeles Ethics Commission, and San Francisco Ethics Commission. However, the trend among more recently-established ethics commissions, including Sacramento’s and Orange County’s, is to include stronger requirements up front to prevent recent political actors from being appointed to the Commission, mirroring the best practices identified by City Ethics above. Oakland has followed a similar model with respect to its more-recently established Independent Redistricting Commission, which similarly excludes from appointment applicants who were recently lobbyists, candidates, or consultant to a City political campaign. The PEC should adopt similar, but less strict, restrictions, in recognition of the fact that the PEC must recruit civically-active residents to serve on the Commission on a nearly annual basis, as compared with the Redistricting Commission which only recruits applicants once every ten years.

Other Jurisdictions - Commissioner Qualifications

	Qualifying Criteria	Disqualifying Criteria	Citation
Oakland	-Oakland registered voter & resident -Attest to having attended one PEC meeting -Professional background requirements for Mayor, City Attorney, and Auditor appointees	-Mayor, Attorney, and Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official -See also during-service restrictions	C. s603(d)(1)-(2) & (e)
Oakland Redistricting Commission	-Oakland resident for 3 years	Cannot be: -City employee or commissioner - Redistricting consultant in prior 5 years - A person or their family who in prior 10 years was a: ~ Candidate or elected official ~ Paid consultant to a campaign ~ Registered lobbyist	C. s220((D)(1) & J)(5)

		<ul style="list-style-type: none"> ~ Employee/consultant to elected official ~ Officer of a City campaign committee - Contributor over 50% of contribution limits to City candidate in last election 	
FPPC	<ul style="list-style-type: none"> -Elector -Members cannot all be of the same political party 	-See during service restrictions	GC s83101, 83102
Los Angeles	- Registered voter	-See during service restrictions	C s700(d)
San Diego	<ul style="list-style-type: none"> - Professional background requirements for 5 members - At most 3 members registered with same political party - Must be a qualified elector of the City, subject to exceptions 	<ul style="list-style-type: none"> - Can't have run for office against a current elected City official - Can't have served in a staff capacity for the campaign of a candidate running against a current elected City official 	MC s 26.0404(b)
San Francisco	Mayor, City Attorney, and Assessor appointees must have certain professional backgrounds	Cannot be: <ul style="list-style-type: none"> - Any person removed from federal, State, County, or City office or employment for a moral turpitude felony in prior 10 years - Any person removed from federal, State, County, or City office or employment for official misconduct in prior 5 years - See during service restrictions 	C s15.100 C s15.105
Sacramento	<ul style="list-style-type: none"> -Sacramento resident -3 (of 5) members must meet professional background requirements 	<ul style="list-style-type: none"> -Applicant (or partner/child) can't have given 50%+ of contribution limit in last 2 elections -Applicant (or partner/child) cannot have been a City employee, lobbyist, or local/state elected official appointee in prior 2 years -Applicant (or partner/child/parent/ sibling) cannot have been a City elected official, candidate, employee/contractor to a City elected official in prior 4 years -See also during-service restrictions 	MC s2.112.040 (B)
Orange County	- Registered voter	10 years prior to appointment, cannot have: <ul style="list-style-type: none"> - employed a lobbyist - been an elective County officer or County department head/executive - been a partisan political committee officer - been convicted of a felony or misdemeanor involving dishonesty or election law - worked for County of Orange, or any Special District operating in the County - worked with an County employee representative organization 	CO s 1-2-354

6. Commissioner During & Post-Service Restrictions

Current law: PEC Commissioners cannot be involved in City politics during their term and cannot, during their term and for one year after, be employed by the City or register as or employ a lobbyist.

Subcommittee recommendation: To avoid the appointment of a commissioner who may appear biased in favor of or against a candidate, incumbent, or faction, amend the Charter to add:

- A. During-service restrictions*: While serving on the Commission, Commissioners may not:
 - i. Contribute or participate in an OUSD campaign
 - ii. Serve as an officer or employee of a political party
- B. During and post-service restrictions*: Commissioners may not:
 - i. Run for City or School Office while serving on the Commission and for 2 years after their term ends.
 - ii. Be a paid staffer or paid consultant to a City or School elected official, or receive gifts from the same officials, while serving on the Commission and for 1 year after their term ends.
- C. Exception: Commissioners should be able to advocate in support or opposition to ballot measures that affect the PEC or the laws it enforces.
 - **These new restrictions would apply only prospectively to new Commissioners.*

Rationale: The PEC already imposes a number of common sense restrictions on Commissioners while serving on the Commission, including that they cannot participate in local political campaigns, lobby, or be City employees. Because the Commission regulates campaigns, lobbyists, and city officials, these restrictions help to prevent Commissioners from having conflicts of interest or their appearance. In the campaign context in particular, these restrictions also reinforce Commissioners' impartiality, by avoiding a situation where a Commissioner's campaign activity may make it appear that they are biased for or against a candidate or ballot measure. This proposal makes modest extensions to these rules, modelled off of restrictions in other jurisdictions, by prohibiting commissioners from being staff or officers in political parties (which may suggest bias against other partisans) and clarifying that the restriction against Commissioners contributing to "municipal" campaigns also applies to OUSD campaigns.

Under current law, PEC Commissioners are also subject to two post-service restrictions: they cannot become a City employee or lobbyist (or employ a lobbyist) for one year after their term concludes. Post-service restrictions serve a slightly different purpose than during-service restrictions: they prevent the risk or appearance that a Commissioner may favor a party before the Commission in the hopes that they will receive a benefit from that party (e.g., employment) immediately after their service concludes. This proposal extends this restriction by similarly preventing Commissioners from being employed by or receiving gifts from an elected official for one year after their service. The proposal would also prohibit Commissioners from running for City or OUSD office for two years (one election cycle) after leaving the Commission. This restriction, which is fairly common among ethics commissions, prevents a situation where a Commissioner may vote to fine an elected official and shortly thereafter leave the Commission to run against that official, which could undermine public confidence in that adjudication.

One area where the proposal would *relax* restrictions is by permitting Commissioners to advocate for or against ballot measures affecting the PEC, which is the rule in San Diego. This would permit Commissioners, who are particularly knowledgeable about the Commission's structure and laws, to share this perspective with the public. Commissioners are generally prohibited from advocating for or against measures because the Commission may have to adjudicate whether a ballot measure committee has violated the City's campaign finance laws; however, for measures affecting the PEC,

the Commission’s practice is already to refer such complaint to other agencies, like another local ethics commission, to avoid the appearance of bias.

Other Jurisdictions -- During & Post-Service Restrictions

	During Service Only	During & Post-Service	Citation
Oakland	Cannot: - Seek election to public office in a jurisdiction intersecting with Oakland - Participate or contribute in an Oakland municipal campaign - Endorse or work on behalf of candidate/measure in Oakland election	<i>During & 1 year post, cannot:</i> - Be employed or contract with the City - Be a registered lobbyist or employed by/receive gifts from a registered lobbyist	C s603(e)
Oakland Redistricting Commission		<i>During & 10 years post:</i> hold elective office for City <i>During & 4 years post:</i> - hold appointive City or OUSD office - serve as paid staff/consultant to Councilmember or OUSD member - Receive a no bid City contract - Register as a City lobbyist	C s220(D)(4)
FPPC	Cannot: - Hold or seek election to public office - Serve as an officer of any political party or partisan organization - Participate in or contribute to an election campaign - Employ or be employed as a lobbyist -Receive a gift over \$10/month	None specified	GC s83105, 83117.5
Los Angeles	- Hold public office - Participate or contribute to a City or School Board campaign - Participate or contribute to a councilmember or school board member running for another office - Employ or be employed as a lobbyist	-Cannot run for City or School Board office unless it is 2 years past the end of their term	C. s700(d)
San Diego	Cannot: - make a financial contribution to candidate for City office - participate in a campaign supporting or opposing a candidate for City office - participate in a campaign supporting or opposing a City ballot measure (except one affecting the Commission) - become a candidate for elective governmental office - become a City lobbyist	- For 12 months, can't be a candidate for elective governmental office	MC s 26.0406

<p>San Francisco</p>	<p>Cannot:</p> <ul style="list-style-type: none"> - Hold any other City or County office or be an officer of a political party - Be a registered lobbyist, campaign consultant, or be employed by or receive gifts/compensation from same - Hold employment with the City - Participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office 	<p>None</p>	<p>C s15.100 C s15.101</p>
<p>Sacramento</p>		<p><i>During & 1 year post, cannot:</i></p> <ul style="list-style-type: none"> - Be appointed to a City Commission - Be paid staff/consultant to City elected official - Receive a no bid City contract - Register as a City lobbyist. <p><i>During & 4 years post, cannot:</i></p> <ul style="list-style-type: none"> - Hold City elected office 	<p>MC s2.112.040 (B)(3)&(4))</p>
<p>Orange County</p>	<p>May not:</p> <ul style="list-style-type: none"> - Hold an elected or appointed position - Work for an elected/appointed officer - Work for an elected official appointee - Be a public employee of a body that is appointed by an elected official - Participate in or publicly support or oppose a candidate - Hire anyone working as a lobbyist - Have been convicted of a felony or misdemeanor involving dishonesty or election law - Provide services to candidates/elected officials within Orange - Engage in public affairs or legislative liaison services for employers doing business within Orange 	<p>None</p>	<p>CO s 1-2-354</p>

7. Ethics Commission Vacancy

Current law: Vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days **may** be filled by the City Council.

Subcommittee recommendation: To avoid long vacancies which could disrupt the effectiveness of the PEC, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy should transfer to the PEC.

Rationale: The PEC can only function if a quorum of its members attend a Commission meeting. Extended vacancies may impact the Commission’s ability to adjudicate cases or adopt policies. Currently, the PEC has had one vacancy for over one year and had to cancel one meeting last year for

lack of a quorum. Other ethics commissions, like Los Angeles's in 2023, have been legally unable to meet for months because the number of appointed commissioners fell below quorum.

Oakland's Charter attempts to prevent this situation by authorizing the City Council to fill a PEC seat appointed by a citywide official that has been vacant for more than 90 days; however, for the Council to exercise this option it would in effect be "taking" an appointment away from a citywide elected official, which is politically sensitive, and would likely only be done if the Council and citywide official were at odds. This proposal would provide citywide officials with more time to fill a vacancy, but a stricter remedy if that deadline is missed.

8. Ballot Referral

Current law: The PEC may recommend to the City Council changes to the laws the PEC administers or enforces.

Subcommittee proposal: The PEC should have the authority, by supermajority vote, to refer ordinances relating to its subject matter jurisdiction (campaign finance, government ethics, lobbying, and transparency) to the ballot for voter consideration.

Rationale: An important responsibility of most local ethics commissions is to periodically review and recommend improvements to the laws the commission enforces or administers to promote more honest and accountable government. Traditionally, an ethics commission, as is the case with Oakland's Ethics Commission, would only provide a recommendation for the city council's consideration. However, increasingly, academics and good government reformers have advocated that ethics commissions be authorized to place measures on the ballot by supermajority vote, in recognition of the fact that elected officials may have a conflict or appearance of a conflict in enacting or rejecting laws that directly regulate their conduct. For example, the Los Angeles Good Governance Project, which is a consortium of university research centers at UCLA, USC, Loyola Marymount, Pomona, CSU Northridge, and CSU Los Angeles, recently included this [recommendation](#) in its package of proposed ethics reforms for Los Angeles. Project authors explained in a [press conference](#) that, "for ethics matters in particular, the City Council is an interested party, so we would recommend that the Ethics Commission have the option ... to place measures directly on the ballot." Good government organizations, like nonprofit California Common Cause, have also advocated this reform as a best practice for ethics commissions, and the LA Ethics Commission has also sought this authority.

Currently, the San Francisco Ethics Commission is the only California commission to have this power, which it has used to propose limited reforms that were fairly uncontroversial with voters. Under San Francisco's City Charter, Commissioners may only place a measure on the ballot by a 4/5 vote. From 2013 to 2023, the Commission placed two measures on the ballot, accounting for less than 2% of all San Francisco ballot measures in that time period. Each measure responded to a local corruption scandal and was approved by large margins: Proposition C (2015) required additional lobbying reporting and passed with 75% of the vote and Proposition T (2016) restricted gifts from lobbyists to officials and passed with 87% of the vote. The Commission has placed a measure on the March 2024 ballot, Proposition D, which adds restrictions on gift-giving to City officials in response to another recent corruption scandal.

III. Align the Charter with the PEC's New Mission

These recommendations seek to align Section 603 with new responsibilities the PEC has taken on, principally of implementing Measure W, but also aligning the PEC's new salary-setting responsibilities for City elected officials with the Commission's best practice recommendation for setting the Mayor's salary.

9. Commission Mission

Current law: The City Charter defines the PEC's primary roles as being the (1) "enforcement of laws, ... intended to assure fairness, openness, honesty and integrity in City government," (2) education on such laws, and (3) "impartial and effective administration" of its programs. The Charter further enumerates a number of specific duties of the Commission, including different laws the Commission enforces.

Subcommittee proposal: To better align the Charter with the PEC's expanded role under Measure W, the Charter should be amended to:

- A. Add that one of the PEC's roles is to promote more inclusive, representative, and accountable democracy in Oakland; and
- B. Include the administration of the Democracy Dollars Program, including the creation of an impartial voter guide to assist voters in assigning their vouchers, as one of the PEC's enumerated duties.

Rationale: The PEC has traditionally been primarily an enforcement and government watchdog agency. However, with the passage of Measure W, the Commission's role expanded to administering a public financing that's stated goal is to promote a more inclusive and participatory democracy. This goal should inform how the PEC approaches its work and should be added to the PEC's enumerated core roles and responsibilities. Administering the Democracy Dollars Program, and adopting and administering policies that facilitate the implementation of this Program, such as creating a voter guide to assist voters in assigning their vouchers, should also be expressly added to the Charter.

10. Elected Official Salary-Setting

Current law: The PEC adjusts the City Council's salary every two years to account for inflation and adjusts the City Attorney and City Auditor's salary every year to provide for competitive compensation and equitable alignment.

Subcommittee proposal: To align the PEC's existing salary-setting process with the recommendations the Commission made for setting the Mayor's salary, the PEC, in its discretion, should have the authority to waive or reduce a salary increase for the City Council, City Attorney, or City Auditor if either (a) the City Council declares that the City is facing an extreme fiscal necessity/crisis or (b) if General Purpose Fund revenue for the current fiscal year is projected to decline.

Rationale: As explained in the staff report on options for adjusting the Mayor's salary for the PEC's December 2023 meeting, in years where the City is facing significant financial hardship, it may be inappropriate or controversial to award elected officials a large pay increase when the City is financially

struggling. This proposal, which the Commission endorsed for setting the Mayor's salary, would permit the PEC to waive or reduce a salary increase but only if an objectively-determined precondition is met, which is that a financial urgency exists.

SUMMARY OF PROPOSALS

For ease of reference, the proposals discussed above are re-listed here:

1. Executive Director Selection: The Commission should directly appoint the Commission's Executive Director.
2. Commission Enforcement Staffing: The PEC's minimum staffing should provide two *additional* non-administrative enforcement staff, which could include an investigator, auditor, or staff attorney.
3. Measure W Funding: The Charter should provide that the PEC's minimum staffing and budget for the Democracy Dollars Program may only be reduced in the same general proportion as any general budget reduction.
4. Legal Capacity: The Charter should specify that:
 - A. The Enforcement Chief is required to be an attorney.
 - B. The PEC may hire legal staff, including outside counsel in its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual or perceived conflict in the City Attorney representing the Commission.
 - C. The City Attorney provides legal advice and assistance to the Commission.
5. Commissioner Qualifications: In addition to existing Commissioner qualifications, the Charter should prohibit the appointment of an applicant who, at any point in the two years prior to the start of their term on the Commission, was:
 - A. an elected official, or the partner or spouse of an elected official;
 - B. a candidate for City or OUSD office;
 - C. a paid staffer or paid consultant to a City or OUSD campaign;
 - D. an officer or employee of a political party political party; or
 - E. a substantial local campaign donor, defined as someone who has contributed in the aggregate more than two times the City contribution limits (2 x \$600 in 2024) to candidates for a City or OUSD office or to a campaign committee making independent expenditures in City or OUSD campaigns.
6. Commissioner During & Post-Service Restrictions: In addition to existing during and post-service restrictions, add:
 - A. *During-service restrictions*: While serving on the Commission, Commissioners may not:
 - i. Contribute or participate in an OUSD campaign
 - ii. Serve as an officer or employee of a political party
 - B. *During and post-service restrictions*: Commissioners may not:
 - i. Run for City or School Office while serving on the Commission and for 2 years after their term ends.

- ii. Be a paid staffer or paid consultant to a City or School elected official, or receive gifts from the same officials, while serving on the Commission and for 1 year after their term ends.
- C. *Exception:* Commissioners should be able to advocate in support or opposition to ballot measures that affect the PEC or the laws it enforces.

7. Ethics Commission Vacancy: If a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy should transfer to the PEC.

8. Ballot Referral: The PEC should have the authority, by supermajority vote, to refer ordinances relating to the subject matter jurisdiction (campaign finance, government ethics, lobbying, and transparency) to the ballot for voter consideration.

9. Commission Mission: Amend the Charter to:

- A. Add that one of the PEC's roles is to promote more inclusive, representative, and accountable democracy in Oakland; and
- B. Include the administration of the Democracy Dollars Program, including the creation of an impartial voter guide to assist voters in assigning their vouchers, as one of the PEC's enumerated duties.

10. Elected Official Salary-Setting: The PEC, in its discretion, should have the authority to waive or reduce a salary increase for the City Council, City Attorney, or City Auditor if either (a) the City Council declares that the City is facing an extreme fiscal necessity/crisis or (b) if the GPF revenue for the current fiscal year is projected to decline.

CHARTER AMENDMENT PROCESS

Charter amendments require approval by a majority of Oakland voters to go into effect. There are only two ways for a charter amendment to make it to the ballot: the City Council may place a measure on the ballot or Oakland voters, through the local initiative process, may collect sufficient signatures to place a measure on the ballot. Prior amendments to the PEC's scope and responsibilities have been placed on the ballot by the City Council. To make the November 2024 ballot, the City Council would likely need to vote to place a measure on the ballot no later than August 2024. The Council is already likely to consider a proposal later this year to amend the City Charter to move the responsibility for setting the Mayor's salary from the City Council to the PEC.

SUBCOMMITTEE AND STAFF RECOMMENDATION

The Subcommittee and Staff recommend that the Commission vote to direct staff to draft potential language for a charter amendment, consistent with these recommendations, and to bring them back to the Commission at a future meeting. The Subcommittee is also still considering other changes to the City Charter and may bring those recommendations back to the full Commission at that time as well.

Attachment: Oakland City Charter Section 603 and Oakland Municipal Code Chapter 2.24.

OAKLAND CITY CHARTER

Section 603. Public Ethics Commission.

(a) Creation and Role. There is hereby established a Public Ethics Commission which shall be responsible for: (1) enforcement of laws, regulations and policies intended to assure fairness, openness, honesty and integrity in City government, including compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, and other persons subject to laws within the jurisdiction of the Commission; (2) education and responding to issues regarding the aforementioned laws, regulations and policies, and; (3) impartial and effective administration and implementation of programs to accomplish the goals and purposes of the Commission as defined by this Section. Such laws, regulations, policies, and programs shall include those relating to campaign finance, lobbying, transparency, and governmental ethics, as they pertain to Oakland. The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing. Nothing in this Section shall preclude other City officials, agencies, boards and commissions from exercising authority heretofore or hereafter granted to them, with the exception of Charter Section 603(b)(5).

(b) Functions and Duties. It shall be the function and duty of the Public Ethics Commission to:

- (1) Foster and enforce compliance with:
 - (i) Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") of this Charter, for violations occurring on or after January 1, 2015;
 - (ii) The Oakland Campaign Reform Act, Oakland Fair Elections Act, False Endorsement in Campaign Literature Act, Oakland's Conflict of Interest Code, code of ethics and governmental ethics ordinance, the Oakland Lobbyist Registration Act, the Oakland Sunshine Ordinance, any ordinance intended to protect City whistleblowers from retaliation, and other Oakland laws regarding campaign finance, lobbying, transparency, or governmental ethics, as provided by ordinance or this Charter.
 - (iii) Related state laws including, but not limited to, the Political Reform Act, Ralph M. Brown Act, and Public Records Act, as they pertain to Oakland.
- (2) Report to the City Council concerning the effectiveness of all local laws regarding campaign finance, lobbying, transparency, and governmental ethics.
- (3) Issue oral advice and formal written opinions, in consultation with the City Attorney.
- (4) Within the time period for submission of such information for the timely completion of the City's regular budget process, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.
- (5) Act as the filing officer and otherwise receive and retain documents whenever the City Clerk would otherwise be authorized to do so pursuant to Chapter 4 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), provided that this duty shall be transferred to the Commission during the 24 months following the effective date of this provision and the Commission shall be the sole filing officer for the campaign finance programs by January 1, 2017.
- (6) Educate and promote understanding regarding the requirements under the Commission's oversight and study any significant non-compliance problems or trends with

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Oakland's campaign finance, lobbying, transparency, and governmental ethics laws and identify possible solutions for increasing compliance.

(7) Review and make recommendations regarding all City systems used for public disclosure of information required by any law within the authority of the Commission.

(8) Perform such other functions and duties as may be prescribed by laws of this Charter or City ordinance.

(c) Councilmember Salary Increases. The Public Ethics Commission shall set Council compensation as provided for in Charter Section 202.

(d) Appointment, Vacancies, Terms. The Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents. Commissioners shall serve without compensation.

The Commission shall be appointed as follows in subsection (1) and (2).

(1) Appointments by Mayor, City Attorney and City Auditor. The Mayor shall appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

The City Attorney shall appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters.

The City Auditor shall appoint one member who has a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting. The Mayor, City Attorney, and City Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official.

Upon the effective date of this section, the three members appointed by the Mayor prior to 2015 shall continue to serve the remainder of their terms. Vacancies in the three positions appointed by the Mayor shall be filled in the following manner: the City Attorney shall appoint a member to fill the first vacancy; the City Auditor shall appoint a member to fill the second vacancy and the Mayor shall appoint the member to fill the third vacancy. Thereafter, the positions appointed by the Mayor, City Attorney and City Auditor shall be filled in the same manner and upon consideration of the same criteria as the initial appointments.

The appointments made by the Mayor, City Attorney, and City Auditor may be rejected by City Council Resolution within 45 days of receiving formal notice of the appointment. An appointment shall become effective once written notice is made by the appointing authority to the City Clerk. Upon receiving such written notice, the Clerk shall promptly provide formal notice to the City Council.

(2) Commission Appointments. The four members of the Commission who are not appointed by the Mayor, City Attorney or City Auditor shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of

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the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.

(3) Terms of Office. All categories of member shall be appointed to staggered terms. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, such member may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, such member may serve two consecutive full three-year terms.

(4) Quorum. Four members shall constitute a quorum.

(5) Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or is absent continuously from the City for a period of more than 30 days without permission from the Commission, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member.

Vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days of the occurrence of such vacancy may be filled by the City Council in the same manner as provided by Charter, Section 601.

(6) Removal. Members of the Commission may be removed by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular meetings except on account of illness or when absent by permission of the Commission, or violation of this Charter section, after written notice of the grounds on which removal is sought and an opportunity for a written response.

(e) Qualifications and Restrictions. Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections. No member of the Commission shall:

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

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(4) Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

(f) Enforcement.

(1) Authority. In furtherance of Charter Section 603(b)(1) and (5), the Public Ethics Commission is authorized to:

- (i) Conduct investigations;
- (ii) Conduct audits of compliance with disclosure requirements with the Commission;
- (iii) Conduct public hearings as provided by the Commission's complaint procedures or other law;
- (iv) Issue subpoenas to compel the production of books, papers, records and documents and take testimony on any matter pending before the Commission. The Commission may seek a contempt order as provided by the general law of the state for a person's failure or refusal to appear, testify, or to produce required books, papers, records and documents;
- (v) Impose penalties, remedies and fines, as provided for by ordinance. Ordinances enforced by the Public Ethics Commission shall not be subject to the \$1,000 limit on fines provided Sections 217 and 1208 of this Charter. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to the Alameda County Superior Court by filing a petition for writ of mandamus;
- (vi) Submit referrals to other enforcement authorities, including but not limited to the Alameda County District Attorney, California Fair Political Practices Commission, and California Attorney General;
- (vii) Seek remedial relief for violations and injunctive relief;
- (viii) By an affirmative vote of at least five members, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 218 and 1202 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;
- (ix) Reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 907 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;
- (x) Perform other functions as authorized by law.

(2) Final enforcement action. Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four members.

(3) Investigations. Preliminary review by Commission staff of allegations shall be confidential, to the extent permitted by law, until any of the following occurs:

- (i) Placement of the item on a Public Ethics Commission meeting agenda;
- (ii) Passage of one year since the complaint was filed;
- (iii) Action by the Executive Director closing the file without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or

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(iv) Expiration of the Statute of Limitations.

(4) Penalty guidelines and Enforcement Discretion. The Public Ethics Commission shall develop a policy setting forth standards for imposing penalties and exercising enforcement discretion. Commission staff shall adhere to the policy when recommending penalties under each of the different penalty provisions that the Commission has the power to enforce.

(5) Per diem late filing fees. Regarding per diem fees that are authorized due to the late filing of disclosure reports, including campaign finance statements, lobbyist reports, and other ethics-related disclosures filed with the Commission by law, the following shall apply:

(i) Assessments. Any instance of late filing that triggers the assessment of a fee of \$1,000 or more by the Commission shall be placed on a Commission meeting agenda before issuance of the fee;

(ii) Waiver guidelines. The Commission shall establish waiver guidelines in accordance with state law, which the Commission, as the filing officer, shall follow in determining whether or not to grant a waiver. These guidelines shall be published on the Commission's website. The Commission shall prescribe criteria for appeal to the Commission of waiver decisions made by the Executive Director. At each regular Commission meeting, the Executive Director shall provide a written report, which shall be published online, regarding any waivers decisions made since the previous regular meeting;

(iii) Referral of final, uncollected fees to collections. Unpaid non-investigatory, per diem late filing fees for disclosure programs that are past due for more than 90 days shall be referred to a City delinquent revenue collection office.

(6) Private right of action. Oakland residents shall have a private right of action to file suits to enforce the Oakland Campaign Reform Act, Oakland Lobbyist Registration Act, Oakland Sunshine Ordinance, and any City governmental ethics ordinance when the City does not impose or stipulate to a penalty or file suit for a particular violation. Such private right of action shall be enabled for a given ordinance once criteria for such suits, including but not limited to a required notice period, actionable violations and remedies that may be sought, are prescribed by the ordinance.

(g) Staff Assistance & Budget.

(1) The City shall appropriate a sufficient budget for the Public Ethics Commission to fulfill the functions and duties as set forth above.

(2) Sufficient staffing shall not be less than the following minimum staffing requirement. The City shall meet a minimum staffing requirement for the Commission. The minimum staffing shall consist of the following full-time positions or their equivalent should classifications change: Executive Director; Enforcement Chief; Ethics Investigator; Ethics Analyst I; Ethics Analyst II; Administrative Assistant I. Effective July 1, 2023, the City shall also provide additional adequate staff necessary to properly administer the Democracy Dollars Program established by the Oakland Fair Elections Act, including, but not limited to, one full-time Democracy Dollars Program Manager and three full-time equivalent positions, to be determined as necessary by the Commission, all of whom shall report to the Executive Director of the Public Ethics Commission.

(3) The minimum staffing budget set-aside may be suspended or reduced, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution.

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(4) The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.

(5) The Enforcement Chief shall serve at the pleasure of the Executive Director. Other than the Executive Director and Enforcement Chief, staff shall be civil service in accordance with Article IX of the City Charter. Candidates for staff vacancies shall be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time, except that said selective certification shall not be subject to discretionary approval by the Personnel Director.

(6) All staff are subject to the restrictions in Charter Section 603(e), except that staff are not prohibited from employment with the City and the one-year post-service restriction shall apply only to the Executive Director.

(h) Amendment of Laws. Prior to enacting any amendments to laws that the Commission has the power to enforce, the City Council shall make a finding that the proposed changes further the goals and purposes of the ordinance or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to laws that the Commission has the power to enforce and proposed ballot measures that would amend such laws shall be submitted to the Commission for review and comment, prior to passage of the amendments or approval of the proposed measures for the ballot by the City Council.

(i) References to Other Laws in this Section. All references to other laws in this Section shall refer to these laws as they may be amended from time to time.

(Added by: Stats. November 2014.)

(Res. No. [89316](#), § 6, 7-11-2022; Res. No. [89280](#), 6-21-2022)

Chapter 2.24 - PUBLIC ETHICS COMMISSION

2.24.010 - Creation.

Oakland City Charter Section 603 establishes the Public Ethics Commission (Commission) and proscribes its role and function, Commissioner qualifications and appointment process, enforcement and investigative authority, and staff resources, among other provisions. ([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 1, 1997)

2.24.020 - Commission operations.

A. Implementation of City Charter enumerated role, functions, and duties. The Commission shall adopt policies, procedures, and regulations for the conduct of its business by a majority vote of the members present.

B. Process. A majority vote of the Commission is required for the adoption of any motion or resolution.

C. Transmittal. The Commission shall transmit to the City Council any rules, regulations, or procedures adopted by the Commission within seven (7) calendar days of adoption. A rule, regulation or procedure adopted by the Commission shall become effective sixty (60) days after the date of adoption by the Commission unless, before the expiration of the sixty (60) day period, two-thirds ($\frac{2}{3}$) of all the members of City Council vote to veto the rule, regulation, or procedure.

D. Policies and Procedures. Policies and procedures include, but are not limited to, operations policies to guide the Commission's general operations, and complaint procedures to establish the administrative process for the investigation and enforcement of potential violations of government ethics, transparency, and campaign finance laws or policies. ([Ord. No. 13628](#), § 2, 12-15-2020)

2.24.030 - Commission structure.

A. Role of the Commission. The Commission, as a whole, is responsible for establishing Commission policies and priorities, promoting government ethics and transparency, and serving as a quasi-judicial body that adjudicates enforcement matters brought to the Commission by staff.

B. Commission Staff. The Executive Director reports to the Commission Chair and the Commission and is responsible for establishing staff priorities in consultation with the Chair and consistent with policy direction provided by the Commission. The Executive Director leads and supervises Commission staff and has the authority to hire and remove employees within constraints set by the Civil Service Commission, the Department of Human Resources, and the Commission's budget.

([Ord. No. 13628](#), § 2, 12-15-2020)

2.24.040 - Election of chairperson and meetings.

A. Election of Chair and Vice-Chair. At the first regular meeting of each year, the members shall elect a chairperson and a vice-chairperson.

B. Meetings. The Commission shall hold regular meetings at an established time and place suitable for its purpose. Other meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notice of special meetings shall be provided the members, the Council, and the public press at least seventy-two (72) hours before the meeting is scheduled to convene.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 6, 1997)

2.24.050 - Staff assistance.

The City Manager, or designees thereof, shall provide the Commission with staff assistance as necessary to permit the Commission to fulfill the functions and duties as set forth in the City Charter and in ordinances within the Commission's jurisdiction.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 12101, 1998; Ord. 11961 § 8, 1997)

2.24.060 - Legal assistance.

The City Attorney is the Commission's legal advisor. The City Attorney shall provide the Commission with legal assistance, to the extent such assistance does not constitute a conflict. In the event of a conflict, the City Attorney shall retain outside counsel.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 9, 1997)

2.24.070 - Procedures for imposing administrative fines.

A. Purpose. This section establishes standard procedures for the imposition, enforcement, collection, and administrative review of fines and penalties for violation of any law or ordinance under the purview of the Commission. The procedures set forth in this section are adopted pursuant to Government Code Section 53069.4 and the City of Oakland's power to govern municipal affairs under Article 11 of the California Constitution. By adopting this section, the City does not intend to limit the ability of the City to use any other remedy, civil or criminal, that may be available in a particular case. The City may use the procedures set forth in this section as an alternative to, or in conjunction with, any other available remedy.

B. Complaint Procedures. The Commission shall adopt procedures to establish the administrative process for the investigation and enforcement of violations of the laws within the Commission's jurisdiction. These procedures shall dictate the process for receiving, initiating, and reviewing complaints, conducting investigations or audits, and resolving cases prior to an administrative hearing.

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C. Administrative Hearing Process.

1. Selection of Hearing Panel or Examiner. If the Commission decides to schedule a hearing, the Commission may either sit as a hearing panel or delegate authority to one (1) or more members or to an independent hearing examiner.

2. Pre-Hearing Process and Submissions. The Commission must provide notice of the hearing to the responding party and may define reasonable time limits and other requirements for submission of any proposed subpoenas, resolution of any procedural or preliminary matters not related to the truth or falsity of the factual allegations, and submission of any written materials.

3. Conduct of Hearings. The Commission may define reasonable terms for the conduct of hearings, receipt and rules of evidence, presentation of testimony, and order of oral arguments. The Commission also may establish a process for hearing a matter in which the responding party refuses or otherwise fails to appear at a properly noticed hearing.

4. Action Upon Conclusion of Hearing. The Commission may define reasonable time limits and other requirements for preparation and submission of findings of fact and conclusions by the hearing panel or examiner and any procedure for requesting re-hearing.

The Commission's order following a hearing may determine that any violation of law occurred only if the weight of the evidence shows that it was more likely than not that a violation occurred.

The Commission's order and any findings of facts and conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions, and any appropriate fines. The Commission's decision following a hearing shall be final and shall constitute closure of the administrative process with respect to any complaint.

D. Payment of Administrative Fines. Any fines imposed by a final order of the Commission will be required to be paid by the due date identified in the order, but no sooner than thirty (30) days after the order is issued. Fines that remain unpaid after the due date will be subject to a late payment penalty of ten percent plus interest at a rate of one (1) percent per month on the outstanding balance.

E. Remedies for Non-Payment. The amount of any fine not paid within the time required under this Chapter, including the amount of any applicable late payment charges, constitutes a debt to the City. The City may file a civil action or pursue any other legal remedy to collect such money. In any civil action to obtain payment of the fine, and any late payment penalties, the City shall be entitled to obtain a judgment for the amount of the unpaid fines and penalty payments and, in addition, for the costs and attorneys' fees incurred by the City in bringing any civil action to enforce the provisions of this Section.

F. Right to Judicial Review. Any person aggrieved by the action of the hearing officer taken pursuant to this Chapter may obtain review of the administrative decision by filing a petition

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for review in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

If a final order of a court of competent jurisdiction determines that the City has not properly imposed a fine pursuant to the provisions of this Chapter, and if the fine has been deposited with the City during the course of the legal proceeding, the City shall promptly refund the amount of the deposited fine, consistent with the court's determination, together with interest at the average rate earned on the City's portfolio for the period of time that the City held the fine amount.

([Ord. No. 13628](#), § 2, 12-15-2020)

2.24.100 - Protection against retaliation.

A. No officer or employee of the city shall use or threaten to use any official authority or influence to effect any action as a reprisal against a city officer or employee for acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

B. No officer or employee of the city shall use or threaten to use any official authority or influence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 10, 1997)