

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”



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TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 30, 2024
RE: Incorporating “Ability to Pay” as a factor for determining appropriate case resolutions under the PEC’s Penalty Guidelines

The purpose of this report is to propose an amendment to our Penalty Guidelines that expressly includes a respondent’s “ability to pay” as one of the factors for determining an appropriate fine amount in a given case. It also provides Enforcement staff’s thoughts on how to apply this factor in cases involving low- and moderate-income respondents, as well as to higher-income respondents (including PACs and business entities) potentially facing large fines.

Background and Brief Summary of Current Procedures

If the PEC determines that a violation of our laws has occurred, we normally impose a monetary fine. The PEC has written Penalty Guidelines which we must follow when determining the size of a fine in a particular case. The idea is to have consistent standards for resolving cases, in order to avoid unduly harsh or favorable treatment of particular respondents. It also helps to facilitate settlements of cases without a hearing, because PEC staff and respondents can use the Penalty Guidelines to calculate a fair outcome that is likely to be accepted by the Commission.¹

In practice, the Penalty Guidelines are applied in the following way. Regardless of whether a case is being resolved by settlement or a full hearing, the commission is typically presented with a recommended penalty by Enforcement staff. We reach this recommendation by following a three-step process.

First, we look to the section of the Penalty Guidelines titled “Mainline Penalty” to learn the “baseline” penalty for a given violation, as well as the possible maximum above which we

¹ All case settlements require Commission approval, except for very low-level violations resolved under our “streamlined” resolution program. Note that the Penalty Guidelines apply regardless of whether the other party is agreeing to settle the matter or if the Commission is determining a penalty after a full hearing.

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cannot go (“Statutory Limit Per Violation”).² “Baseline” is another way of saying “starting point”; it’s what the penalty would be if we were not to consider anything else about the case. Below is a reproduction of this section of the Penalty Guidelines:

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.

² Note that this is *per violation*. If someone has committed multiple violations, then the penalties are aggregated. For example, someone who receives an unlawful gift is facing a baseline \$1,000 fine or maximum \$5,000 fine (assuming this is greater than the value of the gift). Someone who receives two unlawful gifts is facing a baseline fine of \$2,000 and a maximum fine of \$10,000; and so on.

Of course, this does not factor in the “three times the unlawful amount” provision. If the unlawful gift were worth \$4,000, then the baseline fine would still be \$1,000 but the maximum fine would be \$12,000 (because 3 x \$4,000 = \$12,000). If they received two unlawful gifts worth \$4,000 and \$3,000 respectively, then the baseline fine would be \$2,000 and the maximum fine would be \$21,000 (because 3 x (\$4,000 + \$3,000) = \$21,000); and so on.

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Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)	\$1,000.	\$5,000 or three times the unlawful amount, whichever is greater.
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.

Second, we look to the section of the Penalty Guidelines titled “Specific Factors to Consider in Determining a Penalty” to determine how far above or below the baseline we should go, given the facts of the particular case at hand. Currently, our Penalty Guidelines list the following eight factors that we should take into consideration (though the Guidelines also state that this list is not meant to be exclusive, meaning that we can look to other factors as well):

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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.

Finally, Enforcement staff looks to previous PEC cases with similar facts and/or legal issues, to make sure that the recommended penalty is in line with how the penalties were determined in those cases. We refer to these as “comparable cases” or “comps.”³

By this three-step process, Enforcement staff arrives at a recommended penalty. It is then up to the Commission to approve or reject the recommendation based on the same criteria. For settlements, the Commission can send the parties back to negotiations with guidance on what it feels would be a more appropriate penalty. For cases resolved via a hearing, the Commission will directly impose the penalty it thinks is warranted, after hearing recommendations from the parties and the hearing officer.

Proposal to Include “Ability to Pay” as a Factor for Determining a Penalty

Staff is proposing to amend the Penalty Guidelines to expressly include a respondent’s ability to pay as a factor for determining an appropriate fine. Specifically, we propose the following amendment:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;

³ The PEC keeps a list of its resolved cases online at <https://www.oaklandca.gov/resources/public-ethics-commission-enforcement-actions>.

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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;
9. **The respondent’s ability to pay the contemplated penalty without suffering undue financial hardship. This factor shall not apply to the portion of a penalty that constitutes a repayment or disgorgement of the unlawful amount, except in cases of extreme financial hardship.**

The purposes of the proposed amendment are the following:

- To clarify that a respondent’s “ability to pay” is a valid consideration under our Penalty Guidelines and should be given appropriate weight, along with the other factors that are specifically listed.
- To minimize the possibility that a straightforward application of our Penalty Guidelines may result in a fine that imposes a disproportionate hardship on a particular respondent, e.g. a low-income respondent whose personal finances may be seriously impacted by a contemplated fine, or a business entity or political organization whose ordinary operations may be severely impacted after accounting for a contemplated fine.
- By including a reference to “undue” financial hardship, we intend to underscore that the purpose is not to avoid all possible hardship or annoyance to a respondent, but only financial hardship that poses a serious risk to their personal finances or a severe impact on their ability to carry on ordinary campaign or business operations.

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- To clarify that respondents cannot obtain the benefit of unlawful funds and then claim financial hardship when required to repay or disgorge those funds, except in extreme circumstances.
- To help ensure that the respondent will actually pay any fine imposed, and minimize the amount of City resources that might be spent pursuing a fine through the collections process.

Determining what is an undue financial hardship will depend upon each respondent’s individual circumstances. PEC staff would require respondents claiming a financial hardship to provide some proof of income, for example a copy of their most recent tax return or campaign bank statement.

It is not our intention to allow this proposal to undermine the PEC’s deterrent function via the imposition of fines. Our proposal is only to include “ability to pay” as one factor among many to be considered when determining an appropriate fine amount. In cases involving particularly serious violations (e.g., those done deliberately, by “sophisticated” parties with experience of the law, and/or involving relatively large amounts of unlawful funds), our interest in deterring future violations and conveying the seriousness of the violation(s) would still warrant imposition of a large fine, though perhaps lowered somewhat to avoid undue hardship to the respondent.

The question of what constitutes “undue hardship” to a PAC or business entity which has a substantial amount of money (or ability to raise a substantial amount of money) is a more complicated one than in the case of a low-income respondent. Generally, PEC staff would give less weight to this factor when dealing with respondents of this sort. Nevertheless, if a PAC or business entity were facing a large enough fine that might cripple their operations going forward, we might use this factor to arrive at a fine amount that represents a reasonable proportion of their demonstrated income or fundraising over the past few years, without imposing a long-term obstacle to their future operations.

Finally, some respondents (usually elected officials or candidates) are able to raise money to help pay PEC fines by opening what is called a “legal defense fund” (LDF). An LDF is essentially a PAC, though its funds can only be used for purposes related to the controlling official’s legal expenses or penalties. There is also no contribution limit on funds received by an LDF.⁴

⁴ State law allows cities to impose a contribution limit on LDFs controlled by local officials or candidates (2 Cal. Code of Regulations section 18530.45). Oakland does not currently impose a contribution limit on LDFs (OMC section 3.12.170(B)).

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In theory, the ability to open an LDF offsets any claims of financial hardship that a respondent might make (at least one who is in a position to raise funds from third parties). In practice, however, there are policy drawbacks to relying on LDFs to cover large fines that the PEC might impose. If the PEC’s purpose in enforcing its ethics, lobbying and campaign finances laws is to reduce the actuality or appearance of corruption or undue influence over candidates and elected officials (who tend to be the type of respondents who open LDFs), then incentivizing these respondents to open a LDF and solicit large contributions to cover their personal financial liability may undermine this policy purpose. In addition, the use of an LDF means that it is the third parties and not the respondent who are bearing the financial burden of the penalty, which can diminish its deterrent effect on the respondent.

It should be noted that the PEC does allow respondents to enter a payment plan rather than paying the entire amount of their fine at-once. This should be taken into consideration when determining a reasonable application of the proposed “ability to pay” factor in a given case.

Approaches by Other California Commissions

Of the other ethics commissions in California that carry out substantial enforcement functions (San Francisco, Los Angeles, San Diego, and the state Fair Political Practices Commission), only San Francisco expressly includes “ability to pay” a factor in determining a penalty under its regulations:

“The respondent’s ability to pay will be considered a mitigating factor if the respondent provides documentation to the Director of Enforcement of such inability, which must include three years’ worth of income tax returns and six months’ worth of bank records or accounting statements, at a minimum.”⁵

Staff at the San Francisco Ethics Commission informed PEC staff that there is not yet a standardized approach to applying this factor; instead they arrive at a “common sense determination” in consultation with the respondent.

Recommendation

In light of the above background, Enforcement recommends that the Commission vote to approve our proposed amendment to the Penalty Guidelines (see Attachment 1).

When discussing and voting on this proposal, Commissioners are encouraged to give any guidance that they feel would be helpful in clarifying their legislative intent and to act as a

⁵ San Francisco Ethics Commission Enforcement Regulations section 9(D)(7).

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guide for Enforcement staff in applying the amendment, should the Commission choose to adopt it.

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;
9. The respondent’s ability to pay the contemplated penalty without suffering undue financial hardship. This factor shall not apply to the portion of a penalty that constitutes a repayment or disgorgement of the unlawful amount, except in cases of extreme financial hardship.

~~8.—~~

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

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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.

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;
 - 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;

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- 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;
- 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;
- 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 set forth below shall be applied on a per-violation basis and are contingent upon the following conditions:

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- the respondent has taken corrective action as requested by Commission staff, such as filing 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 fees.

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Violation	Compliance prior to or in response to first PEC enforcement contact	Compliance in response to second 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>Diversion</u>	<u>\$400</u>	<u>\$800</u>
<u>Gift Restrictions (GEA § 2.25.060C)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>
<u>Form 301 Non-Filer (CRA § 3.12.190)</u>	<u>Diversion, plus 2% of contributions received over limit prior to filing form</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>Diversion, plus 1% of all financial activity not timely reported</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>
<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 received over the limit</u>	<u>\$800, plus 1% of the total amount received over the limit</u>
<u>Contractor Contribution Prohibition. (CRA § 3.12.140.)</u>	<u>Diversion, plus 1% of the total amount of the prohibited contribution</u>	<u>\$400, plus 1% of the total amount of the prohibited contribution</u>	<u>\$800, plus 1% of the total amount of the prohibited contribution</u>
<u>Lobbyist Registration Non-Filer. (LRA § 3.20.040.)</u>	<u>Diversion, plus \$200</u>	<u>\$400</u>	<u>\$800</u>
<u>Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>

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

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

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

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

Public Ethics Commission

Effective January 7, 2024

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.