

Item 14A - Charter Review Subcommittee

Chair's Termination Statement:

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill (formerly), Karun Tilak.

A) What was the specific goal of the committee?

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

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

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

C) What did the Commission accomplish?

The subcommittee proposed well-researched and meaningful reforms, which staff and commissioners successfully guided through the legislative process and were ultimately approved overwhelmingly by voters with the passage of Measure OO in November 2024.

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

The City Council stopped short of including the full set of reforms in Measure OO. The commission may wish to continue to pursue PEC-backed proposals to enhance the PEC's capacity and independence.

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

By moving quickly in formulating and submitting a reform proposal, the commission was able to capitalize on a unique moment where ethics reform was on the mind of City leaders and residents to pass meaningful Charter reform. Future ethics commissions should continue to look for unique opportunities to strengthen the capacity, effectiveness, independence, and mission of the commission.

Another important lesson learned in this process is that the citizens of Oakland care deeply about ethics reform: despite no campaign in favor of the Measure OO, an overwhelming 73% of voters supported expanding the commission's authority and independence. This continues a trend of a supermajority of Oaklanders supporting the PEC and its mission, as evidenced by similar 70%+ voter support of Measure CC (2014) and Measure W (2022).

As expected, councilmembers did not fully support all of the PEC's recommendations. This left the PEC with difficult decisions about how much to compromise and limited options once the proposal reached the council, which has the authority to amend such measures at its discretion. Future ethics commissions should consider these challenges and limitations when deciding whether to invest the substantial effort required to amend the charter and may benefit from developing a robust outreach strategy for educating the public, groups, and City leaders on the reforms as they advance. Had there been more time in the process, the PEC may have benefitted from partnering with a Council Office to

Item 14A - Charter Review Subcommittee

advance the proposal and presenting its proposed reforms to other City organizations to build greater community support for the proposals.

Overall, the subcommittee and commission's work promoting charter reform were successful, and future commissions should seek to build on this work by seeking the enactment of those reforms which were proposed but not enacted in Measure OO as future opportunities at charter reform arise.

With that in mind, and to memorialize the Commission's work, I am attaching:

1. A lengthier description of the subcommittee's work, process, and outcomes
2. A chart identifying provisions of the PEC's charter reform package that were not enacted in Measure OO.
3. The draft language of the Commission's proposed charter reforms and the staff and subcommittee reports explaining the basis for these recommendations.

I am also asking Staff to post this closure memo and associated materials to the PEC's website as a **public statement of the endorsed charter reform proposals** of the Commission, which may be helpful to future Commissions, organizations, or members of the public interested in City Charter reform.

Item 14A - Charter Review Subcommittee

CHARTER REVIEW SUBCOMMITTEE – EXPANDED CLOSURE MEMO

PURPOSE

The PEC Charter Review Ad Hoc Subcommittee was formed to develop a set of recommended reforms to update and build upon Measure CC, the 2014 measure that established the PEC in its modern incarnation, taking into account developments over the last 10 years. The reforms were intended to enhance Oaklanders' trust in government by strengthening anti-corruption rules, establishing the PEC more firmly as a vigorous, independent agency free of political influence, and move Oakland toward the more inclusive democracy that voters demanded with the passage of Measure W (2022).

PROCESS

The subcommittee met several times to examine each provision of City Charter Section 603 (the section established by Measure CC pertaining to ethics and the PEC), alongside other best practices and models from peer jurisdictions, such as the state FPPC and ethics commissions in San Francisco, Los Angeles, San Diego, and Sacramento. The review also incorporated insights from organizations like the Campaign Legal Center and City Ethics.

The Subcommittee's work resulted in a proposal to modernize the PEC through three primary objectives:

1. Strengthening the PEC's staffing and administrative capacity to meet its expanded responsibilities.
2. Enhancing the PEC's independence to maintain public trust and ensure integrity in its work.
3. Aligning the Charter with the PEC's broadened mission, as reflected in Measure W (2022), which included administering the "Democracy Dollars" public financing program.

The proposal sought to ensure that Oakland remains a leader in ethical governance and responsive to the city's evolving needs. The subcommittee envisioned the proposal as part of an expected measure to transfer mayoral salary setting to the PEC, which was requested by the City Council.

The proposal was endorsed by the full commission in March and April 2024 for inclusion in the November 2024 general election ballot.

OUTCOME

The City Council adopted a revised subset of the recommendations as Measure OO, which voters approved with 73 percent of the vote. Most significantly, Measure OO made the following changes:

- **Staffing:** Increases minimum PEC staffing by one investigator beginning in July 2026 and limits City Council ability to reduce the staffing level.
- **Legal capacity:** Grants the PEC executive director sole discretion to select outside legal counsel when the City Attorney has a conflict of interest.

Item 14A - Charter Review Subcommittee

- **Legislative proposals:** Requires that PEC legislative proposals be referred to the City Council for consideration within 180 days.
- **Salary setting:** Changes to frequency with which the PEC adjusts the salaries of the City Attorney and City Auditor from annually to every two years.
- **Lobbyist gift restriction:** Prohibits registered lobbyists from giving gifts with a cumulative value exceeding \$50 during a calendar year to elected officials, candidates, and their immediate family.
- **Vacancy appointments:** Empowers the PEC to make a commissioner appointment if a vacancy has not been filled within 120 days by the appointing authority.
- **Commissioner qualifications:** Adds additional minimum qualifications and service restrictions for commissioners, to promote independence.
- **Mission:** Specifies that one of the PEC's roles is to promote more inclusive, representative, and accountable democracy in Oakland, consistent with Measure W.

REFORMS ENDORSED BY THE PEC NOT INCLUDED IN MEASURE OO

The City Council stopped short of including the full set of reforms in Measure OO. Significant PEC-backed proposals that the commission believes would enhance the PEC's capacity and independence, that the commission may wish to continue pursuing in the future, include:

- **Staffing:** Add an additional enforcement position beyond the investigator granted in Measure OO, to address the PEC's severe case backlog, and require that cuts to staffing be proportionate to citywide staffing cuts.
- **Legal capacity:** Authorize the PEC to hire legal staff, including outside counsel at its discretion, instead of relying exclusively on the City Attorney's Office, for the purposes of expertise and independence.
- **Legislative proposals:** Authorize the commission, by supermajority vote, to refer ordinances directly to the ballot for voter consideration.
- **Salary setting:** Transfer the responsibility of mayoral salary-setting to the PEC, with specific and transparent guidelines for determining any adjustments.
- **Lobbyist gift restrictions:** Prohibit lobbyist gifts of any amount to elected officials, candidates, and their immediate family.
- **Executive Director:** Grant the PEC the ability to appoint its Executive Director, rather than the current process of recommending candidates to the City Administrator, who selects the E.D.
- **Democracy Dollars:** Provide that the Democracy Dollars minimum budget may be reduced only in an extreme fiscal necessity and by no more than the same proportion as any reductions in General Purpose Fund expenditures.

A detailed table of the remaining unenacted provisions of the PEC's ballot measure proposal is attached, as are the PEC's staff reports explaining the reform proposals, and the draft language the PEC produced.

Item 14A - Charter Review Subcommittee

REMAINING UNENACTED PROVISIONS OF THE PEC'S CHARTER AND OMC REFORM PROPOSAL

In 2024, the PEC proposed a package of changes to the City Charter and Oakland Municipal Code relating to the Commission or the laws it enforces. The Council placed a measure on the November 2024 ballot, Measure OO, which included some but not all of these proposed changes, which the voters adopted. This chart summarizes the recommendations that the PEC had proposed which are not part of current law (including after the adoption of Measure OO), and might be considered in future reform efforts.

Charter Section Affected	Current Law (including Measure OO)	Outstanding Changes from PEC's Original Proposal (difference in blue)
Executive Director Selection C.603(g)(4)	<ul style="list-style-type: none"> Has the PEC recommend Executive Director candidates to the City Administrator, who selects the Director. 	<ul style="list-style-type: none"> Have the PEC appoint the Executive Director.
During & Post-Service Restrictions C.603(e)	<ul style="list-style-type: none"> Prohibits Commissioners, while on the Commission, from running for City or OUSD Office. Prohibits Commissioners, while on the Commission, from being a paid staffer or paid consultant to a City or OUSD elected official or receive gifts from the same officials. 	<ul style="list-style-type: none"> Prohibit Commissioners, while on the Commission and for 2 years after, from running for City or OUSD Office. Prohibit Commissioners, while on the Commission and for 1 year after, from being a paid staffer or paid consultant to a City or OUSD elected official or receive gifts from the same officials.
Extended Vacancy C.603(d)(5)	<ul style="list-style-type: none"> Provides that, if a Commission vacancy has not been filled within 120 days by an appointing Citywide official, either the official or the PEC may fill the vacancy 	<ul style="list-style-type: none"> Provide that, if a Commission vacancy has not been filled within 120 days by an appointing Citywide official, the responsibility for filling the vacancy transfers to the PEC.
Staffing C.603(g)(2)&(3)	<ul style="list-style-type: none"> Increases the PEC's minimum Enforcement staffing by 1 investigator in FY 2027-2027 Prohibits a reduction in the PEC's minimum staffing requirement unless the Council declares an extreme fiscal necessity and the reduction is part of a general reduction in expenditures across multiple departments. 	<ul style="list-style-type: none"> Increase the PEC's minimum Enforcement staffing by 1 investigator in FY 2025-2026 and 1 additional non-administrative enforcement position in FY 2027-28. Prohibit a reduction in the PEC's minimum staffing requirement unless the Council declares an extreme fiscal necessity and the reduction is proportional to the overall reduction in the General Purpose Fund. Update the Charter to reflect the PEC's current staffing levels. Provide greater flexibility in determining which positions to hire with the PEC's non-enforcement minimum staffing requirement

Item 14A - Charter Review Subcommittee

Legal Capacity C.603(g)(5),(i);	<ul style="list-style-type: none"> ▪ Provides that the Enforcement Chief may be an attorney. ▪ Designates the City Attorney as legal counsel for the Commission, except in cases of a legal conflict, in which case the Executive Director selects conflict counsel. 	<ul style="list-style-type: none"> ▪ Provide that the Enforcement Chief shall be an attorney. ▪ Authorize the PEC to 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. ▪ Codify in the Charter that the City Attorney provides legal advice and assistance to the Commission. ▪ Require a reasonable budget for hiring outside counsel, investigators, or holding administrative hearings.
PEC Legislative Proposals	<ul style="list-style-type: none"> ▪ Requires the Council or a Council Standing Committee to consider PEC legislative proposals within 180 days. 	<ul style="list-style-type: none"> ▪ Authorize the Commission, 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.
Salary Setting C.603(c)	<ul style="list-style-type: none"> ▪ Requires the PEC to adjust the City Attorney, City Auditor, and City Council's salaries every two years 	<ul style="list-style-type: none"> ▪ Require the PEC to adjust the City Attorney, City Auditor, and City Council's salaries every two years and permit the PEC to reduce or waive a salary increase if the City is facing an extreme fiscal necessity or fiscal crisis/emergency, or if General Purpose Fund Revenue declines ▪ Add to the PEC the responsibility setting the Mayor's salary using defined criteria
Lobbyist Gifts OMC 3.20.180	<ul style="list-style-type: none"> ▪ Prohibits lobbyist gifts of more than \$50 to elected officials, candidates, and their immediate family, subject to certain existing exceptions. 	<ul style="list-style-type: none"> ▪ Prohibit lobbyist gifts of any amount to elected officials, candidates, and their immediate family, subject to certain existing exceptions.
Vote Threshold C.603(d)(4)	<ul style="list-style-type: none"> ▪ Permits the Commission to take action by a majority of those present at a meeting, except where a different vote threshold is required by the Charter or another law. 	<ul style="list-style-type: none"> ▪ Clarify that the Commission may take action by a majority of those present at a meeting, except where a different vote threshold is required by the Charter or another voter-approved law.
Democracy Dollars Budget OMC 3.15.060 (E)	<ul style="list-style-type: none"> ▪ Minimum funding for the Democracy Dollars Program set by Measure W (2022) may be reduced in an extreme fiscal necessity as part of general reduction in expenditures across multiple departments if the City is facing an extreme fiscal necessity. 	<ul style="list-style-type: none"> ▪ Minimum funding for the Democracy Dollars Program set by Measure W (2022) may be reduced in an extreme fiscal necessity by no more than the same proportion as any reductions in General Purpose Fund expenditures.

Item 14A - Charter Review Subcommittee

Democracy Dollars Implementation Rules OMC 3.15.050 (C)(1)	<ul style="list-style-type: none">▪ Generally PEC-adopted rules and regulations go into effect 60 days after adoption, unless vetoed by the Council. However, there is ambiguity as to whether this applies to rules implementing the Democracy Dollars program.	<ul style="list-style-type: none">▪ Clarify that Commission rules and regulations implementing the Democracy Dollar Program go into effect immediately and are not subject to Council veto.



Item 14A - Charter Review Subcommittee

Ryan Mickey, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: March 27, 2024
RE: Proposed City Charter and OMC Amendments Affecting the PEC for the April 10, 2024 PEC Meeting

This item presents recommended changes to Section 603 of the Oakland City Charter and the Oakland Municipal Code (OMC) regarding the role, organization, and duties of the Public Ethics Commission (PEC or Commission). The proposal was developed by Commission Staff and the Charter Review Subcommittee with the primary goals of (1) strengthening the PEC's staffing, (2) strengthening the PEC's independence, and (3) aligning the Charter with the PEC's expanded mission of building a more representative, inclusive, and accountable democracy after the passage of Measure W (2022).

At its March 2024 meeting, the Commission reviewed ten of the Subcommittee's proposals and directed staff to return with draft legal language implementing those proposals for possible consideration as a November 2024 ballot measure. The Subcommittee met twice to review draft language and also to consider additional changes in furtherance of the three goals identified above or to clean-up potential ambiguities in the Charter or OMC. The Subcommittee's recommended amendments, including those previously reviewed by the Commission, are summarized in Table 1, below, and Draft Amendment Language implementing these changes is attached to this memorandum.

Recommendation

Staff recommends that the Commission pass a motion:

1. Endorsing the policy recommendations listed in Table 1, below, and the Draft Amendment Language attached to this Staff Memo;
2. Directing Staff, in coordination with the Chair, to request that the City Council place a measure on the November 2024 ballot that includes one or more of the policy recommendations listed in Table 1 and using the language in the Draft Amendment Language, or substantially similar language.

Background

The Oakland Public Ethics 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. At the PEC's March 13, 2024, meeting, the Commission considered and adopted a set of ten recommendations prepared by the Subcommittee, which would update Section 603 and the Oakland Municipal Code (OMC) to strengthen the PEC's staffing, strengthen the PEC's independence, and align the Charter with the PEC's mission of building a more inclusive democracy. (The March meeting staff report describing those recommendations is attached to this memo.) The Commission further directed staff to return at a future meeting with draft language implementing these changes and reflecting other changes discussed by the Commission at that meeting. The Subcommittee also indicated it would look at other potential amendments prior to returning with draft language.

After the March PEC meeting, the Charter Review Subcommittee met twice, on March 21 and March 25, to review and provide feedback on draft Charter and OMC amendment language prepared by Staff. As part of its review, the Subcommittee also considered other proposed changes that furthered the three Charter reform goals earlier adopted and presented by the Subcommittee, or that clarified/cleaned-up existing law. (Only three new substantive proposals were added, the rest seek to clarify existing law or practice.) This item presents the final set of recommended changes proposed by Staff and the Subcommittee and proposed draft language implementing those changes.

Most of the recommendations involve amendments to the City Charter. Charter amendments may only be adopted by a vote of the electorate. For these to go into effect, the City Council (or the voters, via the initiative process) would have to place a measure on the ballot and Oakland voters would have to approve it by majority vote. For the proposed amendments to the OMC, most of these changes could be done by Council vote and are not required to be included in a ballot measure; however, to create a more comprehensive and cohesive package, the Staff and Subcommittee recommendation is that all these changes be included in a single ballot measure. 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.

Summary of Proposals

The proposed amendments to the City Charter or OMC are summarized below and described in more detail in Table 1. For ease of reference, recommendations are listed below (and in Table 1) in the order that they appear in the Draft Amendment Language. Proposals that were not in the original set of recommendations to come before the Commission at its March meeting are *italicized*. For previously adopted recommendations ("PARs") considered at the March meeting, the number used for that recommendation in the March 2024 staff memo (attached) is also included in parentheses for reference. The proposed amendments are to:

1. **PEC Purpose:** Amend the Charter to include in the PEC's listed purposes promoting a more inclusive, representative, and accountable democracy in Oakland. (PAR #9)

2. **Salary Setting:** Permit the PEC to waive a salary increase for the City Council, City Attorney, or City Auditor if the City is facing an extreme fiscal necessity or revenue loss. *Change the frequency of adjusting Attorney and Auditor salaries from annually to every two years. (PAR #10)*
3. **Commissioner Qualifications:** Adopt additional minimum qualifications for a person to be appointed to the Commission to promote Commissioner independence. (PAR #5)
4. **Holdover Term:** *Clarify that a Commissioner whose term has expired may continue to serve until a replacement is appointed.*
5. **Vote Threshold:** *Clarify that the Commission acts by a majority vote of those present, except as otherwise provided.*
6. **Automatic Removal:** *Delete the requirement that Commissioners absent from the City for 30 days are automatically removed from the Commission; instead, provide that Commissioners who miss 3 consecutive regular meetings are removed unless excused.*
7. **Extended Vacancies:** Provide that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy transfers to the PEC. (PAR #7)
8. **Commissioner Removal:** *Permit the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause.*
9. **During- & Post-Service Restrictions:** Prohibit Commissioners from running for City or OUSD office for 2 years after the expiration of their term and from being compensated by an elected official for 1 year after. (PAR #6)
10. **Records Confidentiality:** *Clarify the point in time that Enforcement files become disclosable public records.*
11. **Staffing:** Increase Enforcement staffing by 2 FTE. *Provide more flexibility in which staff positions are hired. In times of extreme fiscal necessity, limit the number of PEC staff that may be reduced to no more than the same proportion as any citywide reduction in staffing. (PAR #2, #3)*
12. **Executive Director Selection:** Have the Commission appoint its Executive Director. (PAR #1)
13. **Legal Capacity:** Require the Enforcement Chief to be an attorney and authorize the Commission to hire or contract for legal staff. (PAR #4)
14. **Amendments to PEC Governance:** *Clarify that Council amendments to the sections of the OMC establishing PEC's procedures also require notice and comment to the Commission prior to enactment.*
15. **Ballot Referral:** Authorize the Commission, 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. (PAR #8)
16. **Democracy Dollars Implementation Rules:** *Clarify that Commission rules and regulations implementing the Democracy Dollar Program go into effect immediately.*
17. **Democracy Dollars Voter Information:** *Clarify that Commission may publish a digital or online voter guide to assist voters in assigning their Democracy Dollars vouchers.*
18. **Democracy Dollars Budget:** Provide that, in an extreme fiscal necessity, limit the amount that the Democracy Dollar Program minimum budget set-aside may be reduced by no more than

the same proportion as any citywide reductions in General Purpose Fund expenditures. (PAR #3)

19. Lobbyist Gifts: *Prohibit lobbyist gifts to elected officials and their immediate family.*

Table 1 provides additional detail as to each proposal, including the code section being amended, an explanation of current law, what change is being proposed, and the rationale for the change.

TABLE 1: PROPOSED AMENDMENTS

Recommendations are listed in the order they appear in the Draft Language. New recommendations are **Highlighted**.

Recommendation	Sections	Proposal	Rationale
1. PEC Purpose (PAR #9)	C.603(a), (b)	<ul style="list-style-type: none"> ▪ Add to the PEC's Charter-listed purposes promoting more inclusive, representative, and accountable democracy in Oakland. ▪ Add to the PEC's Charter-listed responsibilities administering the Democracy Dollars Program. 	<ul style="list-style-type: none"> ▪ Currently, the City Charter lists the PEC's role as (1) enforcement of laws to "assure fairness, openness, honesty and integrity in City government," (2) education on such laws, and (3) "impartial and effective administration" of its programs. This reflects the PEC's role as a watchdog agency, but not its role in promoting better democracy. ▪ In 2022, voters passed Measure W establishing the Democracy Dollars Program, administered by the PEC, with the goal of promoting broader and more inclusive participation in Oakland democracy. This recommendation aligns the Charter with the PEC's expanded mission.
2. Salary Setting (PAR #10)	C.603(c)	<ul style="list-style-type: none"> ▪ Permit the PEC to waive a salary increase for the City Council, City Attorney, or City Auditor if the City is facing an extreme fiscal necessity or fiscal crisis/emergency, or if General Purpose Fund Revenue declines ▪ Change the frequency that the PEC must adjust the City Attorney and City Auditor's salaries from annually to every two years (New) 	<ul style="list-style-type: none"> ▪ Currently, the PEC sets the City Attorney/Auditor's salary annually. The City's financial situation is not a criterion in setting the salary. ▪ When the City is facing significant financial hardship, it may be inappropriate or controversial to award elected officials a large pay increase. This recommendation gives the PEC discretion to account for this factor. ▪ Fully reassessing the City Attorney/City Auditor's salary every year requires a significant expenditure of staff time, although in many years the adjustment may be modest. This recommendation aligns the City Attorney/City Auditor

Item 14A - Charter Review Subcommittee

			salary adjustment schedule with the same two-year cycle used for the City Council, which is more administrable.
3. Commissioner Qualifications (PAR #5)	C.603(d)	<ul style="list-style-type: none"> Prohibit a person from being appointed to the Commission if, in the two years prior to the start of their term, the person was: <ul style="list-style-type: none"> a City/OUND elected official, <i>or the immediate family (New)</i> of an elected official; an employee of a City/OUND elected official; (New) a candidate for City/OUND office; a paid staffer or consultant to a City/OUND campaign; an officer/employee of a political party; someone who has contributed more than two times the City contribution limits to: candidates for a City or OUND office, <i>a committee controlled by a City/OUND elected official (New)</i>, or to a committee making independent expenditures in City/OUND campaigns. A registered City lobbyist (New) Clarify that a person registered to vote in City <i>or OUND (New)</i> elections is eligible to be appointed. <p><i>* These prohibitions would be applied prospectively only.</i></p>	<ul style="list-style-type: none"> Currently, to be appointed to the Commission, an applicant must be registered to vote in Oakland elections and must have attended at least one PEC meeting. Mayor, City Attorney, and City Auditor appointees must have a specified professional background and cannot have been paid during the past two years for work by a committee controlled by the appointing official. These rules would permit the appointment of a recent candidate for office, the spouse of an elected official, or major political donors, which might undermine public confidence in the fairness of the Commission. This recommendation adds restrictions, modelled off of best practices in other jurisdictions and other Oakland independent agencies, to prevent the appointment of a Commissioner who may appear strongly biased in favor or against of a candidate, incumbent, or political faction.
4. Holdover Term (New - Clarifying)	C.603(d)(3)	<ul style="list-style-type: none"> Clarify that a Commissioner may continue to serve on the PEC after the expiration of their term until a replacement is appointed, up to a maximum of 1 year. 	<ul style="list-style-type: none"> This clarifies existing law: The City's existing practice is to allow members of boards and commissions to serve in a holdover capacity until a replacement is appointed, which helps to ensure a smooth transition between commissioners. For clarity, this recommendation codifies that practice as to the PEC.
5. Vote Threshold (New - Clarifying)	C.603(d)(4)	<ul style="list-style-type: none"> Clarify that the Commission may take action by a majority of those present at a meeting, except where a different vote threshold is required by the Charter or voter-approved law. 	<ul style="list-style-type: none"> This clarifies existing law: The Charter specifies that, for certain actions the PEC takes, a specified vote threshold is required. For example, the PEC may only impose administrative penalties with the affirmative vote of 4 Commissioners. Where no vote threshold is specified, the OMC provides that a majority vote of those present

Item 14A - Charter Review Subcommittee

			suffices. For consistency, this recommendation codifies that requirement in the Charter.
6. Automatic Removal <i>(New - Substantive)</i>	C.603(d)(5)	<ul style="list-style-type: none"> ▪ Delete the requirement that any Commissioner absent from the City for more than 30 days is removed from office. ▪ Provide that any Commissioner who misses 3 consecutive regular meetings is removed from office unless the absence is excused by the Chair. 	<ul style="list-style-type: none"> ▪ The PEC can only function with a quorum of its members. Extended vacancies may impact the Commission's ability to adjudicate cases or adopt policies. Currently, a Commissioner may be removed by their appointing authority if they miss 3 consecutive meetings. However, this discretionary removal process is likely to take months. Conversely, Commissioners absent from the City for 30 days are automatically removed unless excused, which is far stricter, as the PEC typically meets only monthly. ▪ This recommendation provides a streamlined process for removing regularly absent Commissioners, instead of a formal removal vote, and eliminates an unduly strict removal requirement for a 30-day absence from the City.
7. Extended Vacancy <i>(PAR #7)</i>	C.603(d)(5)	<ul style="list-style-type: none"> ▪ Provide that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy transfers to the PEC. 	<ul style="list-style-type: none"> ▪ The PEC can only function with a quorum of its members. Extended vacancies may impact the Commission's ability to adjudicate cases or adopt policies. ▪ Currently, Citywide officials have only 90 days to fill a PEC vacancy, which could be a short time for a newly elected official, but the remedy for failing to do so – that the Council may appoint a replacement – is rarely exercised. This recommendation ensures PEC vacancies are filled in a reasonable timeframe by providing officials 120 days to fill a vacancy while transferring the power to the PEC to fill a vacancy thereafter.
8. Commissioner Removal <i>(New – Substantive)</i>	C.603(d)(6)	<ul style="list-style-type: none"> ▪ Permit the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause. 	<ul style="list-style-type: none"> ▪ Currently a Commissioner may only be removed for cause by their appointing authority with Council approval. This may create the risk or misperception that a Commissioner is beholden to their appointing official, rather than being an impartial adjudicator. The lack of a supermajority vote for removal also risks making removal seem political.

Item 14A - Charter Review Subcommittee

			<ul style="list-style-type: none"> ▪ This recommendation permits the Council, which does not have an appointment to the PEC, and the Commission, to remove a member for cause by supermajority vote. This recommendation is to help ensure Ethics Commissioners are, and are perceived to be, fair and impartial.
9. During & Post-Service Restrictions (PAR #6)	C.603(e)	<ul style="list-style-type: none"> ▪ Prohibit Commissioners, while on the Commission, from serving as an officer or employee of a political party. ▪ Clarify that Commissioners, while on the Commission, cannot contribute to an OUSD campaign. ▪ Prohibit Commissioners, while on the Commission and for 2 years after, from running for City or OUSD Office. ▪ Prohibit Commissioners, while on the Commission and for 1 year after, from being a paid staffer or paid consultant to a City or OUSD elected official or receive gifts from the same officials. ▪ Permit Commissioners to advocate in support or opposition to ballot measures affecting the PEC. <p><i>* These prohibitions would be applied prospectively only.</i></p>	<ul style="list-style-type: none"> ▪ Currently 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. However, a Commissioner could adjudicate a claim involving an elected official then immediately run against that official or accept a campaign job with that official. ▪ This recommendation adds a 1-year post-service prohibition on Commissioners working for the elected officials they had to regulate, similar to the existing restriction on working for the City or lobbyists, and a 2-year prohibition on running for City/USD office, modelled off of best practices in other jurisdictions and other Oakland independent agencies. This recommendation is to make sure Commissioners are, and are perceived to be, fair and impartial when adjudicating cases. ▪ Currently, to avoid the risk or appearance of bias, PEC commissioners cannot advocate on any ballot measure, as the PEC may have to adjudicate a complaint against a campaign for/against a ballot measure campaign. However, this risk does not exist for ballot measures affecting the PEC, because the PEC's practice is already to refer complaints against such campaign committees to other agencies. This recommendation would therefore allow Commissioners, who are uniquely knowledgeable on PEC-related laws, to share that perspective with the public in this very limited circumstance.

Item 14A - Charter Review Subcommittee

10. Records Confidentiality <i>(New - Clarifying)</i>	C.603(f)(3)	<ul style="list-style-type: none"> ▪ Clarify that confidentiality of Enforcement records applies to matters in both the “Preliminary Review” and “Investigation” stage. ▪ Clarify the point in time when Enforcement files become disclosable public records. ▪ Clarify that disclosing evidence to other enforcement agencies, or when charging/prosecuting/resolving a case, does not constitute a waiver of confidentiality. 	<ul style="list-style-type: none"> ▪ This codifies PEC confidentiality requirements under state law and harmonizes them with the terminology used in the PEC’s Complaint Procedures. ▪ This codifies the PEC’s current practice and harmonizes with state law (Enforcement files are not disclosed until either Enforcement findings are made public, or the Statute of Limitations passes) ▪ This codifies the PEC’s current practice and harmonizes with state law, which allows for disclosure of evidence in furtherance of the enforcement process.
11. Staffing <i>(PAR #2, #3)</i>	C.603(g)(2)&(3)	<ul style="list-style-type: none"> ▪ Increase minimum Enforcement staffing by 2 FTE. ▪ Update the Charter to reflect the PEC’s current staffing levels and titles and <i>to require a minimum number of FTEs instead of individual positions for most staff. (New)</i> ▪ Prohibit a reduction in Democracy Dollars staff <i>and other PEC staff (New)</i> that is proportionally higher than the general reduction in City staff. 	<ul style="list-style-type: none"> ▪ Minimum staffing is an important aspect of the PEC’s independence. The PEC cannot serve as a watchdog agency if it is not adequately staffed; in addition, allowing City officials, who are regulated by the PEC, to reduce its staffing beyond certain minimums required for its effective operation may create the risk or appearance that political pressure is being exerted on the Commission. ▪ Currently, the Charter mandates that the PEC have 2 Enforcement staff, a staffing ratio that has not been updated in a decade. The PEC’s caseload now vastly outpaces the PEC’s staff capacity, which has forced around 60% of the PEC’s cases to be placed on hold. ▪ This recommendation provides the PEC with 2 additional enforcement staff, the minimum number the PEC estimates is required to keep pace with its caseload, to maintain an appropriate minimum staffing level. ▪ Currently, the Charter provides the PEC with a minimum of 10 staff positions, 7 of which are specific positions. PEC staffing may only be reduced if the City is facing an extreme fiscal necessity and as part of a general reduction, however, the reduction to PEC staffing may be disproportionate to the cut taken by other Departments.

Item 14A - Charter Review Subcommittee

			<ul style="list-style-type: none"> ▪ This recommendation provides that cuts to the PEC's minimum staffing levels should be in proportion to cuts taken by other departments, to avoid the risk or appearance that the PEC is being uniquely targeted. The recommendation also provides greater staffing flexibility to meet current needs by identifying minimum staffing based on FTEs rather than positions, with some exceptions.
12. Executive Director Selection (PAR #1)	C.603(g)(4)	<ul style="list-style-type: none"> ▪ Have the Commission appoint its Executive Director. 	<ul style="list-style-type: none"> ▪ Currently, the PEC recommends Executive Director candidates to the City Administrator, who selects the Director. This may create the risk or the appearance that the Director is not independent of the City Administrator, which could undermine public confidence in the Commission. ▪ This recommendation would allow the PEC to appoint its own Director, following best practices used in other local jurisdictions and other Oakland independent agencies.
13. Legal Capacity (PAR #4)	C.603(b)(3),(g)(5),(i); OMC 2.24.050, 2.24.060	<ul style="list-style-type: none"> ▪ Require that the Enforcement Chief be an attorney. ▪ Authorize the PEC to 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. ▪ Codify in the Charter that the City Attorney provides legal advice and assistance to the Commission. 	<ul style="list-style-type: none"> ▪ Currently the City Attorney is the designated legal counsel for the Commission, except in cases of a legal conflict, in which case the City Attorney selects outside counsel for the Commission. Despite being a quasi-judicial agency, the Commission does not have any authorized legal positions and cannot on its own retain outside counsel. ▪ This recommendation enables the PEC to have more in-house expertise in the laws it enforces and eliminates the potential for real and perceived conflicts of interests resulting from the fact that the City Attorney, all candidates for City Attorney, and the entire staff in the City Attorney's office are regulated by the Commission. The recommendation follows best practices used by other ethics commissions and Oakland independent agencies like the Police Commission. While important for independence,

Item 14A - Charter Review Subcommittee

			in most matters, the PEC would continue to rely on the services of the City Attorney's Office.
14. Amendments to PEC Governance <i>(New - Clarifying)</i>	C. 603(h); OMC 2.24.110	<ul style="list-style-type: none"> Clarify that Council amendments to the PEC's procedures in the Municipal Code also require notice and comment to the Commission. 	<ul style="list-style-type: none"> This clarifies existing law: Under the City Charter, before the Council may amend laws the PEC <i>enforces</i>, the proposed amendment must be submitted to the PEC for notice and comment. This recommendation clarifies that this provision also applies to laws the PEC administers or laws relating to the PEC's procedures.
15. Ballot Referral <i>(PAR #8)</i>	N/A	<ul style="list-style-type: none"> Authorize the Commission, 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. 	<ul style="list-style-type: none"> Currently, the Commission may recommend policy changes to laws it enforces to the City Council. This recommendation incorporates a best practice recommended by academics and good government organizations to enable the Commission to propose such changes directly to voters. San Francisco's Ethics Commission has this authority and has proposed non-controversial reforms, generally in the wake of ethics scandals, that have received 70%/80%+ voter support.
16. Democracy Dollars Implementation Rules <i>(New – Clarifying /Substantive)</i>	OMC 3.15.050 (C)(1)	<ul style="list-style-type: none"> Clarify that Commission rules and regulations implementing the Democracy Dollar Program go into effect immediately and are not subject to Council veto. 	<ul style="list-style-type: none"> Currently, most PEC-adopted rules and regulations go into effect 60 days after adoption, unless vetoed by the Council by a 2/3 vote. However, there is some legal ambiguity as to whether this applies to rules implementing the Democracy Dollars program, which the PEC is authorized to adopt under Measure W. Practically, it would be challenging for the PEC to implement Democracy Dollars rule changes between elections if they take two months to go into effect. Vetoes of implementing rules may also hurt public and candidate confidence in the Program. This recommendation ensures necessary Program implementation rules can go into effect immediately and also ensures the Program is implemented impartially, without the risk or appearance that implementing rules

			may be vetoed to stymie the Program or advantage incumbents.
17. Democracy Dollars Voter Information (PAR #3)	OMC 3.15.050(D)	<ul style="list-style-type: none"> Clarify that Commission may publish a digital or online voter guide to assist voters in assigning their Democracy Dollars vouchers. 	<ul style="list-style-type: none"> This codifies existing law: Measure W already permits the PEC to adopt manuals and guides to implement the Program, which may include a voter guide. This codifies that authority to make it more explicit.
18. Democracy Dollars Budget (PAR #3)	OMC 3.15.060(E)	<ul style="list-style-type: none"> Provide that the Democracy Dollars Program minimum budget set-aside may be reduced in an extreme fiscal necessity by no more than the same proportion as any reductions in General Purpose Fund expenditures. 	<ul style="list-style-type: none"> Currently, the minimum funding for the Democracy Dollars Program set by Measure W (2022) may be reduced as part of general reduction in expenditures across multiple departments if the City is facing an extreme fiscal necessity. However, “general reduction” is not defined, and may lead to disproportionate cuts or cancellation of the Program. This recommendation clarifies 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.
19. Lobbyist Gifts (New - Substantive)	OMC 3.20.180	<ul style="list-style-type: none"> Prohibit lobbyist gifts to elected officials and immediate family, subject to certain exceptions. 	<ul style="list-style-type: none"> Lobbyist gifts to the lawmakers they are lobbying creates a heightened risk or appearance of corruption. This recommendation is intended to increase public confidence in governance and aligns Oakland with best practices in other jurisdictions, like San Francisco, that prohibit such contributions. Current rules for lobbyist gift-giving are confusing – such gifts may be subject to a \$240 limit, \$50 limit, or ban, depending on the context. This recommendation also provides a clearer and more administrable rule. This recommendation complements the preceding proposals and helps shape a cohesive message that these proposed reforms serve an anti-corruption interest.

Additional Attachments: 1. Proposed Draft Amendment Language; 2. Staff Report for the March 2024 Meeting.

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

Oakland City Charter

Section 603. Public Ethics Commission.

(a) ~~Creation, and Role~~ **Purpose and Responsibilities.**

~~(1)~~ There is hereby established a Public Ethics Commission as an independent department of the City whose purpose shall be to promote more inclusive, representative, and accountable democracy in Oakland and to promote fairness, openness, honesty and integrity in City government.

Commented [HN1]: Rec. 1. - Purpose

~~which~~ (2) The Commission shall be responsible for:

~~(i4)~~ 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, lobbyists, candidates, campaign committees, and other persons subject to laws within the jurisdiction of the Commission;

Commented [HN2]: Clean-up: adds other parties already regulated by the PEC.

~~(2ii)~~ education and responding to issues regarding the aforementioned laws, regulations and policies, and;

~~(3iii)~~ impartial and effective administration and implementation of programs to accomplish the goals and purposes of the Commission as defined by this Section, including programs to promote more inclusive, representative, and accountable democracy in Oakland.

Commented [HN3]: Rec. 1 - Purpose

Such laws, regulations, policies, and programs shall include those relating to campaign finance, lobbying, transparency, and governmental ethics, as they pertain to Oakland.

~~(3)~~ The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing.

~~(4)~~ 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.

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

(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, which may be done in consultation with the City Attorney.

Commented [HN4]: Conforming to Rec. 13.

(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 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) Administer and adopt policies to implement the Democracy Dollars Program or any other campaign public financing program.

Commented [HN5]: Rec. 1 - Purpose

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

(c) Councilmember-Elected Official Salary Increases. ~~The~~ In every even-numbered year, the Public Ethics Commission shall set the salary for City Councilmembers, the City Attorney, and the City Auditor as provided for in Charter Sections 202, 401(1), and 403(1). Notwithstanding the requirements of any other provision of this Charter, the Commission may waive or reduce a salary increase in any year where the City Council has declared that the City is facing an extreme fiscal necessity, fiscal crisis, or fiscal emergency, or if the General Purpose Fund revenue in the fiscal year in which the salary adjustment is made is projected to be less than the revenue in the prior fiscal year. Council compensation as provided for in Charter Section 202.

Commented [HN6]: Rec. 2 – Salary-Setting

(d) Appointment, Qualifications, 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) (i) 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.

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

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.~~

Commented [HN7]: Clean-up: moved to new Qualifications Subsection.

~~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.~~

Commented [HN8]: Clean-up: method for appointing first Commissioners no longer needed.

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 and the Executive Director of the Commission.

~~(2) (ii)~~ 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 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.~~

Commented [HN9]: Clean-up: moved to new Qualifications Subsection.

(2) Commissioner Qualifications.

Commented [HN10]: Rec. 3 – Commissioner Qualifications

~~(i) Each member of the Commission shall be a resident of Oakland and registered to vote in a City or Oakland Unified School District election.~~

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

~~(iii) A person is ineligible to be appointed to the Commission if that person, in the two (2) years preceding their appointment, has been any of the following:~~

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

(A) A City or Oakland Unified School District elected official.

(B) A spouse, registered domestic partner, parent, sibling, or child of a City or Oakland Unified School District elected official.

(C) An employee of a City or Oakland Unified School District elected official.

(D) A candidate for a City or Oakland Unified School District elected office.

(E) An employee of, or paid consultant to, a candidate running for a City or Oakland Unified School District elected office, or a campaign committee controlled by a City or Oakland Unified School District elected official.

(F) An officer or paid employee of a political party.

(G) A person who has contributed, in the aggregate, more than two times the individual contribution limits (excluding any contributions attributable to public campaign funds) to one or more candidates for a City or Oakland Unified School District elected office, to a campaign committee controlled by a City or Oakland Unified School District elected official, or to a campaign committee that supported or opposed a candidate for a City or Oakland Unified School District elected office.

(H) A registered Oakland lobbyist.

Notwithstanding the requirements of this Paragraph, a Commissioner appointed prior to January 1, 2025, shall only be subject to the qualifications in effect at the time of the Commissioner's appointment.

(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 (3) 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. In the event a member's replacement has not been appointed by the conclusion of the member's term, that member may continue to serve as a member of the Commission during the following term in a holdover capacity for a period not to exceed one year until a new member is appointed to serve the remainder of such following term.

(4) Quorum and Voting. Four (4) members shall constitute a quorum. Provided that a quorum exists, the Commission may take action by majority vote of the members present at a meeting, except as otherwise required in this Section or another law enacted by the voters.

Commented [HN11]: Rec. 4 – Holdover Term

Commented [HN12]: Rec. 5 – Vote Threshold

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

(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~~ ~~is absent from three (3) consecutive regular Commission meetings~~ without permission from the ~~Chair of 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.

Commented [HN13]: Rec. 6 - Automatic Vacancy

~~Vacancies not filled by the Mayor, City Attorney, or City Auditor within 12090 days of the occurrence of such vacancy may shall be filled instead by the Commission City Council in the same manner as provided by Charter, Section 604 following a public recruitment and application process and by the affirmative vote of at least four (4) members of the Commission. The Commission's appointee shall possess the same background qualifications that would otherwise be required of an appointee of the Mayor, City Attorney, or City Auditor.~~

Commented [HN14]: Rec. 7 – Extended Vacancy

~~For purposes of this Section, a seat filled by a member acting in a holdover capacity will be considered vacant as of the expiration of the holdover's prior term of office.~~

(6) Removal. Members of the Commission may be removed, ~~after a hearing, by either the City Council by the affirmative vote of at least six (6) members of the Council or by the Commission by the affirmative vote of at least five (5) members of the Commission, 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~~ substantial violation of this Charter ~~Section. Prior to the hearing, the member at risk of removal shall be provided with after~~ written notice of the grounds on which removal is sought and an opportunity for a written response.

Commented [HN15]: Rec. 8 - Removal

(e) ~~Qualifications and During and Post-Service 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:

Commented [HN16]: Rec. 9 – During & Post-Service Restrictions

(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) Have an employment or contractual relationship with a City or Oakland Unified School District elected official, or receive a gift or other compensation from such officials, during the member's tenure and for a period of one year after the date of separation.~~

~~(3)(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)-(4) Seek election to a City elected office or Oakland Unified School District elected office during the member's tenure and for a period of two years after the date of separation.~~

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

~~(5) Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland; during the member's tenure or participate in or contribute to an Oakland municipal campaign.~~

~~(4)(6) Endorse, support, oppose, contribute to, or volunteer or work on behalf of any candidate or ballot measure in an Oakland City or Oakland Unified School District election during the member's tenure, except for a ballot measure that expressly pertains to the activities or authority of the Commission or to the laws under the jurisdiction of the Commission.~~

~~(7) Serve as an officer or employee of a political party during the member's tenure.~~

~~Notwithstanding the requirements of this Subsection, a Commissioner appointed prior to January 1, 2025, shall only be subject to the during and post-service restrictions in effect at the time of the Commissioner's appointment.~~

(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;

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

(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 Confidentiality. Records and information obtained by the Commission during the preliminary review and investigation of a complaint shall be confidential and exempt from public disclosure, to the extent permitted by law, until any of the following occurs:~~

~~(i) Placement of the item on a Public Ethics Commission meeting agenda; Final enforcement action by the Commission;~~

~~(ii) Passage of one year since the complaint was filed;~~

~~(iii) Action by the Executive Director closing the file matter without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or~~

~~(iiiiv) Expiration of the Statute of Limitations.~~

~~Nothing in this section limits the ability of the Commission to disclose such records or information when charging, prosecuting, closing, or dismissing an investigation or complaint into alleged violations of the laws under its jurisdiction. This section does not prevent the Commission from applying any other exemption from disclosure that may be available under City or state public records disclosure laws. Disclosure of records or information in the course of making a referral to other enforcement authorities shall not constitute a waiver of the confidentiality protections under this section.~~

(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;

Commented [HN17]: Rec. 10 – Records Confidentiality

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 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:

(i) Executive Director;

(ii) Enforcement Chief;

(iii) Three other full-time equivalent non-administrative enforcement staff positions, which may include an Ethics Investigator, staff attorney, auditor, or other appropriate position to be determined as necessary by the Commission. ~~Ethics Investigator;~~

(iv) Three full-time equivalent staff positions, which may include an Ethics Analyst I, Ethics Analyst II, Administrative Assistant I, or other appropriate position to be determined as necessary by the Commission.

(v) 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. The proportion of such reduction may not exceed the overall reduction in staffing for all City employees paid out of the General Purpose Fund for that fiscal year or two-year budget cycle.

(4) The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four (4) 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.

Commented [HN18]: Rec. 11 - Staffing

Commented [HN19]: Rec. 12 – Executive Director Selection

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

(5) The Enforcement Chief shall be a licensed attorney and shall serve at the pleasure of the Executive Director.

Commented [HN20]: Rec. 13 – Legal Capacity

(6) 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.

(7) 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 restrictions shall apply only to the Executive Director.

Commented [HN21]: Conforming changes to Rec. 9.

(h) **Amendment of Laws.** Prior to adopting, or enacting any amendments to laws that the Commission has the power to enforce or administer, or that relate to the organization or procedures of the Commission, the City Council shall make a finding that the proposed changes further the goals and purposes of the ordinance-law or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to such laws that the Commission has the power to enforce and proposed ballot measures that would adopt or 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.

Commented [HN22]: Rec. 14 - Amendment to PEC Procedures

(i) Legal Services.

(1) The City Attorney shall provide the Commission with legal assistance, to the extent such assistance does not constitute a conflict.

Commented [HN23]: Rec. 13 – Legal Capacity

(2) In addition to receiving legal advice and legal services from the City Attorney, the Commission may hire and/or contract for, in the discretion of the Executive Director, one or more attorneys to provide legal advice and legal services to the Commission relating to the laws that the Commission administers or enforces, including but not limited to representing the Commission in enforcement-related litigation, or when the Executive Director determines there is an actual or perceived conflict in the City Attorney providing legal assistance to the Commission. The choice of counsel shall be at the sole discretion of the Executive Director. When considering a candidate for an attorney position, the Executive Director shall consider the candidate's familiarity with laws relating to campaign finance, government ethics, lobbying, open meetings and public records.

(3) The City Council shall appropriate a reasonable budget for the Commission to contract for legal services, contract for investigatory services, and for holding administrative hearings.

(j) **Ballot Referral.** Any ordinance which the City Council is empowered to pass relating to campaign finance, lobbying, transparency, and governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a vote of at least five (5) members.

Commented [HN24]: Rec. 15 – Ballot Referral

(k) **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)

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

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

Commented [HN25]: Rec. 2 – Salary-Setting

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible for the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the City Auditor shall be ~~set annually every two years~~ by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

Commented [HN26]: Rec. 2 – Salary-Setting

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

Oakland Municipal Code

Chapter 2.24 - PUBLIC ETHICS COMMISSION

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 members present~~ is required for the adoption of any motion or resolution.

Commented [HN27]: Rec. 5 – Vote Threshold

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 (⅔) 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.

2.24.050 - Staff assistance.

The City ~~Manager~~ ~~Administrator and City Attorney~~, 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)

Commented [HN28]: Rec. 13 – Legal Capacity

~~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)~~

Commented [HN29]: Rec. 13 – Legal Capacity

2.24.110 - City Council amendments.

The City Council may make any amendments to this Chapter that are consistent with the purpose, responsibilities, and independence of the Commission as provided in the City Charter. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to this Chapter and proposed ballot measures that would amend this Chapter 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.

Commented [HN30]: Rec. 14 - Amendments

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

Chapter 3.15 - THE CITY OF OAKLAND FAIR ELECTIONS ACT

3.15.050 - Duties of the Commission.

A. The Commission shall implement and administer the program in accordance with the findings and purposes of this Act.

B. Following the first election after the effective date of this Act and by an affirmative vote of at least five (5) of its members, the Commission may:

1. Adjust any of the following if the Commission determines that the adjustment furthers the purposes of this Act:
 - a. The number or value of Democracy Dollar vouchers to be distributed to each eligible resident, so long as the total value of the Democracy Dollars distributed to each eligible resident for a given election does not exceed the amount of the current contribution limit under Subsection [3.12.050](#) B.;
 - b. The date by which the initial distribution of Democracy Dollars occurs in an election year pursuant to [Section 3.15.090](#) A.;
 - c. The total number of qualifying contributions that candidates for each covered office must receive for certification, in the program under [Section 3.15.080](#);
 - d. The qualifying period;
 - e. Other conditions of participation in the program, including limits on use of personal funds under [Section 3.15.150](#), limits on use of campaign funds under [Section 3.15.160](#), and the number of public debates or forums in which candidates must participate under Subsection [3.15.080](#) A.3.;
 - f. Other eligibility requirements as dictated by [Section 3.15.080](#).

C. In addition to all other functions and duties of the Commission prescribed by this Act, the Commission shall:

1. Adopt rules, regulations, and procedures to carry out this Act, which shall go into effect immediately upon adoption and shall not be subject to Council veto;
2. Develop all forms and documents necessary to administer the program;
3. Design a Democracy Dollar voucher that includes all of the following elements:
 - a. The covered election for which the Commission issues the Dollar;
 - b. A means of uniquely identifying the voucher;
 - c. The amount of campaign money that the Democracy Dollar represents;
 - d. Pre-printed information for identification and verification purposes, such as the resident's name, address or other data as required;
 - e. A place to write the date on which the eligible resident assigns the Democracy Dollar;
 - f. A place to write the name of the candidate to whom the eligible resident assigns the Democracy Dollar;
 - g. A statement, in plain language, that informs each eligible resident of all of the following:
 - i. The eligible resident may not revoke an assignment of the Democracy Dollar;
 - ii. The eligible resident may not transfer the Democracy Dollar;
 - iii. The Democracy Dollar has no monetary value;
 - iv. The eligible resident may assign the Democracy Dollar only as provided under [Section 3.15.110](#);

Commented [HN31]: Rec 16 – Democracy Dollars Implementation Rules

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

- h. A statement that affirms the eligible resident assigns the Democracy Dollars voluntarily, free from duress, and not in exchange for any consideration;
- i. A signature line;
- j. Any additional information that the Commission determines is necessary to implement the Democracy Dollars Program.
- 4. Create a technology system that provides an option for eligible residents to receive and/or redeem Democracy Dollar vouchers electronically;
- 5. Educate and inform candidates and the public about the program as follows:
 - a. Publish informational materials about the program written in plain language, including guides, manuals, instructions, and brochures, for candidates and the public;
 - b. Make informational materials about the program available in all of the following formats:
 - i. Online, such as the Commission's or another website;
 - ii. In paper form;
 - iii. Translated into any and all languages in which ballots are required to be provided in Alameda County pursuant to Section 203 of the Federal Voting Rights Act of 1965 (52 U.S.C. § 10503) and those languages spoken by residents of Oakland who are at least two (2) percent of the adult population and speak English "less than very well," according to the most recent U.S. Census;
 - c. Publish a timeline of important dates in the program;
 - d. Develop and conduct trainings, about the program for candidates and treasurers;
 - e. Develop a comprehensive citywide outreach plan before each election cycle. This outreach plan shall be coordinated with the City Administration and the Department of Race and Equity and should utilize City resources, including any and all databases that the Commission deems appropriate. In addition, outreach should involve collaboration with chambers of commerce, community-based organizations, neighborhood associations, business improvement districts, and good government organizations. This outreach plan shall describe how the Commission will inform all City residents about the program and include all of the following:
 - i. A statement of the Commission's outreach goals;
 - ii. An approximate timeline of proposed outreach activities, which may include, but are not limited to, attending community events, distributing informational materials to community-based organizations, posting informational materials in public places, and placing public announcements in print media, newsletters, social media, websites, radio, or television;
 - iii. A description of those proposed outreach activities that will be used to reach groups or categories of City residents that have been historically underrepresented in the political process or underserved by City government;
 - iv. The approximate cost of proposed outreach activities;
 - f. Conduct outreach activities in collaboration with chambers of commerce, community-based organizations, neighborhood organizations, business improvement districts, good government organizations, and other City departments and agencies, as informed by the outreach plan described in Subsection C.5.e.
- 6. Create and maintain a public-facing website that does all of the following:

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

- a. Displays the following information for each Democracy Dollar assigned by an eligible resident:
 - i. The full name of the eligible resident;
 - ii. The date on which the eligible resident assigned the Democracy Dollar;
 - iii. The name of and covered office sought by the candidate to whom the Democracy Dollar was assigned;
 - iv. The date the candidate redeemed the Democracy Dollar for proceeds with the Commission, if applicable;
 - v. The unique identifier of the Democracy Dollar;
- b. Displays the total number of Democracy Dollars assigned to and redeemed by each applicant or certified candidate to date;
- c. Displays the total number of qualifying contributions received by each applicant candidate to date;
- d. Provides electronic access to campaign statements and reports filed with the Commission by each applicant or certified candidate;
- e. Provides a mechanism by which an eligible resident may request a Democracy Dollar pursuant to Subsections [3.15.090 A.—B.](#)
- 7. Conduct audits and investigations of certified candidates as necessary to oversee compliance with this Act;
- 8. Issue oral advice and formal written opinions, in consultation with the City Attorney when necessary, regarding compliance with this Act;
- 9. Within six (6) months of after each election, conduct a review of the program in collaboration with the Department of Race and Equity and submit a post-election report to City Council that contains all of the following:
 - a. The number and names of, and covered offices sought by, all certified candidates, and the total amount of contributions received and expenditures made by those candidates, in the last election;
 - b. The number and names of, and covered offices sought by, all applicant candidates who were not certified in the program, and the total amount of contributions received and expenditures made by those candidates, in the last election;
 - c. The number and names of, and covered offices sought by, all candidates who did not seek certification in the program, and the total amount of contributions received and expenditures made by those candidates, in the last election;
 - d. The total number of Democracy Dollars:
 - i. Distributed to eligible residents;
 - ii. Distributed to but not used by eligible residents;
 - iii. Assigned to applicant or certified candidates;
 - iv. Redeemed by certified candidates;
 - e. Total public funding available in the fund before and after the last election;
 - f. The number and nature of program education and public outreach events conducted by the Commission for the last election, and the approximate number of public attendees at those events;
 - g. Review of the costs of the program in the last election;
 - h. Projected revenue available in the fund for each of the next three (3) election cycles;

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

- i. Analysis of the program's impact on the last election, including its equity impacts, as defined under Subsection 2.29.170.3 B. of the Oakland Municipal Code, and its effects on the sources and amounts of campaign funding and spending, the level of participation by eligible residents in each City Council District, and the number of candidates for covered offices;
- j. Legislative recommendations for improvements or adjustments to the program;
- k. Any other information that the Commission determines to be relevant;

~~D.~~ To provide voters with information which may assist them in assigning their vouchers and voting, the Commission may create and disseminate a digital or paper voter information guide, or both. The Commission may periodically update and disseminate the guide up through election day.

Commented [HN32]: Rec. 17 - Voter Guide

~~E.~~ In the event of a special election for a covered office, the Commission may reasonably modify conditions, procedures, or deadlines under the program, as necessary, to make the program available to candidates in the special election if it would not unduly deplete revenue available in the fund for regularly scheduled elections.

~~F.~~ In the first election cycle following voter approval of this article, the Commission may, by a vote of at least five (5) of its members, delay the implementation of the program in part or in its entirety if the Commission is not able to meet all of the requirements of the program as provided by this article. In making this determination, the Commission should consider all possible alternatives to avoid delaying program implementation in its entirety, including, but not limited to, partial implementation by issuing only mailed Democracy Dollars, or limiting the program to only certain races, or changing Program components.

(Res. No. [89316](#), § 2, 7-22-2022)

3.15.060 - Oakland Democracy Dollars Fund.

A. There is hereby established the dedicated, non-lapsing Oakland Democracy Dollars Fund to be used for disbursing proceeds to certified candidates who redeem Democracy Dollars under [Section 3.15.120](#).

For the two-year budget cycle beginning July 1, 2023 and each subsequent two-year budget cycle beginning on July 1 of odd-numbered years, the City shall appropriate to the fund no less than four million dollars (\$4,000,000.00) for the purpose of funding the Democracy Dollars Fund. The City shall consider additional appropriations to the fund as requested by the Commission to ensure sufficient money in the Fund. After July 1, 2023, for every two-year budget cycle beginning on July 1 of odd-numbered years, the required minimum appropriation under this subsection shall be increased by the increase in the Consumer Price Index over the preceding two (2) years.

B. Additional monies may be deposited into the fund from these sources:

1. Special tax.
2. Democracy Dollar proceeds returned by candidates under [Section 3.15.170](#).
3. Voluntary donations made to the fund.

C. Any unspent revenue remaining in the fund after an election shall remain in the fund and accrue for making future disbursements under Subsection A. Funds remaining in the Democracy Dollars

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

Fund shall not exceed double the amount of the budgeted fund at any one time. Any excess beyond twice the amount of the four million dollars (\$4,000,000.00), as adjusted over time for inflation, shall be returned to the General Fund. In addition, after all money has been distributed to candidates in an election cycle, the Commission may use up to twenty (20) percent of the remaining Democracy Dollars Fund for outreach efforts intended to increase candidate and resident participation in the Democracy Dollar Program in future election cycles.

D. For the two-year budget cycle beginning July 1, 2023 and each subsequent two-year budget cycle beginning on July 1 of odd-numbered years, the City shall appropriate for the Public Ethics Commission no less than three hundred fifty thousand dollars (\$350,000.00) for the purpose of non-staff costs for administering the Democracy Dollars Program, in addition to staff budgeting required by Oakland City Charter Section 603(g). Upon receiving notice from the Commission under Oakland City Charter Section 603(b)(4), the City shall consider additional appropriations to the Commission to ensure sufficient funds are provided to administer the Democracy Dollars Program. After July 1, 2023, for every two-year budget cycle beginning on July 1 of odd-numbered years, the required minimum appropriations under this subsection shall be increased by the increase in the Consumer Price Index over the preceding two (2) years. For the 2023—24 fiscal year, or earlier, the City shall appropriate an additional amount of no less than seven hundred thousand dollars (\$700,000.00) for the purpose of startup costs associated with initiating the Democracy Dollars Program, with any remaining funds to be carried forward into future fiscal years.

E. ~~The minimum budget set-aside in this Section may be 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. A reduction may occur only as a part of general reduction in expenditures across multiple departments and the proportion of such reduction may not exceed the overall reduction in the General Purpose Fund expenditures for that fiscal year or two-year budget cycle.~~

Commented [HN33]: Rec. 17 – Democracy Dollars Budget

(Res. No. 89316 , § 2, 7-22-2022)

Chapter 3.20 - THE CITY OF OAKLAND LOBBYIST REGISTRATION ACT

3.20.180 - Restrictions on payments and expenses benefiting local public officials, candidates for local office, designated employees and immediate families.

A. ~~No local governmental lobbyist or a~~ local governmental lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected City officeholder, candidate for elected City office, a designated employee, or a member of the immediate family of one (1) of these individuals, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.

Commented [HN34]: Rec 19 – Lobbyist Gifts

B. No local governmental lobbyist shall make any payment or incur any expense that directly benefits a designated employee, or a member of the immediate family of a designated employee, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.

C. No local governmental lobbyist shall make any payment or incur any expense of any amount that directly benefits an elected City officeholder, candidate for elected City office, or a member of the immediate family of one (1) of these individuals.

Item 14A - Charter Review Subcommittee

Redline of Proposed City Charter & OMC
Amendments
April 10, 2024 Regular Meeting

~~B.D.~~ The payments and expenses specified in subsections (A) ~~through (C)~~ include gifts, honoraria and any other form of compensation but- do not include (1) campaign contributions; (2) payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal. Code of Regs. No. 18944. 1 (a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this Section. (Ord. 13469, § 1, 1-16-2018; Ord. 12782 § 3 (part), 2007)



Item 14A - Charter Review Subcommittee

Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak
Francis Upton IV

Nicolas Heidorn, Executive Director

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

Item 14A - Charter Review Subcommittee

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:

- an elected official, or the partner or spouse of an elected official;
- a candidate for City or OUSD office;
- a paid staffer or paid consultant to a City or OUSD campaign;
- an officer or employee of a political party political party; or
- 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.
- *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	<ul style="list-style-type: none"> -Oakland registered voter & resident -Attest to having attended one PEC meeting -Professional background requirements for Mayor, City Attorney, and Auditor appointees 	<ul style="list-style-type: none"> -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	<ul style="list-style-type: none"> -Oakland resident for 3 years 	Cannot be: <ul style="list-style-type: none"> -City employee or commissioner - Redistricting consultant in prior 5 years - A person or their family who in prior 10 years was a: <ul style="list-style-type: none"> ~ Candidate or elected official ~ Paid consultant to a campaign ~ Registered lobbyist 	C. s220((D)(1) & J)(5)

Item 14A - Charter Review Subcommittee

		<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	CC 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

Item 14A - Charter Review Subcommittee

San Francisco	<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 	None	<p>C s15.100 C s15.101</p>
Sacramento		<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>
Orange County	<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 	None	<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.

Item 14A - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Karun Tilak

December 6, 2024 Minutes

Attendees – Members: Commissioners Micik, Tilak

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. Commissioners discussed the lessons learned from the process of proposing a charter amendment.
2. Commissioners discussed the Chair Micik producing a Closure Memo to memorialize the work of the Commission. It would include:
 - a. A discussion of reforms that could still be adopted (ie that were not included in Measure OO) and recommendations on the process of proposing charter reforms
 - b. To memorialize the Commission's work, and make it available for future reform efforts, the memo should include as attachments:
 - i. A chart showing current law (as adopted by Measure OO) vs what remains unenacted of what the PEC had produced – **NH to work on chart**
 - ii. The PEC's staff reports explaining its reform proposals
 - iii. The draft language the PEC produced
 - c. The Chair's Closure memo and materials would be posted on the PEC's website