

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Wednesday, February 9, 2022
6:30 p.m.



PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

NOTE: Pursuant to California Government Code section 54953(e), Public Ethics Commission members and staff will participate via phone/video conference, and no physical teleconference locations are required. The following options for public viewing and participation are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference:** Click on the link below to join the webinar: <https://us02web.zoom.us/j/88171471481?pwd=ODIQVFFUeVRsZUtHdFU3YU5XcHVadz09>
Password: 674732
 - To comment by online video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” is available at: <https://support.zoom.us/hc/en-us/articles/205566129> - Raise-Hand-In-Webinar.
- **Telephone:** Dial (for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592
Webinar ID: 881 7147 1481
International numbers available: <https://us02web.zoom.us/j/88171471481>
 - To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing *9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663> - Joining-a-meeting-by-phone.

Members of the public may submit written comments to ethicscommission@oaklandca.gov. If you have any questions about how to participate in the meeting, please email ethicscommission@oaklandca.gov before or during the meeting.

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Commissioners: Arvon Perteet, (Chair), Michael MacDonald (Vice-Chair), Charlotte Hill, Jessica Leavitt, Ryan Micik, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

PRELIMINARY ACTION ITEMS

- 4. Virtual meetings by the Public Ethics Commission.** The Commission will review and take possible action to renew Resolution 22-01, approved at the January 12, 2022 Regular meeting, establishing certain determinations to justify the ongoing need for virtual meetings following the California State Legislature's adoption and Governor's approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021). ([Resolution](#))

ACTION ITEMS

- 5. Approval of Commission Meeting Draft Minutes.**
 - a. January 12, 2022 Regular Meeting Minutes ([Meeting Minutes](#))
- 6. Public Ethics Commission Annual Report.** The Commission will review and consider approval of the annual report summarizing the PEC's activities in 2021. ([PEC Annual Report 2021](#))
- 7. Proposed New City Ticket Policy Ordinance.** Commission staff presents a draft proposed ordinance for potential Commission approval to forward to City Council to codify a new City Ticket Policy for the City of Oakland and replace City Council's existing policy (Council



Resolution 82032). The new policy makes important updates following regulatory changes by the California Fair Political Practices Commission in 2019 and implements the policy recommendations made by the PEC in its 2017 report, *Ensuring Ethical and Transparent Distribution of City Tickets*. Specifically, the new ordinance will align the policy language with state law, including new rules that limit the number of tickets that may be used by high-level officials, and will further expand the public purposes for which City tickets may be used, apply the policy city-wide, and clarify reporting requirements, restrictions, and PEC responsibilities in ensuring compliance. ([Staff Memorandum](#); [Draft Proposed City Ticket Policy Ordinance](#); [PEC Report – Ensuring Ethical and Transparent Distribution of City Tickets](#))

DISCUSSION ITEMS

8. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work.
 - a. **Enforcement Subcommittee** (*ad hoc*, created on November 1, 2021) – Arvon Perteet (Chair) and Ryan Micik
 - b. **Public Records Performance** (*ad hoc*, created on January 12, 2022) - Michael MacDonald (Chair) and Jessica Leavitt.

INFORMATION ITEMS

9. **Lobbyist Registration Act Guide 2022.** Commission staff presents the final updated Lobbyist Registration Act Guide with recent changes that include an overview of the PEC's electronic filing system for lobbyists as well as minor changes throughout to add clarity and answer common questions received in recent years. ([Lobbyist Registration Act Guide](#))
10. **Oakland Campaign Reform Act Contribution Limit and Expenditure Ceiling Annual Adjustment for 2022.** Commission staff provides an updated list of Oakland's campaign contribution limits and expenditure ceiling amounts, adjusted per the increase in the Consumer Price Index as required by the Oakland Campaign Reform Act. Staff has made the required adjustments and publishes the 2022 limits for the public. ([Staff Memorandum](#); [Campaign Contribution and Expenditure Limits 2022](#))

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11. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides an overview of education, outreach, disclosure and data illumination activities for this past month. ([Disclosure Report](#))
12. **Enforcement Program.** Enforcement Chief Kellie Johnson provides a monthly update on the Commission's enforcement work since the last regular Commission meeting. ([Enforcement Report](#); [22-01 Dismissal Letter](#))
13. **Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Executive Director's Report](#); [M2019-08 Mediation Summary](#); [M2019-14 Mediation Summary](#))
14. **Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

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

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.

1/28/22

Approved for Distribution

Date



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CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 22-01
[Proposed renewal 2-9-22]



Resolution Summary:

ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE PUBLIC ETHICS COMMISSION AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(E), A PROVISION OF AB 361.

By action of the Oakland Public Ethics Commission:

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

WHEREAS, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. See <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. See <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

WHEREAS, persons without symptoms may be able to spread the COVID-19 virus. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

CITY OF OAKLAND Public Ethics Commission

RESOLUTION NO. 22-01
[Proposed renewal 2-9-22]



WHEREAS, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

WHEREAS, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh/outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

WHEREAS, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

WHEREAS, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households;

Now therefore be it:

RESOLVED: that the Public Ethics Commission finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and

RESOLVED: that, based on these determinations and consistent with federal, state and local health guidance, the Public Ethics Commission determines that conducting in-person meetings would pose imminent risks to the health of attendees; and

RESOLVED: that the Public Ethics Commission firmly believes that the community's health and safety and the community's right to participate in local government, are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and

RESOLVED: that the Public Ethics Commission and its committees will meet by teleconference this month and will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Public Ethics Commission finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 22-01
[Proposed renewal 2-9-22]



CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for renewal at a duly noticed meeting of the City of Oakland Public Ethics Commission held on February 9, 2022, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of ____ to ____.

I hereby certify that the foregoing is true and correct.

Whitney Barazoto, Executive Director
Oakland Public Ethics Commission

Date

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DRAFT

Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Jessica Leavitt, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:32 p.m.

Members present: MacDonald, Yan, Leavitt, Micik, and Perteet.
Klein and Tuman were absent.

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Trish Shafie.

2. Staff and Commission Announcements.

There were no announcements.

3. Open Forum.

There was one public speaker.

PRELIMINARY ACTION ITEMS

4. Virtual meetings by the Public Ethics Commission.

Commissioners reviewed the resolution establishing certain determinations to justify the ongoing need for virtual meetings following the California State Legislature's

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adoption and Governor's approval of AB 361 on September 16, 2021.

Leavitt moved, and Perteet seconded to approve **RESOLUTION NO. 22-01**.

Ayes: MacDonald, Yan, Leavitt, Micik, and Perteet.

Noes: None

Vote: Passed 5-0

Absent: Klein and Tuman.

ACTION ITEMS

5. Approval of Commission Meeting Draft Minutes.

a. December 6, 2021 Regular Meeting Minutes

There were no public speakers.

Micik moved and MacDonald seconded to approve the minutes for December 6, 2021.

Ayes: MacDonald, Yan, Leavitt, Micik, and Perteet.

Noes: None

Vote: Passed 5-0.

Absent: Klein and Tuman

6. Election of Officers (Chair and Vice-Chair) of the Commission.

There were no public speakers.

Yan moved to approve the appointment of Arvon Perteet as Chair of the PEC for 2022.
Leavitt seconded the motion.

Ayes: MacDonald, Leavitt, Micik, and Perteet.

Noes: None

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Abstain: Yan

Vote: Passed 4-0.

Absent: Klein and Tuman

Micik moved to approve the appointment of Michael MacDonald for Vice-Chair. Perteet seconded the motion.

Ayes: MacDonald, Leavitt, Micik, and Perteet.

Noes: None

Abstain: Yan

Vote: Passed 4-0.

Absent: Klein and Tuman

7. *In the Matter of Jason Overman (Case No. 18-14).*

Commissioners discussed and asked questions on the matter.

There were no public speakers.

Perteet moved and Leavitt seconded to approve the staff recommendation.

Ayes: MacDonald, Yan, Leavitt, Micik, and Perteet.

Noes: None

Vote: Passed 5-0.

Absent: Klein and Tuman

8. *Proposed Amendments to the Limited Public Financing Act (OMC Chapter 3.13).*

Commission staff presented draft amendments to the Limited Public Financing Act to implement statutory amendment recommendations made by the City Auditor in her

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audits of the 2018 and 2020 implementation of the program.

There were no public speakers.

MacDonald moved and Micik seconded to adopt the recommendations.

Ayes: MacDonald, Yan, Leavitt, Micik, and Perteet.

Noes: None

Vote: Passed 5-0.

Absent: Klein and Tuman

DISCUSSION ITEMS

9. Reports on Subcommittees and Commissioner Assignments.

- a. **Enforcement Subcommittee** (*ad hoc*, created on November 1, 2021) – Arvon Perteet (Chair), Ryan Micik, Jerett Yan

MacDonald created a new *ad hoc* Public Records Performance Subcommittee. The members will include MacDonald as Chair, and Leavitt. The third member will be selected at the next meeting.

Perteet shared that the *ad hoc* Enforcement Subcommittee met last month and will continue to meet. A new member will be selected after Yan's term ends January 21, 2022.

MacDonald also mentioned that he would like to create an *ad hoc* Outreach Subcommittee. This will be discussed at a future meeting.

INFORMATION ITEMS

10. Disclosure and Engagement.

Suzanne Doran, Lead Analyst, provided an overview of education, outreach, disclosure and data illumination activities for the 2021 year, as well as an update on activities for this past month.

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There were no public speakers

11. Enforcement Program.

Kellie Johnson, Enforcement Chief, provided a year-end summary of the Commission's enforcement work, as well as a monthly update since the last regular Commission meeting.

There were no public speakers

12. Executive Director's Report.

Whitney Barazoto, Executive Director, reported on overall projects, priorities, and significant activities for the 2021 year, as well as a monthly update since the Commission's last meeting.

Ms. Barazoto thanked the two outgoing commissioners, Klein and Yan, for their service.

There were no public speakers

13. Future Meeting Business.

Perteet proposed to have a retreat in the coming months.

Ms. Barazoto shared that the City Auditor is currently recruiting to fill the upcoming vacancy.

There were no public speakers.

The meeting adjourned at 7:55 p.m.

City of Oakland Public Ethics Commission



ANNUAL REPORT 2021

Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Room 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593



Item 6 - PEC Annual Report 2021

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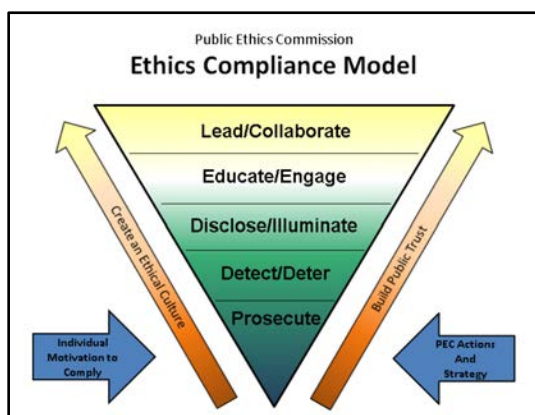
EVOLVING TO ADDRESS SYSTEMIC ISSUES, BUILD ETHICAL CULTURE

In 2021, the Public Ethics Commission (PEC or Commission) demonstrated an expanded capacity to hold Oakland government accountable at multiple levels utilizing a diverse array of tools to accomplish its mission: fairness, openness, honesty, and integrity in City government. This year, the Commission issued record fines for ethics violations by individuals; devised new training programs to address department-specific gaps; collaborated with department leaders to tackle systemic issues exposed by PEC investigations; and conducted a Citywide review of public records system performance resulting in a formal report as well as the development of an ongoing performance monitoring tool to highlight where the need for improvement is most urgent.



2021 HIGHLIGHTS

- **Enforcement Program Issues Record Penalties** – The Commission imposed its two largest ever fines for ethics violations that included serious bribery and conflicts of interest charges: a \$55,000 fine In the Matter of Anthony Harbaugh, and a \$309,600 fine In the Matter of Thomas Espinosa.
- **Accountability for Oakland’s Public Records Performance** – The Commission released the report *Spotlight on Oakland’s Public Records System*, a summary of data from Oakland’s public record request system as well as user input collected via surveys with next steps for the Commission to continue to work to improve department performance in this area.
- **Major Release of Ethics-related Data** – The Commission implemented its largest release of new ethics-related data since 2013 with the publication of eight new datasets and ten interactive data visualizations on OakData, the City’s open data portal.
- **Diversion Training Program Implemented** – The Commission deployed its newly created Diversion program for the first time in two ethics cases where diversion training was the best option for fair and effective enforcement of local ethics rules.
- **Sunshine Training Launched** – Staff launched a new online Sunshine Training covering open meeting rules directed at promoting awareness among Board and Commission members and staff.



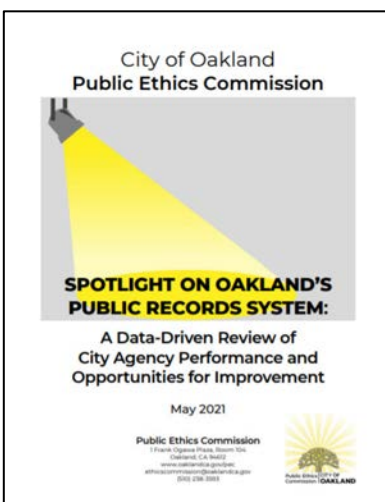
Utilizing its comprehensive approach that aligns education, engagement, disclosure, and enforcement activities to ensure compliance with the City of Oakland’s government ethics, campaign finance, transparency, and lobbyist registration laws, the Commission continued to break new ground in 2021, expanding the reach of its programs, deepening its interventions, and increasing the impact of its enforcement program. This report summarizes the Commission’s accomplishments and activities in 2021.

LEAD AND COLLABORATE

The Commission leads by example and employs collaborative approaches to facilitate changes in City laws, policies, systems, and technology to ensure fairness, openness, integrity, and innovation.

REVIEWING PUBLIC RECORDS PERFORMANCE

In May 2021, the Commission completed the first phase of its project to review Citywide performance in responding to public records requests via the City's online NextRequest system. The PEC's Sunshine Review subcommittee presented a summary of data extracted from the NextRequest online public portal for public records requests and the subcommittee's initial analysis of the information. The Commission adopted the subcommittee's recommendations as outlined in ***Spotlight on Oakland's Public Records System***, which includes next steps to improve public records request



performance and create an online tool to track ongoing progress across City departments.

In November 2021, after noting that six of the PEC's nine mediations completed as of October 2021 were regarding public records requests made to the Department of Planning and Building,

the PEC invited the director to provide an update regarding his department's system of responding to public records requests. The director and his team reported on significant changes that had been made to improve their performance and addressed specific concerns that were brought to their attention during the PEC's mediation of certain public records requests. PEC staff also reviewed NextRequest data for the department and found significant improvements in average response time and closures within the ten-day time period in 2021 compared to the prior three years, despite record requests almost tripling in total number over that four-year time period.

PEC MISSION AND ACTIVITIES

The Public Ethics Commission was created in 1996 to ensure fairness, openness, honesty and integrity in City government. The PEC's work is governed by local ordinances in three main areas: campaign finance, transparency, and ethics. The Commission's authority and ability to do its work is guided by the provisions outlined in the City Charter, as amended in 2014, as well as in each relevant ordinance, listed as follows:

- Government Ethics Act
- Conflict of Interest Code
- Oakland Campaign Reform Act
- Lobbyist Registration Act
- Sunshine Ordinance
- Limited Public Financing Act
- False Endorsement in Campaign Literature Act

The Commission's activities, and the six-person staffing structure are organized by the following ethics compliance framework to ensure a strong, effective, and fair ethics commission:

Lead/Collaborate – Lead by example and facilitate City policy, management, and technological changes to further the Commission's mission.

Educate/Engage – Provide education, advice, technical assistance, and formal legal opinions to promote awareness and understanding of the City's campaign finance, ethics, and transparency laws.

Disclose/Illuminate – Facilitate accurate, effective, and accessible disclosure of government integrity data, such as campaign finance reporting, conflicts of interest/gifts reports, and lobbyist activities, all of which help the public and PEC staff monitor filings, view information, and detect inconsistencies or noncompliance.

Detect/Deter – Conduct investigations and audits to monitor compliance with the laws within the Commission's jurisdiction.

Prosecute – Enforce violations of the laws within the Commission's jurisdiction through administrative or civil remedies.

DEVELOPING PERFORMANCE MONITORING TOOLS

During the second half of 2021, Commission staff began implementing the recommendations of the Commission's **Spotlight on Oakland's Public Records System** report to provide an ongoing monitoring tool for public records request performance by putting into operation the technical requirements to sync real-time data from the NextRequest database to a performance webpage. Staff developed a process to clean and prepare the raw data and calculate department statistics and initial performance metrics to measure compliance with the requirements of the California Public Records Act and Oakland Sunshine Ordinance for timeliness, transparency, quality of service, and best practices.

FACILITATING PROCESS IMPROVEMENTS

In response to systemic issues exposed in the process of investigating recent enforcement cases, Commission staff engaged in consultations with the Human Services Department and the Planning and Building Department to assist with the development and refining of disclosure tools intended to help employees understand and disclose potential conflicts that may arise in grant, contract, and other application processes where employees are participating in the proposal evaluation process.

EDUCATE AND ENGAGE

Prevention activities consist of education, outreach, and online information to facilitate compliance with government integrity laws. The Commission educates and advises candidates for local elective office, elected officials, appointed officials, City staff, lobbyists, people doing business with Oakland, City residents, businesses, and organizations.

ADVICE AND ASSISTANCE

In 2021, Commission staff responded to 260 requests for information, advice or assistance regarding campaign finance, ethics, lobbyist registration or public records issues, fielding an average 22 requests per month. Over half of requests for advice and assistance came from lobbyists, treasurers, candidates, and law firms seeking to comply with lobbying and campaign finance disclosure laws. Other questions came from City staff and officials, as well as members of the public regarding misuse of public resources, gift restrictions, and conflicts of interests rules, to name a few.

ETHICS TRAINING

Commission staff provided ethics training through various avenues reaching 781 participants, a three-year high, including the following target audiences:

- Elected officials (2) and their staff participated in ethics check-ins with PEC staff;
- New employees (290) attending the City's monthly orientation sessions received an introductory ethics presentation, and additionally, staff conducted a live ethics training at the Oakland Parks, Recreation, and Youth Development Department's Summer Orientation reaching over 65 new employees;
- One hundred and twenty-nine City employees completed the PEC's comprehensive Government Ethics



260 requests for information, advice or technical assistance

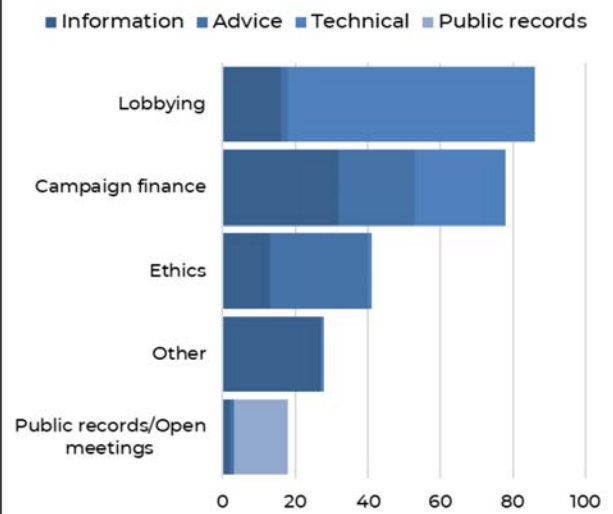


781 training participants

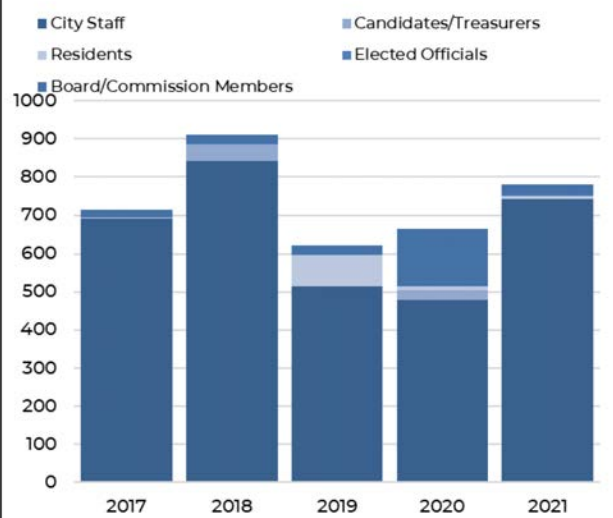


16 public records request mediations completed

Requests for Assistance by Topic 2021



Training Attendees 2017 - 2021



Training for Form 700 Filers, 59 through the City's online learning management system and another 70 attended four live trainings conducted by PEC staff via the Zoom platform; and

- City staff supervisors (100 in total) received a higher-level ethics training at the City's Supervisor Academy;
- Board and Commission members and staff received introductory ethics trainings, for a total of three Commissions and 150 board members and staff;
- The Commission's YouTube channel reached 945 viewers in 2021: 807 viewers watched the PEC's ten-minute ethics introductory video; another 54 viewers watched the one-hour Ethics Training for Form 700 Filers video; and 84 viewers watched ethics training segments on specific topics such as gift rules, conflicts of interests, misuse of City resources, and post-employment restrictions.

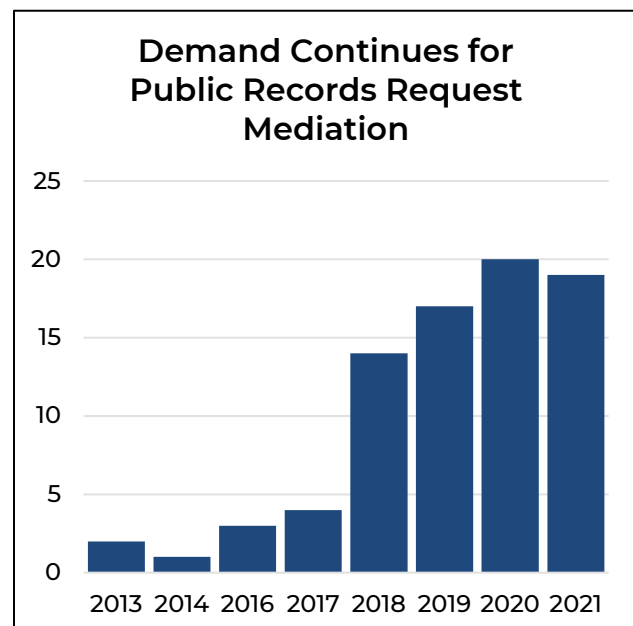
NEW DIVERSION AND SUNSHINE TRAINING PROGRAMS DEPLOYED

In July, Staff conducted the first training for the Commission's new enforcement diversion program. Two diversion participants successfully completed the required trainings including the Government Ethics Training for Form 700 Filers, a Conflicts of Interests training, and a one-on-one session with staff.

Staff launched a new online Sunshine Training covering open meeting rules. Twenty-eight board and commission members completed the training in 2021. Commission staff also expanded access to online training by offering on-demand training videos covering campaign finance basics and ethics, in addition to the new open meeting requirements training. On-demand training options are now featured prominently on the Commission's home page.

MEDIATION PROGRAM

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. In March 2021, the Mediation Program was moved from the Enforcement team to the Education and Engagement team to address the increase in workload from both mediations and enforcement cases, facilitate staff ability to enhance education and engagement through the mediation process itself, and integrate this work with the PEC's broader Sunshine Review project to assess department performance Citywide as discussed above.



The Commission received 19 new requests for mediation in 2021, continuing the high demand for mediations since 2018. Sixteen mediations were completed in 2021.

DISCLOSE AND ILLUMINATE

The Commission's Disclosure Program aims to help candidates, lobbyists and City officials submit required disclosure reports and ensure Oaklanders can easily access campaign finance, lobbyist, and ethics-related data and information that is accurate, user-friendly, and understandable. The goal is for the public and the PEC to be able to monitor filings, view information, and detect inconsistencies or noncompliance. This program utilizes a collaborative transparency approach, which reaches beyond the traditional minimum of providing copies of filings; the Commission proactively shares data in user-centered formats, invites participation and feedback, and facilitates shared discussion around community needs.



500+ campaign and lobbyist disclosure reports reviewed



8 datasets and 10 visualizations published



12,000+ views of ethics data and visualizations

DIGITAL TOOLS AND OPEN DATA EXPANDED

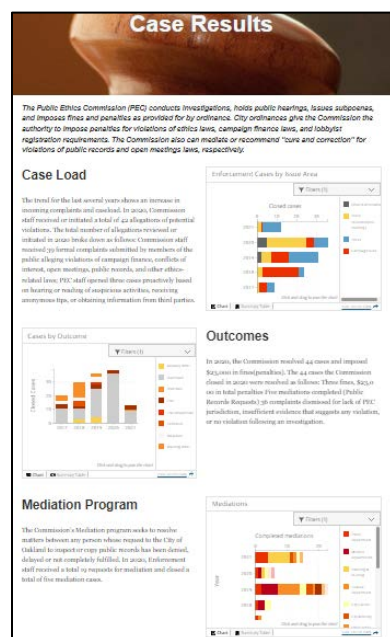
The Commission collects, reviews, and provides public access to ethics-related data. As part of this responsibility, Commission staff works to put the information into formats that can be searched and displayed in easy-to-use data visualizations made available for public viewing.

New features added to the Commission's Lobbyist Dashboard and Data Portal in 2021 enabled users to sort and filter the Lobbyist Directory as well as search lobbyist activity reports based on the client name.

Commission staff implemented its largest release of new data since 2013 with the publication of eight new ethics-related datasets and ten interactive data visualizations on OakData, the City's open data portal, including:

- Three datasets containing lobbyist disclosure data including client information, client payments, contacts with Oakland officials, and campaign contributions solicited by lobbyists.
- Two datasets containing data from Oakland's NextRequest public records request system, with information such as the department assignments, request status, and closure date.
- A dataset with information from disclosure reports submitted when an Oakland elected official solicits a payment over \$5,000 from a third party for a legislative, governmental, or charitable purpose.
- Two datasets summarizing PEC enforcement and mediation cases.

The new datasets garnered over 800 visits and 29 downloads in 2021. The Commission's open datasets have received 32,134 visits and 11,754 downloads to date.



ONLINE ENGAGEMENT HIGHLIGHTS ENFORCEMENT DATA

Commission staff added three new pages of interactive charts and tables displaying PEC enforcement and mediation outcomes to the Commission website in September. The interactive tables allow website users to search, sort and download summaries of closed enforcement cases and completed mediations. In addition, staff published a Case Results webpage to provide an up-to-date and easy to access overview of enforcement activities.

Commission staff continued highlighting specific PEC policy areas, activities, and client-groups via social media, gaining 205 new followers for a total of 1,667 at the end of 2021. Social media posts generated more than 800 user engagements (likes, shares, retweets, clicks on links, and new followers).

DISCLOSURE COMPLIANCE AND DATA

As Filing Officer, the Commission collects, reviews, and provides public access to ethics-related data.

Campaign Finance data includes candidate and ballot-measure campaign committee information, including contributions to and expenditures made by the committee during the election cycle. Oakland had 77 active political committees as of December 2021. In a non-election year, all active campaign committees must file two semi-annual campaign statements. In all, staff processed and reviewed over 300 campaign-related filings during 2021.

Political Contributions Solicited by City Officials (OCRA Form 303) – Effective July 1, 2019, any Oakland public servant required to file a Statement of Economic Interests (Form 700) who successfully solicits a political contribution of \$5,000 or more from any person or entity that contracts or proposes to contract with the official's department must disclose the solicitation to the Public Ethics Commission within 30 days. No solicited contributions were reported in 2021.

Lobbying activity reports identify who is lobbying City officials and for what purpose. In 2021, 83 lobbyists registered with the City of Oakland representing over 100 clients. Oakland lobbyists reported \$1,131,998* in payments from clients and a total of 900 contacts with City officials during the first three quarters of 2021. PEC staff provides outreach and assistance to lobbyists to ensure compliance with registration and reporting requirements. Staff processed 205 quarterly lobbyist activity reports in 2021.

Behested Payments reports (Form 803) show who is donating to a nonprofit organization at the request or solicitation of an elected official. Elected officials who solicit such payments are required to file a Form 803 to report these payments if they amount to \$5,000 or more. In 2021, the Commission received 33 filings reporting \$4,859,000 in total contributions at the behest of Oakland officials.

Statements of Economic Interests (Form 700) are filed with the City Clerk's office but are of high interest to the PEC in ensuring compliance with ethics laws that require reporting of personal financial information by City officials. Commission staff checks for elected official compliance with filing deadlines and provides education and advice regarding Form 700 filing.

*This figure includes voluntary disclosure of client payments to lobbyists. Total actual payments to lobbyists may be greater.

ENFORCEMENT

The Commission conducts investigations, holds public hearings, issues subpoenas, and imposes fines and penalties as provided for by ordinance. City ordinances give the Commission the authority to impose penalties for violations of ethics laws, campaign finance laws, and lobbyist registration requirements. The Commission also can mediate or recommend “cure and correction” for violations of public records and open meetings laws, respectively.



47 active investigations



14 cases resolved



\$365,600 in monetary penalties imposed

INCOMING CASES

Commission staff received a total of nine allegations of potential violations of campaign finance, conflicts of interest, open meetings, public records, and other ethics-related laws in 2021, ending the year with 44 open investigations.

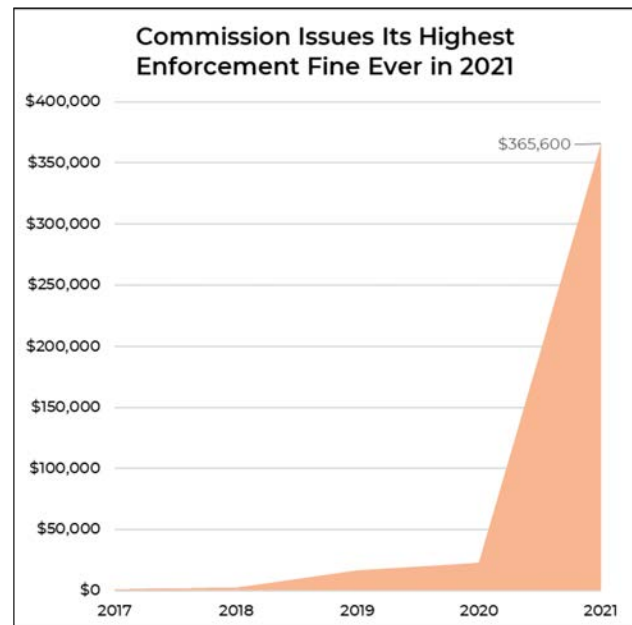
ENFORCEMENT OUTCOMES

By year end, the Commission resolved 14 cases as follows:

- Three fines, \$365,600 in total penalties;
- Two diversion agreements;
- Nine complaints dismissed (6 for lack of jurisdiction, 1 referred to another agency, 2 withdrawn by complainants).

Most notably in 2021, the Commission imposed its two largest ever fines for ethics cases involving significant bribery and conflicts of interest charges: a \$55,000 fine in the matter of Anthony Harbaugh, and a \$309,600 fine in the matter of Thomas Espinosa. The large monetary penalties assessed by the Commission reflect the number and seriousness of violations and the amount of money involved in the unlawful activity. Both cases required substantial staff resources due to both the complexity and volume of evidence as well as the lack of cooperation by respondents in each case – from evidence gathering to an administrative hearing.

In addition, the Commission employed its newly created Diversion program for the first time to resolve two ethics cases in which diversion was the best option for fair and effective enforcement of local ethics rules. These important actions highlight the PEC Enforcement Unit’s ability to employ effective tools to address ethics matters of any level of complexity in a manner that is commensurate to the seriousness of each violation.



2021 ENFORCEMENT ACTIONS SUMMARY

In the Matter of Thomas Espinosa (Case No. 16-14) After opening a proactive investigation in 2016, Commission staff found that between January 1, 2015, and September 15, 2016, Espinosa committed 47 violations of the Oakland Government Ethics Act, including: soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; misusing his City position to induce/coerce others to provide him with economic gain; and failing to report significant income from individuals with matters before him as a City building inspector. The Commission found probable cause that Espinosa violated the Government Ethics Act and set the matter to an administrative hearing, which was held in April 2021. Following the hearing, the Commission imposed a fine of \$308,600 at its September 2021 special meeting.

In the Matter of Anthony Harbaugh (Case No. 18-11). In November 2020, PEC staff brought to an administrative hearing evidence of a bribery and misuse of position scheme that involved Harbaugh, a City building inspector. Between January 2015 and December 2016, Harbaugh committed, participated in, or aided and abetted a fellow building inspector in committing multiple violations of the Oakland Government Ethics Act, including soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; and misusing his City position to induce/coerce others to provide him with and failing to report significant income from individuals with matters before him as a City building inspector. Following the administrative hearing held in November 2020, the Commission imposed a fine of \$55,000 at its January 2021 meeting.

In the Matter of Annie Campbell Washington for Oakland City Council 2018 (Case No. 19-06). In 2019, the Commission's filing officer for campaign statements referred former City Council member Annie Campbell Washington and her Annie Campbell Washington for Oakland City Council 2018 committee to the PEC Enforcement Unit for failing to file campaign statements for the period of July 1, 2018 through December 31, 2018. Enforcement staff found that Campbell Washington and her campaign committee, despite multiple warnings, did not electronically submit the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act for multiple periods between July 1, 2018, and December 31, 2020. The Commission adopted staff's recommendation to approve a stipulation imposing an enforcement penalty of \$1,000, in addition to \$1,171 in late fees assessed by the filing officer, at its December 2021 meeting.

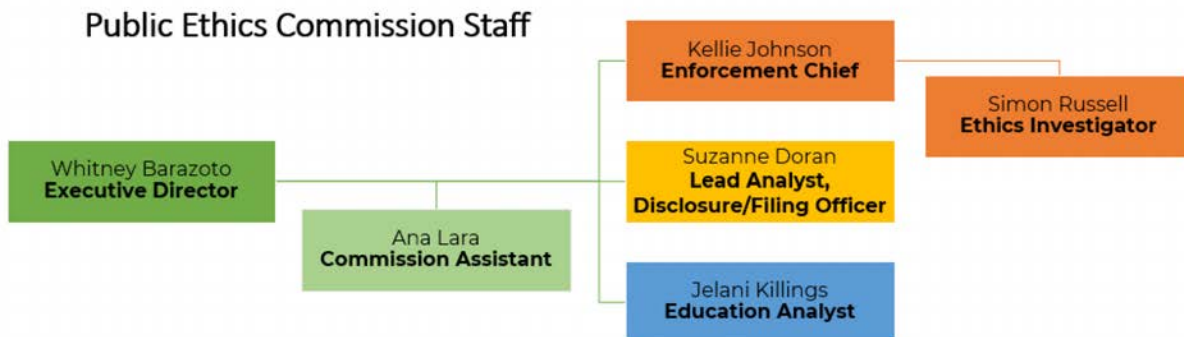
In the Matter of Everett Cleveland Jr. (Case No. 20-03 (a)). In January 2020, PEC staff received information alleging that Cleveland may have violated the Government Ethics Act while participating in deciding the award of funds by the City of Oakland Housing Community Development agency to a nonprofit housing developer under the 2019 Notice of Funding Availability (NOFA) program. Staff determined Cleveland had taken part in the decision-making process, and in April 2021 the Commission approved staff's recommendation of a Diversion Agreement to resolve the violation.

In the Matter of Norma Thompson (Case No. 20-03(b)). PEC staff received information alleging that Norma Thompson, a City of Oakland Housing Community Development (CHDC) staff member, was working as a paid consultant for the Community Housing Development Corporation at the time that she took part in the decision-making process regarding CHDC's 2019 Notice of Funding Availability applications. An investigation determined that Thompson failed to file a Form 700 when she rejoined the City in 2019, that she failed to file a Form 700 upon leaving office, and that she violated the City of Oakland revolving-door provisions of the Government Ethics Act through her consulting work with CHDC, and in April 2021 the Commission approved staff's recommendation of a Diversion Agreement to resolve the violation.

ADMINISTRATION

STAFFING

Commission staff are responsible for the Commission's day-to-day operations, including investigations and enforcement casework, education and advice, data collection and illumination activities, and law and policy projects. Throughout 2021, Commission staff worked remotely and adapted program activities to provide services without in-person contact. Staff continue to participate in ongoing professional development, covering topics such as reducing bias, inclusive engagement, continuing education in legal subjects, filing officer duties, and advanced data analysis and visualization.



BUDGET

The adopted budget for the Commission was \$1,206,539 for Fiscal Year 2020-21 and \$1,411,407 for Fiscal Year 2021-22. In June 2021, the City Council approved a budget that includes the addition of one new position for the PEC to begin in July 2022. The new position will provide administrative support to the Enforcement Team, including complaint intake, communications, complaint database management, case tracking, agenda and hearing preparation for enforcement cases, and other related tasks.

PUBLIC MEETINGS

The Commission's public meetings in 2021 continued to be held online and accessible to the public via the Zoom platform. On September 16, 2021, the Governor signed AB 361 which amended provisions of the Brown Act to allow local legislative bodies to continue to meet by teleconference so long as the body adopts certain findings in compliance with the new law. Since then and ongoing, the Commission must adopt a resolution with findings that a public health emergency still exists, warranting the PEC to meet via teleconference.

2021 COMMISSIONERS

Michael B. MacDonald, Chair **Commission Appointee 1/22/2020 - 1/21/2023**

Michael MacDonald is an Assistant City Clerk for the City of Berkeley. In that role, he supervises a variety of functions within the department with a focus on municipal elections, campaign filings, conflict of interests requirements, and regulations for City advisory commissions.



Prior to serving in municipal government, Michael spent three years as a District Representative under two California State Senators serving as lead representative for K-12 education, transportation, housing, and homelessness issue areas by working closely with the Senator, constituents, district organizations, local governments, and state agencies. Before moving to Oakland in 2018, Michael co-founded the Diversity Collective Ventura County Community Resource Center, a non-profit LGBTQ community center that strives to build a community in which LGBTQ people can be healthy, equal, and complete members of the community.

Michael is a CSU graduate with a Bachelor's Degree in Political Science. He lives in downtown Oakland with his partner.

Jerett Yan, Vice-chair **City Auditor Appointee 1/22/2019 - 1/21/2022**

Jerett Yan is an attorney with Hanson Bridgett LLP in San Francisco where he provides litigation and advisory services to public entities. In that capacity, he currently serves as a deputy city attorney to the City of Millbrae and an investigator for the San Jose Board of Fair Campaign and Political Practices, where he advises on matter relating to public ethics, transparency, elections, and campaign practices. He also has particular expertise in public works contracting, public ethics, and civil rights compliance.



Jerett previously served as an attorney adviser to the US Environmental Protection Agency's Office of Civil Rights, where he investigated claims of discrimination in environmental permitting practices, a law clerk with the Superior Court of California, County of Los Angeles, and at Americorp VISTA in Chicago as a tenant organizer with the Metropolitan Tenants Organization.

Jerett holds degrees from UC Berkeley School of Law and Northwestern University.

Avi Klein **Commission Appointee 11/19/2020 - 1/21/2022**

Avi Klein is a licensed private investigator based in Oakland, California. He previously served as managing investigator at The Mintz Group, one of the world's premier international investigations and due diligence firms; and managed private equity-related research for a winning presidential campaign. Earlier in his career, he was an investigative journalist in Washington, DC, where he focused on the finance, defense, and national security industries.



Avi has a BA from UC Davis and a law degree from the University of Southern California.

Jessica Leavitt

City Attorney Appointee 9/15/2021 - 1/21/2024

Jessica Leavitt is Senior Corporate Counsel with NetScout Systems, Inc., where she focuses on compliance issues. She previously worked at the City of Oakland as both a Deputy City Attorney and as an investigator for the Citizens' Police Review Board. She also worked as a Special Assistant to the Chief Trial Counsel of the State Bar of California and served on a number of local and state boards.



Jessica is a native Oaklander and holds a BA from Claremont McKenna College, a JD from UC Hastings, and a Master's degree in Information Science from the University of Michigan.

Ryan Micik

Commission Appointee 6/11/2021 - 1/21/2023

Ryan Micik operates a political research and communications consulting practice. His clients have included government reform advocacy organizations and other nonprofits, private companies, and candidates for all levels of government office, from school board to president. Among other services, he assists clients with mastering complex issues; navigating local, state and federal public records laws; and developing messaging and strategy.



He formerly served as deputy director of Maryland StateStat, a government performance management and accountability initiative. In that role, he engaged with state agencies to improve service delivery, increase government efficiency and responsiveness, and reduce waste.

Ryan earned a BA in Political Science from UC Berkeley, where he was active in progressive and AAPI organizations and won awards for radio journalism. He is a former member of the Alameda County Democratic Central Committee. He resides in Grand Lake.

Arvon J. Perteet

Commission Appointee 1/22/2021 - 1/21/2024

Arvon J. Perteet is the Global Legal Response and Fraud Investigations Manager at Square, Inc. Arvon's teams are responsible for conducting investigations related to external fraud against Square and Square's merchants and responding to legal requests, both civil and criminal in nature. Prior to working at Square, Arvon was an Assistant District Attorney in the Independent Investigations Bureau at the San Francisco District Attorney's Office investigating and prosecuting cases involving officer involved shootings, use of excessive force, and in-custody deaths. Arvon was an Assistant United States Attorney in the Northern District of California in the Asset Forfeiture Unit for eight years, and he was a Deputy District Attorney in the Contra Costa County District Attorney's office for two years. His legal career also included time at a small insurance defense firm in the Bay Area. Arvon is a graduate of



Golden Gate University School of Law, and a graduate of Morehouse College in Atlanta, Georgia. Arvon is an Oakland native.

Joseph Tuman

Mayoral Appointee 1/22/2020 – 1/21/2023

Joseph Tuman is a full-time university professor at San Francisco State University in First Amendment law, public speaking, critical thinking and argumentation, and debate. He has also taught at St. Mary's College, the New School for Social Research in New York, and Paris II Law School in France.



Joseph received his BA in Political Science from UC Berkeley with Great Distinction and Highest Honors and his JD from Boalt Law. His law work included comprehensive evidence review and sorting of internal documents produced by tobacco companies related to advertising and marketing campaigns targeting children for class-action lawsuits filed by different states. His law work also included being the primary drafter of a successful Amicus Curiae brief to US Supreme Court in *Reno v. ACLU* in 1997. He currently serves as an academic advisor to the North Atlantic Treaty Organization (NATO) regarding terrorist use of social media, symbolism and counter-messaging as counter-terrorism. He has also served as a political analyst for major television networks and newspapers, and is an author and senior editor of numerous books and academic journals, including "Political Communication in American Campaigns" (2004) and "Communicating Terror: The Rhetorical Dimensions of Terrorism" (2003 and 2011).

Joseph was born in Dallas, Texas, and raised in the San Joaquin Valley. He has lived in Oakland since 1984 and ran twice for Mayor of Oakland.



Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Room 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593



Arvon Perteet, Chair
Michael B. MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: January 28, 2022
RE: Draft Citywide Ticket Policy Ordinance

The Public Ethics Commission (PEC or Commission) is considering draft language for a new ordinance to update and codify the City's policy for the distribution of City tickets, such as tickets to City-sponsored events, events at City facilities or pursuant to City contracts, and events for which tickets are provided to the City for promotional purposes.

Oakland's existing City Ticket Policy consists of a City Council Resolution that is now outdated in relation to state and local law and that also created problems that the PEC identified in its report, *Ensuring Ethical and Transparent Distribution of City Tickets* in 2017. After publishing its report, the PEC drafted a new City Ticket Policy Resolution for City Council consideration, and staff engaged with City officials regarding both policy and process recommendations made by the Commission. In addition, the California Fair Political Practices Commission (FPPC) amended state regulations in 2019 to address some of the concerns that were raised in the PEC's report as well as the Alameda County Civil Grand Jury's report on Alameda County official use of tickets.

Following these discussions and state-level changes, Commission staff now brings a new draft policy in the form of an ordinance to the PEC for approval, for subsequent City Council review and potential adoption. The new ordinance will codify and update Oakland's City Ticket Policy to both align with state law and ensure local compliance.

Background

Attached is a copy of the PEC's report from 2017 that provides a description of the problem, discussion of the legal framework of state rules and local policy, a copy of the existing City Council resolution, and the PEC's recommendations for policy and process improvements. In short, the report explained the significance of a City Ticket Policy that allows for the receipt of tickets by City officials and employees that otherwise may be prohibited by gift rules under the California Political Reform Act. A City Ticket Policy is required by state law if a local entity wants to be able to distribute tickets for public purposes and if local public officials want to be able to receive such tickets, distributed for public purposes, without the tickets triggering gift limits and reporting requirements. The City of Oakland has an existing policy in City Council Resolution 82032; however, that policy was drafted in 2009 and is now out of date with more recent changes made to state regulations by the California FPPC.

The PEC report went on to illustrate numerous practical problems with the disproportional use of tickets (especially high-value tickets) by elected officials claiming to be "reviewing the facilities" as part of their service to the City, as well as the PEC's concern that tickets to Oakland Coliseum and Oracle Arena events, which are City resources since they are provided to the City as a joint

partner/owner of the facilities, should be delivered directly to the City Administration instead of elected officials.

Commission Staff Education and Outreach

During and following the PEC's review, staff engaged with Councilmembers and their staff to highlight these issues and ensure that they were aware of distribution requirements and state rules, particularly as it relates to tickets that Councilmembers receive from the Oakland Coliseum and Oracle Arena, which is the origin of almost all the tickets that were reported in the City's ticket distribution database at that time. This continued upon the onboarding of newly elected Councilmembers in more recent years, where PEC staff provided education specific to the distribution and use of tickets under state and local rules, as well as the concerns the PEC had with past practices. Following this education campaign, ticket data shows that ticket use shifted significantly, with some Councilmembers distributing more tickets to third parties and some Council members opting out of using or distributing any tickets at all. At least one Councilmember proposed eliminating the practice of the City receiving tickets from the Coliseum and Arena during budget discussions in 2018-19.

Ticket Policy Should Apply Citywide

While the focus of the PEC's report in 2017 was on the distribution of Coliseum and Arena event tickets to Councilmembers and other elected officials, those are not the only tickets that are subject to the state gift rules. Any public servant who is a Form 700 filer is subject to the gift prohibition of \$250 per calendar year from a single source and the requirement that any gift of \$50 or more be disclosed on the public servant's Form 700. Form 700 filers generally include all elected officials, board and commission members, designated staff positions (roughly one-third of city staff who are in decision-making roles), and consultants to the City. When a public servant receives tickets to an event, they should review these gifts rules to determine whether it exceeds the gift limit and whether it must be reported. If the tickets are received by the City and then distributed by a "Ticket Administrator" under the City policy, the tickets are exempt from gift limits and Form 700 reporting requirements and are instead subject to the policy provisions and an alternate reporting process.

New State Regulations

In 2019, the California Fair Political Practices Commission (FPPC) amended state regulations¹ to limit the potential for abuse of agency ticket policies by requiring each agency policy to include a provision prohibiting the disproportionate use of tickets by elected officials and department heads, as well as requiring an official to submit to the agency a written inspection report of findings and recommendations if the public purpose is for oversight or inspection of facilities. The new regulations also clarified the definition of "fair value" where a dollar amount is not specified on the ticket, which is often the case with luxury box or suite tickets.

Conclusion and Proposed Ordinance

The existing City Council Resolution does not include any reference to these newer requirements under state law, such as the prohibition on disproportionate use of City tickets or the method for establishing ticket value if none is indicated on the ticket. Furthermore, the Council Resolution was drafted for the primary purpose of addressing those tickets coming from the Oakland Coliseum and

¹ Title 2, Division 6, Cal. Code of Regulations Sections 18944.1, 18946, 18946.1, and 18942. These regulations can be accessed on the FPPC's website here: <https://www.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html>.

Item 7a - Staff Memorandum

Oracle Arena and does not provide a comprehensive City-wide policy that applies broadly to all City departments and all kinds of tickets that may be received and distributed by the City. Lastly, the Council Resolution was adopted in 2009, years before the creation and adoption of the Government Ethics Act in 2014, which provided the PEC with prevention and enforcement jurisdiction over ethics laws, and, specifically, rules regarding gifts and misuse of City resources.

To resolve the above concerns, Commission staff presents the attached draft ordinance to propose to City Council to rescind and supersede the existing Council Resolution and place the policy into an ordinance that provides Citywide guidance and authority. The new policy aims to provide clear instructions for the distribution and use of City tickets, an expanded list of public purposes for which City tickets may be distributed, and updates that align the policy with state rules, including incorporating a prohibition on disproportionate use of City tickets by elected and high-level officials and requiring reporting within 45 days. It also articulates the PEC's prevention and enforcement responsibilities consistent with other ordinances under the Commission's jurisdiction.

Recommended Action

Commission staff recommends the PEC approve the draft proposed ordinance for forwarding to City Council.

Attachment: Public Ethics Commission report, *Ensuring Ethical and Transparent Distribution of City Tickets*, 2017 (this report includes the existing policy, City Council Resolution 82032, in Appendix 1)

OAKLAND CITY COUNCIL

ORDINANCE _____ C.M.S.

**ADOPT A CITY OF OAKLAND "TICKET DISTRIBUTION POLICY" ORDINANCE
RESCINDING AND SUPERCEDING CITY COUNCIL RESOLUTION 82032 TO UPDATE
LOCAL POLICY IN ALIGNMENT WITH STATE AND LOCAL LAW AND ESTABLISH A
CITYWIDE ORDINANCE TO GOVERN THE DISTRIBUTION OF TICKETS TO EVENTS
FOR THE CITY OF OAKLAND**

WHEREAS, the City of Oakland receives and distributes tickets to a variety of entertainment, sporting, or recreational events throughout the City; and

WHEREAS, the distribution of City tickets is governed by the City of Oakland Policy for Receipt and Distribution of Passes and Tickets, adopted as City Council Resolution 75052, C.M.S., on June 15, 1999, and later revised as City Council Resolution 82032, C.M.S., on May 19, 2009; and

WHEREAS, the California Political Reform Act and the Oakland Government Ethics Act provide restrictions on gifts, including a local gift limit of \$250 from a single source in a calendar year, and a lower \$50 limit on gifts from a person doing business with or seeking to do business with the department of the Public Servant receiving the gift or from a person who attempted to influence the Public Servant in any legislative or administrative action within the prior twelve months; and

WHEREAS, tickets are generally considered gifts to a Public Servant, unless a specific exception applies pursuant to the California Political Reform Act, including an exception for tickets that are received pursuant to a local agency's written policy, adopted by that agency's legislative body, which sets forth the public purposes of the agency for which tickets may be distributed; and

WHEREAS, tickets received and reported by Public Servants pursuant to a City's ticket policy and properly used for a "public purpose" as described in the policy are considered exempt from the gift reporting and gift limit rules of the California Political Reform Act and Oakland Government Ethics Act; alternatively, tickets received by Public Servants in a manner that does not meet all of the requirements of the policy are otherwise subject to state and local gift rules, restrictions, and reporting requirements or may be considered income.

WHEREAS, the California Fair Political Practices Commission (FPPC), which administers the California Political Reform Act, recently amended Regulations 18944.1, 18946, 18946.1, and 18942 to provide clarifying and substantive changes to ensure that City Tickets are not disproportionately used by elected and appointed officials and that, if tickets are distributed to

Item 7b - Draft Proposed City Ticket Policy Ordinance

such officials for oversight or inspection of facilities, then those officials must include a written report of findings and recommendations as a result of their review during the ticket use, among other changes; and

WHEREAS, the Oakland Government Ethics Act was adopted by City Council in 2014 to incorporate and supplement the California Political Reform Act, including gift prohibitions, exceptions, and exemptions such as that provided by Regulation 18944.1, and to provide the Oakland Public Ethics Commission with specific authority to prevent and enforce violations of ethics laws; and

WHEREAS, existing City Council Resolution 82032, C.M.S., now is outdated and out of alignment with state law and Oakland's legal framework for education and enforcement of ethics laws under the Oakland Government Ethics Act.

NOW, THEREFORE, BE IT ORDAINED,

The City Council of the City of Oakland, to ensure compliance with the Oakland Government Ethics Act and the California Political Reform Act by the City and its public officials, and to provide a clear policy for the receipt, distribution, and reporting of the use of City tickets, does hereby enact the City of Oakland Ticket Policy Ordinance (hereinafter referred to as the Ticket Policy), to provide as follows:

Item 7b - Draft Proposed City Ticket Policy Ordinance

Chapter 2.26 – City of Oakland Ticket Distribution Policy

2.26.010 – Short title.

This chapter shall be known as the City of Oakland Ticket Distribution Policy.

2.26.020 – Purpose.

- A. This chapter is adopted pursuant to section 18944.1 of Title 2 of the California Code of Regulations as the written ticket distribution policy for the City of Oakland. This chapter governs the distribution of tickets by all departments and offices of elected officials and supersedes any ticket distribution policy or procedures adopted by City Council or City department.
- B. This chapter articulates the public purpose, requirements, and restrictions for the distribution of City tickets to accomplish the following objectives:
 - 1. Ensure that the City's distribution of tickets to and at the behest of Public Servants complies with state law exempting such tickets from gift reporting requirements and limits; and
 - 2. Ensure that tickets, which are City resources, are appropriately distributed to Public Servants or non-City individuals for City purposes, as defined by this chapter.

2.26.030 – Definitions.

- A. Unless expressly defined in this chapter, the words and terms used in this chapter have the same meaning as those defined or used in the California Political Reform Act (Government Code Sections 81000, *et seq.*), as amended, and Fair Political Practices Commission Regulations (Title 2, Sections 18110, *et seq.*, of the California Code of Regulations), as amended.
- B. "City" or "City of Oakland" means and includes the City of Oakland and any of its departments, boards, and commissions.
- C. "City ticket" means any ticket or pass received by the City pursuant to the terms of a contract for use of public property; offered by the City to officials for a City-controlled event; purchased by the City as a lawful expenditure of City money; or obtained by the City from an outside source that did not earmark the tickets for use by a particular official, and the City determines, in its sole discretion, who will receive the ticket.
- D. "Elected official" means the Mayor, City Councilmembers, the City Attorney, and the City Auditor.
- E. "Immediate family" means a person's spouse or registered domestic partner and dependent children.

Item 7b - Draft Proposed City Ticket Policy Ordinance

- F. "Public Servant," as defined by the Oakland Government Ethics Act, includes:
1. Any elected or appointed officeholder of the City of Oakland, including any such officeholder elected but not yet sworn in, and not including Oakland School Board Directors, and
 2. Any City board or commission member, including the Board of Port Commissioners, and
 3. Any full-time or part-time employee of the City, and
 4. Any consultant of the City who is required to file a Form 700 Statement of Economic Interests pursuant to the City of Oakland Conflict of Interest Code and the California Political Reform Act.
- G. "Ticket" means and includes any form of admission, parking, or other access privilege to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose, if similar tickets are sold or provided to the public to view, listen to, or otherwise take advantage of the attraction or activity.
- H. "Ticket Administrator" means an agency or department's chief administrative officer or their designee. For Citywide elective offices, the chief administrative officer is the elected City official or their designee. For Council Member offices, the chief administrative officer is the City Council President or their designee. Both the chief administrative officer and their designee(s) are responsible for ensuring tickets are distributed according to this policy.

2.26.040 – City Receipt of Tickets.

Tickets received or distributed pursuant to this policy must first be obtained by the Ticket Administrator and logged into a database that reflects the number of tickets, event venue, name and date of the event, and the face value for each ticket. If the ticket does not identify a face value, the Ticket Administrator must identify the price at which the ticket or pass would otherwise be offered for sale to the public by the operator of the venue or host of the event who offers the ticket for public sale.

2.26.050 – Ticket Distribution Process.

- A. Each Ticket Administrator shall establish a process for ticket distribution that ensures that tickets are tracked and distributed according to the public purposes and limitations of this policy. The Ticket Administrator and their designee are both responsible for determining whether the ticket distribution is made in furtherance of at least one of the public purposes provided in this chapter. The process shall be electronic so that it can be updated, searched, and provided to the public in electronic format.
- B. The Ticket Administrator shall collect the following information before distributing any tickets to Public Servants or non-City individuals:

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1. The ticket recipient's name and department if a Public Servant, or the ticket recipient's name and organization if a non-City individual;
 2. A description of the event;
 3. The date of the event;
 4. The fair value of the ticket, which is the face value on the ticket, or, if no value is indicated or if the face value does not reflect the actual cost for a ticket in a luxury box or suite, the face value is the total cost of the suite divided by the number of tickets available for the suite;
 5. The number of tickets provided;
 6. If the ticket distribution to the Public Servant or non-City individual was requested by another City official, the name of the requesting or "behesting" official; and
 7. The public purpose that best describes the reason for the distribution of the tickets, from the list provided in this policy.
- C. The Ticket Administrator shall not distribute any City ticket, even temporarily, to any Public Servant or non-City individual without first receiving the above information. If any of the information required above changes following the distribution or use of the ticket, the ticket recipient must notify the Ticket Administrator within 10 days of the change to accurately reflect the use of the ticket.
- D. The Ticket Administrator may receive requests for City tickets to be distributed to other Public Servants, non-City individuals, or organizations for a public purpose as provided by this policy, so long as the Ticket Administrator collects the above information from the ticket recipients directly, determines that a stated public purpose applies, and distributes the tickets to the recipients directly.

2.26.60 – Reporting of City Ticket Data.

- A. For every City ticket received and distributed under this policy, the Ticket Administrator is responsible for ensuring that all ticket distribution data is complete, properly entered into the City's information management system created for this purpose, and maintained as a public record subject to public inspection. Pursuant to State law, all City ticket information must be entered into the City's information management system within 45 days of the distribution of any ticket under this policy.
- B. All ticket distribution data entered into the City's information management system under this policy must be made available to the public online and in real time in an electronic machine-readable format that is accessible, searchable, and downloadable.

2.26.070 – Public Purposes.

The distribution of any City Ticket pursuant to this policy must accomplish one of the following stated public purposes:

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- A. Further the City's work, mission, or duties;
- B. Recognize or encourage young people by providing opportunities for youth development, civic engagement, mentoring, or participation in cultural, artistic, educational, recreational, or community activities in the City;
- C. Promote City-controlled or City-sponsored events, activities, or programs;
- D. Enable a Public Servant to work at or attend the event as part of the Public Servant's job duties for the City;
- E. Promote or support community programs and resources available to City residents;
- F. Support or show appreciation for programs or services rendered by nonprofit 501(c)(3), educational, or government organizations that benefit City residents;
- G. Recognize significant academic, athletic, or public achievements of City residents;
- H. Recognize the meritorious service of another current or outgoing Public Servant or volunteer, for which such Public Servant or volunteer may receive up to 4 tickets per event, notwithstanding the limitations set forth in section 2.26.080;
- I. Promote local and regional businesses, economic development, local culture, and tourism activities within the City, including conventions, conferences, and job creation opportunities;
- J. Provide opportunities for economically disadvantaged or underserved residents to engage in cultural, artistic, educational, recreational, or community activities in the City; or
- K. Facilitate a Public Servant's oversight or inspection of a City facility or event, in which case a written inspection report of findings and recommendations by the official using the ticket must be submitted to the Ticket Administrator and included with the online ticket distribution data as required by state law.

2.26.080 – Limits on the Distribution, Use and Transfer of City Tickets.

- A. A Public Servant may receive no more than two tickets per event: one for their personal use under this policy and the other for a guest. No other transfer of a City ticket by a Public Servant, other than the Ticket Administrator, is permissible.
- B. City Councilmembers, Citywide elected officials, chief administrative officers, political appointees, and department directors may not disproportionately use City tickets. For purposes of this Chapter, disproportionate use means either of the following:
 - a. Using a greater number of tickets than any other person not listed in this subsection who receives tickets from the City, or
 - b. Using more than one set of two tickets to an event per facility per calendar year.
- C. Nothing in this chapter prohibits a Public Servant from purchasing a ticket to an event for themselves or for additional guests to attend an event.

Item 7b - Draft Proposed City Ticket Policy Ordinance

2.26.090 – Public Ethics Commission Role and Responsibilities.

- A. Prevention. The Commission, in consultation with the City Attorney, shall provide timely advice, assistance, and training to Public Servants who are subject to the requirements of this Act.
- B. Implementation. The Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this Act pursuant to Chapter 2.24 of the Oakland Municipal Code.
- C. Enforcement. A person who violates this Act is subject the same enforcement provisions as provided in Chapter 2.25, the Oakland Government Ethics Act.

2.26.100 – Miscellaneous provisions.

All references to other laws in this Act shall refer to those laws as they may be amended from time to time.

2.26.110 – Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

2.26.120 – Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, Gallo, Kalb, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

Item 7b - Draft Proposed City Ticket Policy Ordinance

ATTEST: _____

ASHA REED

City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

Item 7b - Draft Proposed City Ticket Policy Ordinance

NOTICE AND DIGEST

ADOPT A CITY OF OAKLAND “TICKET DISTRIBUTION POLICY” ORDINANCE RESCINDING AND SUPERCEDING CITY COUNCIL RESOLUTION 82032 TO UPDATE LOCAL POLICY IN ALIGNMENT WITH STATE AND LOCAL LAW AND ESTABLISH A CITYWIDE ORDINANCE TO GOVERN THE DISTRIBUTION OF TICKETS TO EVENTS FOR THE CITY OF OAKLAND

Adoption of this Ordinance will rescind and supersede City Council Resolution 82032 to update local policy to bring it into alignment with state and local law. This Ordinance will establish a citywide distribution process for all tickets received or in the possession of the city.

City of Oakland Public Ethics Commission



Ensuring Ethical and Transparent Distribution of City Tickets

April 2017



Public Ethics Commission
1 Frank H. Ogawa Plaza, Room 104
Oakland, CA 94612
Phone: (510) 238-3593
Fax: (510) 238-3315
ethicscommission@oaklandnet.com
Web: www.oaklandnet.com/pec



Ensuring Ethical and Transparent Distribution of City Tickets

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EXECUTIVE SUMMARY

Oakland City officials have been receiving thousands of luxury suite tickets from the Oracle Arena and Oakland-Alameda County Coliseum (Oakland Coliseum) each year pursuant to contracts with the Golden State Warriors, Oakland Raiders, and Oakland Athletics (A's) sports teams. These "City tickets" (at least two and sometimes four per event, per official) are given directly to City Councilmembers and the Mayor for their personal use and distribution. In addition, the Oakland Alameda County Coliseum Authority (Coliseum Authority) provides two tickets per event to the City Attorney and the City Administrator and upon request to other City officials, including Councilmembers. Ultimately, over the two-year period between January 2015 and December 2016, over 11,000 tickets were available to City officials.

According to state and local law, tickets to these events are considered gifts to public officials unless the City adopts a written ticket distribution policy that identifies the public purpose served by the distribution of the tickets. The *City of Oakland Policy for Receipt and Distribution of Passes and Tickets*, adopted in May 2009,¹ provides a list of reasons for which a City official or third party may receive and use a ticket for a "governmental purpose," including "oversight" and "review" of facilities and "rewarding" a City employee, community activist, or school/non-profit organization for their work.

News reports in 2016 reflected some elected officials attending many dozens of Golden State Warriors games using City tickets, and claiming they were there each time to "oversee the facilities." The Public Ethics Commission (Commission) used its new authority granted in 2014 to open an investigation in June 2016 to determine whether any laws were broken, and it further decided that the City's policy and process for distributing tickets also needed evaluation. As part of the latter review, the Commission held a public hearing in November 2016 to review the process by which the City receives, tracks, and distributes tickets provided to the City pursuant to agreements with the Coliseum Authority and the Oakland A's, Raiders, and Warriors teams. The Commission gathered information about the ticket distribution process, reviewed the state law that governs the receipt of free tickets and the disclosure of those transactions, discussed the current policy, and identified concerns with the process by which tickets are handed out to public officials and reported online.

While the state gift rule exception was designed to allow for City distribution of tickets that serve a public purpose, the use and distribution of Oakland Coliseum and Oracle Arena tickets here in Oakland raises multiple concerns about whether the public purpose is achieved in the current process, at best, and, at worst, whether receipt and use of these tickets amounts to a conflict of interest, mismanagement and misuse of public resources, or self-dealing. The Commission, in its recent review of the distribution of City and Coliseum Authority tickets, found the following significant problems:

- The City receives and distributes thousands of tickets each year in a manner that is poorly managed, allows tickets to be handed out to officials despite some officials failing to report ticket information as required by law, and permits public officials and other ticket recipients to claim purported reasons for the use of each ticket that is inconsistent with the nature or extent of their ticket use.

¹ City Council Resolution 82032

- The receipt and use of tickets by City officials who are involved in negotiating, drafting, and approving the contracts under which the tickets are provided to the City presents significant, inherent ethics concerns in the area of conflicts of interest and self-dealing.
- City tickets have been viewed as a perk of office or employment rather than a public asset to be managed and utilized for a public purpose as required by law.
- Form 802 (ticket use) data is incomplete, with several officials failing to file legally-required information; the data also is difficult to find and not provided to the public in an open data format that is searchable and easily consumed by the public.
- Thousands of luxury suite tickets go unused by the City each year, wasting thousands of dollars in City resources, and, due to the design of the distribution process, elected officials have been required to submit hundreds of unnecessary reports of unused tickets.
- The City ticket policy provides vague and questionable reasons for attending events and lacks limitations on the allowable ticket use by officials and distribution to third parties, and the policy lacks express enforcement mechanisms to ensure compliance with the policy and the law.
- Separate from the City's ticket distribution policy and process, the Coliseum Authority's policy, which allows for the distribution and use of hundreds of tickets to certain City and Alameda County officials for facility oversight-related duties, raises many of the same ethical and public purpose concerns as in the City's policy.

The longstanding practice of handing large batches of Oakland Coliseum and Oracle Arena tickets to elected officials under an outdated policy, combined with a cavalier attitude and ineffective system of reporting tickets, results in these tickets being used by City officials and staff as if they were a perk – or tickets going unused or unreported – in contrast to the public purpose for which the gift exemption was intended. Given the history of the use of tickets by elected officials, and the evolution of laws and ethics policies in Oakland and other jurisdictions, the Commission recommends a new approach to both the policy and the process of receiving, distributing, and disclosing information about tickets provided to the City.

This report summarizes the Commission's findings and provides specific recommendations that the Commission urges the Mayor, City Council, and City Administrator to implement in order to ensure that Oakland Coliseum and Oracle Arena tickets provided to the City are used for public purposes and distributed and reported according to state and local law.

BACKGROUND

City Officials Receive Thousands of Tickets Each Year

The City of Oakland receives 20 luxury suite tickets to every Oracle Arena event and 18 luxury suite tickets to every Oakland Coliseum event pursuant to contract agreements with the Golden State Warriors, Oakland Raiders, and Oakland A's. Councilmembers and the Mayor each receive two suite tickets, and the Council President receives four suite tickets, to every event at the Oakland Coliseum and Oracle Arena. In addition, City Councilmembers also receive two field tickets (on top of the two or four suite tickets) to every A's game. These "City tickets," in addition to complimentary parking passes, are delivered to City Councilmembers, the City Council President, and the Mayor, resulting in approximately 8,000² tickets given to City Councilmembers and the Mayor in 2015 and 2016.

Separate from the above-described "City tickets," certain elected officials each are entitled to receive roughly two luxury suite tickets per event from the Coliseum Authority, a multi-agency joint powers authority that manages the Coliseum Complex on behalf of the City of Oakland and the County of Alameda. These sets of tickets, referred to here as "Authority tickets," are provided to members and other executives who participate on the board or assist in the work of the Coliseum Authority, including the City Attorney, City Administrator, and City Councilmembers who sit on the Authority Board as representatives of the City.³ City Councilmembers who sit on the Coliseum Authority receive City tickets as well as Authority tickets. Oakland City officials received over 1,100⁴ Authority tickets in 2016.

Coliseum Complex

The Oakland-Alameda County Coliseum Complex consists of the following two facilities:

Oracle Arena is an indoor arena seating up to approximately 19,000 patrons; home of the Golden State Warriors; also hosts many concerts, family shows (ice shows and circus) and other sporting events. The arena contains three clubs and 72 luxury suites.

Oakland Alameda County Coliseum is an outdoor stadium that seats up to 63,000 patrons, is home of the Oakland Athletics (A's) and the Oakland Raiders, and host to other sporting events such as soccer, motorsports, and concerts. The Coliseum contains two clubs and 147 luxury suites.

Entity Receiving Tickets	Arena Suite	Coliseum Suite
Coliseum Authority	M-39	L-16
City of Oakland	M-13	L-53
Alameda Co.	M-14	L-54

Oakland Alameda County Coliseum Authority, *About Us*, <http://www.coliseum.com/oacca/about-the-authority>, accessed on November 14, 2016.

Tickets are Gifts Under State Law, Except for "Public Purpose"

Under state law, event tickets received by public officials (elected officials and staff) generally are considered gifts to the public official and subject to the state gift limits of \$460 (in 2016)⁵ per calendar

² Most numerical representations for "City tickets" in this report are based on data available through the City's Form 802 database as of January 24, 2017, provided in raw data format by the City's Information Technology Department. This information can be found in piecemeal form on the City Council's website: <http://www2.oaklandnet.com/government/o/CityCouncil/index.htm>, which represents information as it was reported by City officials and confirmed by the Council Assistant. Form 802 data represented in this report may contain duplicate reporting or data entry errors made by persons reporting or confirming the information. Additional data from the Council Assistant's records has been added into this report to compare the raw 802 data with available records showing which tickets were signed out by the Mayor or Councilmembers, or their staff, for the time period of January 1, 2015 through December 31, 2016.

³ In 2015 and 2016, City Councilmembers Kaplan and Reid represented the City on the Coliseum Authority Board. As of March 2017, City Councilmembers McElhaney and Reid represent the City on the Authority Board.

⁴ Numerical representations of data for "Authority tickets" are based on Form 802 data compiled manually from the Coliseum Authority's online Form 802 filings found on the Coliseum Authority's website: <http://www.oraclearena.com/oacca/public-information>.

⁵ State gift limits are adjusted by the California Fair Political Practices Commission every odd-numbered year per the California Political Reform Act, FPPC Regulation 18940.2.

year. In Oakland, the gift limit is \$250 per year, or \$50 if the gift-giver is or has recently done business with the City.⁶ An exception to the gift rule allows tickets to be received, distributed, and reported by the agency, in lieu of being considered a gift to the official, if that agency has adopted a written policy that identifies the public purpose served in distributing the tickets and the official adheres to the policy.⁷

California Fair Political Practices Commission (FPPC) Regulation 18944.1 outlines the exception to the gift rule for tickets given to an agency and distributed according to a written agency ticket distribution policy. The regulation states that the written policy must be adopted by the legislative body of the agency and must include all of the following:

1. A provision setting forth the public purposes of the agency for which tickets or passes may be distributed;
2. A provision requiring that the distribution of any ticket or pass to, or at the behest of, an agency official accomplishes a stated public purpose of the policy;
3. A provision prohibiting the transfer of any ticket received by an agency official pursuant to the distribution policy except to members of the official's immediate family or no more than one guest solely for their attendance at the event;
4. The policy must be maintained as a public record and is subject to inspection and copying; the agency also must post the policy on its website within 30 days of adoption or amendment and send to the FPPC a link to the website where the policy is posted.⁸

Further, tickets received under this exception must be disclosed on FPPC Form 802 (shown here and attached as Appendix 1) within 45 days of the distribution of the ticket. The regulation requires the following reporting:

1. General use requires the following information to be reported:
 - a. Name of person receiving the ticket or pass;
 - b. Description of the event;
 - c. Date of the event;
 - d. Face value of the ticket or pass;
 - e. Number of tickets or passes provided to each person;
 - f. If the ticket or pass is behested, the name of the official who behested the ticket;

Agency Report of: Ceremonial Role Events and Ticket/Pass Distributions A Public Document
California Form 802
For Official Use Only

1. Agency Name
Division, Department, or Region (if applicable)
Designated Agency Contact (Name, Title)
Area Code/Phone Number E-mail
Date of Original Filing: (month, day, year)

2. Function or Event Information
Does the agency have a ticket policy? Yes ☐ No ☐ Face Value of Each Ticket/Pass \$ _____
Event Description: _____ Date(s) _____
Ticket(s)/Pass(es) provided by agency? Yes ☐ No ☐ If no: _____ Name of Source _____
Was ticket distribution made at the behest of agency official? Yes ☐ No ☐ If yes: _____ Official's Name (Last, First) _____

3. Recipients
• Use Section A to identify the agency's department or unit. • Use Section B to identify an individual. • Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Ticket(s)/Passes	Describe the public purpose made pursuant to the agency's policy

B. Name of Individual (Last, First)	Number of Ticket(s)/Passes	Identify one of the following:
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> If checking "Ceremonial Role" or "Other" describe below: _____
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> If checking "Ceremonial Role" or "Other" describe below: _____

C. Name of Outside Organization (include address and description)	Number of Ticket(s)/Passes	Describe the public purpose made pursuant to the agency's policy

4. Verification
I have read and understand FPPC Regulations 18944.1 and 18942. I have verified that the distribution set forth above, is in accordance with the requirements.
Signature of Agency Head or Designee _____ Print Name _____ Title _____ (month, day, year)
Comment: _____

FPPC Form 802 (2016)
FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)

⁶ Oakland Government Ethics Act, O.M.C Section 2.25, adopted in December 2014.

⁷ California Fair Political Practices Commission, *Reporting Ceremonial Role Events and Ticket/Admission Distribution – Form 802*, <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/reporting-ceremonial-role-events-and-ticket-admission.html>, accessed October 25, 2016

⁸ California Fair Political Practices Commission, Regulation 18944.1.

- g. Description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.
2. Tickets provided to an outside organization require the following information to be reported: Name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of reporting the names of each individual as required above.
3. Agency reports on tickets received by the Agency from an outside source or pursuant to a contract with the City, as described in the regulation, may include the name of the department or unit in lieu of reporting the name of the individual employee. Elected officials and members of the legislative or governing body of the agency are not included in this exception.⁹

In sum, state law provides an exception to the gift rules if a local government agency adopts a written policy that identifies the public purpose served in distributing the tickets and the official complies with the policy. Both Oakland and the Coliseum Authority have adopted such policies, and each has instituted a process for distributing tickets according to the policy.

⁹ California Fair Political Practices Commission, Regulation 18944.1.

CITY OF OAKLAND POLICY AND PROCESS

Oakland's Ticket Distribution Policy

The distribution of City tickets is governed by the *City of Oakland's Policy for Receipt and Distribution of Passes and Tickets* (Ticket policy) adopted as City Council Resolution 75052 in June 1999 and later revised as City Council Resolution 82032 in May 2009. This policy authorizes the use of tickets, as exceptions to the state gift rules which impose a current limit of \$470¹⁰ on gifts given to a public official, if the use is for a "governmental purpose" as defined by the Ticket policy. Oakland's policy includes as a "governmental purpose" the following list of reasons for which a public official or third party may receive and use a ticket and not have the ticket be subject to the state gift limit:

1. Oversight of facilities or events that have received City funding or support;
2. Oversight of facilities or events that may require City funding or support in the near future;
3. Reviewing a facility's contribution to blight abatement within a Redevelopment Area;
4. Reviewing the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;
5. Reviewing the ability of a facility or its operator to participate in the City's job creation goals or training programs;
6. Reviewing the contribution of a facility or an event to the City's goals for fostering arts and culture opportunities for City residents;
7. Rewarding a City of Oakland employee for his/her exemplary service to the City;
8. Rewarding a community activist for his or her service to the City of Oakland;
9. Rewarding a school or nonprofit organization for its contributions to the community; and
10. Rewarding an Oakland student for outstanding scholastic achievement.

The above reasons limit ticket use in Oakland to oversight of the facilities or the role of the facility or event in City life, or rewarding a person or organization for their work. Unlike other cities that have ticket distribution policies, Oakland does not recognize other public purposes for the distribution of event tickets, such as promoting local economic development; promoting City business, resources, programs, and facilities; and promoting cultural, recreational, and educational programs and events.¹¹ San Diego takes it a step further, implementing a tiered approach with dozens of public purpose reasons for the allowable use of City tickets organized into three categories with different levels of priority.¹²

Oakland's Ticket Policy has not been significantly updated to reflect the technical changes made to the state regulations on the use and reporting of tickets received under the policy in recent years, as well as the modern views adopted by other cities on the use of such tickets by elected officials, such as specific and narrow limits on the number of tickets that a public official can receive and personally use, or

¹⁰ The state Gift limit of \$460 was in effect for 2015 and 2016; the limit was adjusted to \$470 in 2017 by the FPPC pursuant to the California Political Reform Act. The City of Oakland now has a similar but lower local gift limit per the Oakland Government Ethics Act, passed in 2014, which imposes a \$250 annual gift limit from a single source in a calendar year and a \$50 gift limit from persons doing business with or seeking to do business with the public servant's department.

¹¹ City of Sacramento. Acceptance, Distribution, Use, and Reporting of Tickets Policy. 2016.

¹² City of San Diego. Ticket Policy for Qualcomm Stadium, Petco Park and Other Tickets Provided to the City for Entertainment Purposes (Policy #700-22). August 18, 2016.

moving the distribution of tickets out of legislative control entirely. These changes have been made over time, as cities recognize that the receipt and distribution of tickets by elected officials invites both legal and public perception concerns of government corruption.

Ethical Concerns Regarding City Officials Receiving Tickets Pursuant to a Contract that they Negotiated or Approved

City tickets are provided to the City of Oakland pursuant to contracts with each of the respective teams, with language in each of the contracts setting aside certain box seats for the City of Oakland, the County of Alameda, and the Coliseum Authority, as discussed above. The contract agreements are based on the City leasing the property to the teams in exchange for consideration from the teams that includes, among other things, the sets of tickets provided to the City. City Councilmembers approve these contracts and the language contained in them.

State and local ethics laws contain provisions barring the use of public resources for private or campaign purposes and prohibiting an official from making, participating in making, or influencing a decision or contract in which the official receives a personal financial benefit.¹³ Here, Oakland Councilmembers who approve the lease agreements that earmark tickets to the City are the direct recipients of the tickets. These Councilmembers then make decisions about how those tickets are to be distributed – many of them being used personally by the Councilmembers to the tune of dozens and sometimes hundreds of times over the course of a two-year period, as described in this report.

The participation of elected officials in the contract approval process in which the officials receive free tickets, creates, at a minimum, a perception of both a personal conflict of interest and misuse of public resources for personal gain.¹⁴ The policy and process must therefore be amended to ensure that all tickets are used or distributed according to a legitimate public purpose and that tickets are not considered to be and used as a perk of office by officials, their family, or their staff.

In addition, the contract arrangement described above means that these tickets are City assets, or “public resources,” that must be managed wisely and

Asset Value of a Luxury Box Suite

The monetary value of a box suite is difficult to quantify, according to Scott McKibben, Executive Director of the Oakland Alameda County Coliseum Authority, because prices vary depending on the type of package in which the box is provided, such as part of a sponsorship which would include advertising and other costs. Prices are also difficult to pin down for luxury suites because they are not sold on a per-ticket basis, McKibben explained. However, McKibben provided the following as general estimated ranges of the cost of a suite box to give the Commission a sense of the potential value:

- **Golden State Warriors** – between \$150,000 - \$400,000 per season, depending on the location of the suite
- **Oakland Raiders** – \$60,000 - \$75,000 per season, with recent price increases due to the team’s success in the 2016-17 season (suite boxes used to go for as little as \$5,000 per season)
- **Oakland A’s** – \$50,000 - \$150,000 per season (81 games), depending on the location of the suite

McKibben also stated that it is possible for the City to negotiate to give up the suite of tickets to the teams in exchange for an amount certain, such as \$250,000 in additional rent per year. When asked whether sets of tickets to cities and counties are typically included as part of arena deals in his experience in other cities, McKibben said, “No, not to the extent that we have here... not 3 [suite boxes].”

Scott McKibben, Executive Director, Oakland Alameda County Coliseum Authority, Oral testimony to the Public Ethics Commission, November 30, 2016.

¹³ Oakland Government Ethics Act, O.M.C. Section 2.25.040 and 2.25.060, and California Government Code Sections 87100 and 1090.

¹⁴ JoAnne Speers, Adjunct Professor, Public and Nonprofit Administration Programs, School of Management, University of San Francisco. Testimony provided to the Public Ethics Commission, November 30, 2016.

may not be used for personal or campaign purposes. As a City asset, these tickets should not be handed to the legislative branch to use and distribute but should instead be presented to the Mayor as the City's chief elective officer,¹⁵ or to the City Administrator who is charged with the duty to "administer the affairs of the City."¹⁶

Because Councilmembers participate in the contract approval process, and because these tickets amount to a significant City asset that should be managed responsibly, these tickets should be received by and dispersed through the City executive branch as part of City operations, not within the legislative branch that approves the contracts generating the tickets. A centralized system housed within City administration also would resolve additional significant problems with the ticket delivery and reporting process to be discussed in more detail below.

Ticket Delivery and Reporting Process

Under the current process in which City tickets are delivered directly to City Council, the tickets are brought by Coliseum Authority staff and handed to the Executive Assistant to the Council (Council Assistant). The Council Assistant then distributes the tickets to Councilmembers and the Mayor, requiring only that each office sign for the tickets while they review the tickets available and make decisions about how to distribute them. Some offices keep the tickets and submit the required Form 802. Other offices return the tickets, un-used, to the Council Assistant. Finally, some offices keep the tickets and submit no forms disclosing the tickets' disposition. For those who report the data, they do so through the City's online filing system called Radar, and the Council Assistant later validates the form on behalf of the City. For those who do not report the data, the Council Assistant maintains records that show who signed for the tickets and also who filed Form 802 data for the tickets that were signed out.¹⁷

Thousands of Tickets Go Unreported

According to the Council Assistant's records, Councilmembers and the Mayor, to widely varying degrees, failed to report 3,770 tickets in 2015 and 2016. These records indicate that three Councilmembers provided little to no Form 802 information about the receipt, use, or distribution of the vast majority of tickets that were signed out by their office each month. Records indicate that other officials reported on most of the tickets that were signed out, but also had some tickets that went unreported, as shown by the graph on page 12.

This missing Form 802 data results in a total lack of data, and thus lack of transparency for the public, for about one-third of the tickets provided to these officials. Officials who failed to provide the required reports are subject to potential fines from the Commission and the Fair Political Practices Commission, to be determined separate from this report pursuant to the Commission's pending investigation.

Each official is responsible for ensuring that the Form 802 has been filed in order for the ticket to be exempt from the gift rules under the law. While the potential violation falls on the public official who uses the ticket, there is no demand that the Form 802 report be filed before tickets are physically handed to Councilmembers, the Mayor, or their staff. Instead, officials are left to their own choice as to

¹⁵ Oakland City Charter Section 305.

¹⁶ Oakland City Charter Section 504.

¹⁷ Susan Sanchez, Executive Assistant to the City Council. Statement to the Public Ethics Commission. November 30, 2016, and December 1, 2016.

whether to file the required forms, after having been advised of the requirement by the Council Assistant, a subordinate position to the Council.¹⁸ This is a serious flaw in the ticket distribution system that must be addressed.

Process Puts Onus on Officials to Distribute Tickets or File “Did not use” Reports

Another flaw in the design of the Council’s process in which hundreds of tickets are handed directly to elected officials over the course of a year is that Councilmembers and the Mayor are put in the position to have to decide whether to use or distribute tickets to others. It is the official or their staff who must reach out and distribute tickets; otherwise, the tickets go unused and wasted. Further, all of these officials must file Form 802 data for any instance in which they “did not use” their tickets. This reporting requirement is unnecessary and burdensome on officials by imposing a duty to report even when they have no interest in taking or distributing tickets. It puts the burden onto each elected official to first find someone to give the set of tickets to, or file a report stating they did not use the tickets, with no alternative option – all because the tickets automatically are given to every Councilmember and the Mayor regardless of whether they requested the tickets.

The result in the two-year period between January 2015 and December 2016 was that elected officials filed 1,040 reports stating that they “did not use” roughly 2,229 tickets they were given. This only includes data for those who actually filed reports – there is no way to know how many of the roughly 3,770 unreported tickets went unused as well. Again, the only reason these “did not use” reports are required is because of the process by which these City tickets are automatically given to the elected official even when they have no interest in the tickets.

Integrity of the Ticket Report (Form 802) Data

In preparing the analysis of ticket data for this report, it became clear to the Commission that the City has not created an effective system for tracking City ticket data from receipt through distribution of each ticket. The Form 802 data available on the City’s website only shows information about tickets that end up getting properly reported by Councilmembers and the Mayor and confirmed by the Council Assistant.¹⁹ Separate records kept by the Council Assistant merely provide lists of tickets received and signed out by Council offices. There is no single tracking mechanism that allows the public to see ticket data from receipt by the City through use by a recipient. This means that separate records must be consulted in order to put together an overall picture of ticket receipt, use, and reporting, as is done in this report. However, the use of these separate systems, combined with occasional human errors that are evident in the online Form 802 filings, significantly impacts the quality of the data available for this report and made accessible to the public.

Further, as described above, the total failure by some Councilmembers to report Form 802 ticket data means there is no mechanism to track the use or distribution of thousands of dollars in City assets. The purpose of Form 802 reports is to understand the flow of a benefit going to a City official that would otherwise be considered a gift, to show the public purpose for the distribution and also to see who else

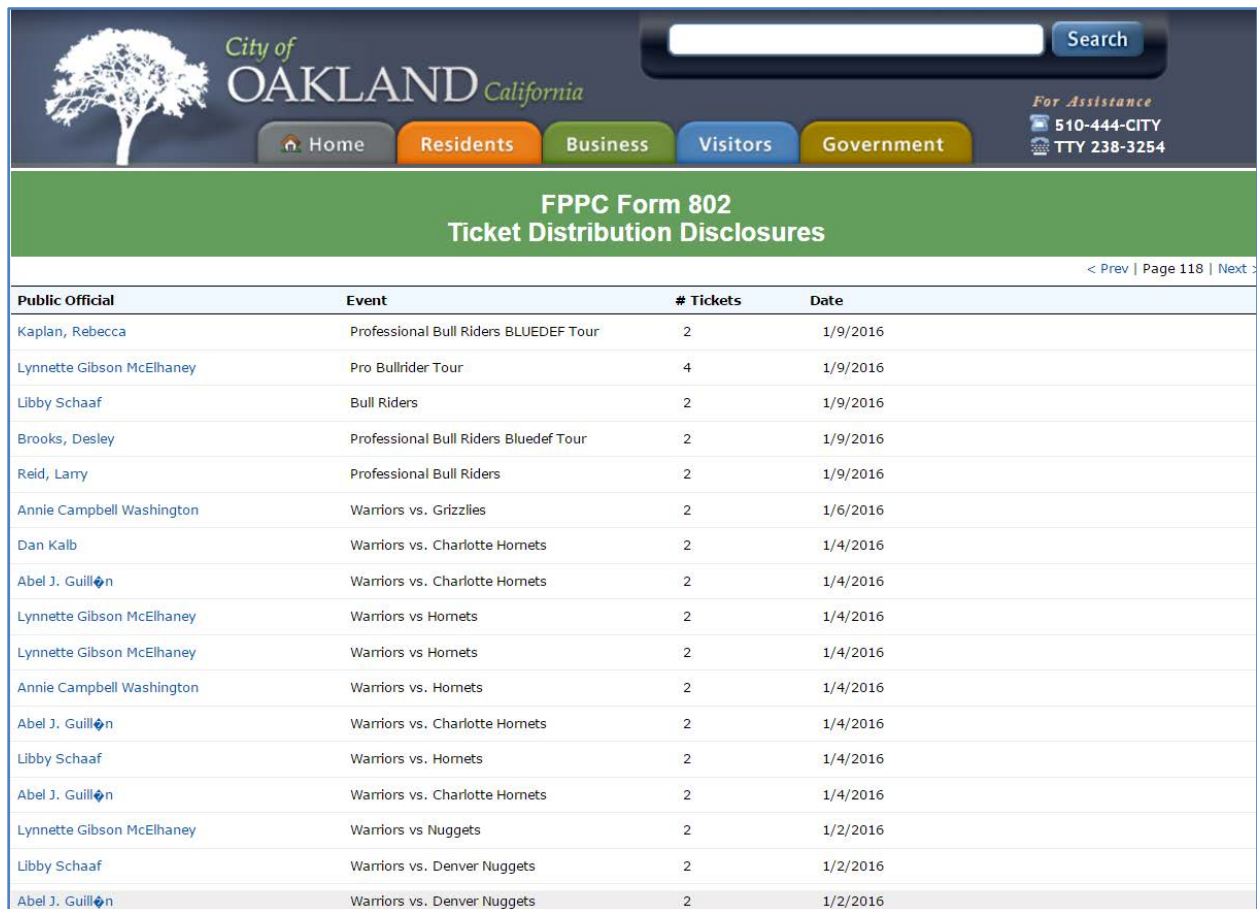
¹⁸ Susan Sanchez, Executive Assistant to the City Council. Statement to the Public Ethics Commission. November 30, 2016, and December 1, 2016.

¹⁹ In 2015 and 2016, there were 227 entries of ticket information submitted by Councilmembers and the Mayor that were not confirmed by the Council Assistant, resulting in discrepancies between records of data submitted by ticket recipients compared with the data that appears on the City Council’s public portal.

may benefit from the distribution of a City asset. For those who fail to submit Form 802 data, basic information is missing for hundreds of tickets for which we have no information about what Councilmembers did with their tickets – whether they personally used the tickets or gave them out to friends or others.

Disclosure System Needs Upgrade, Better Transparency

Ticket data that is reported into the City's electronic filing system, Radar, is provided to the public at the bottom of the City Council's main webpage as a link to "Form 802: Ticket Distribution Disclosures," where each Form 802 data entry is available for viewing as a separate link, as shown below.



Public Official	Event	# Tickets	Date
Kaplan, Rebecca	Professional Bull Riders BLUEDEF Tour	2	1/9/2016
Lynnette Gibson McElhaney	Pro Bullrider Tour	4	1/9/2016
Libby Schaaf	Bull Riders	2	1/9/2016
Brooks, Desley	Professional Bull Riders Bluedef Tour	2	1/9/2016
Reid, Larry	Professional Bull Riders	2	1/9/2016
Annie Campbell Washington	Warriors vs. Grizzlies	2	1/6/2016
Dan Kalb	Warriors vs. Charlotte Hornets	2	1/4/2016
Abel J. Guillón	Warriors vs. Charlotte Hornets	2	1/4/2016
Lynnette Gibson McElhaney	Warriors vs Hornets	2	1/4/2016
Lynnette Gibson McElhaney	Warriors vs Hornets	2	1/4/2016
Annie Campbell Washington	Warriors vs. Hornets	2	1/4/2016
Abel J. Guillón	Warriors vs. Charlotte Hornets	2	1/4/2016
Libby Schaaf	Warriors vs. Hornets	2	1/4/2016
Abel J. Guillón	Warriors vs. Charlotte Hornets	2	1/4/2016
Lynnette Gibson McElhaney	Warriors vs Nuggets	2	1/2/2016
Libby Schaaf	Warriors vs. Denver Nuggets	2	1/2/2016
Abel J. Guillón	Warriors vs. Denver Nuggets	2	1/2/2016

Even though the data is entered electronically by City staff and maintained in an internal database, the data is not provided to the public in this form and is instead made available to the public online in such a way that requires a citizen to click on a separate link for each entry to view the information on a new page. In other words, the data is not provided in an open and searchable format despite being collected and placed into a database format internally that can be exported in CSV format. As a result, the public does not have immediate access to the comprehensive data set in a manner that is searchable by ticket recipient, organization, or any other data category, ultimately defeating the purpose for which the reports are required. The data for Councilmembers and the Mayor also is not made available regularly on the City's Open Data Portal (Socrata), where many public City datasets are made open and accessible to the public.

The City should make the full ticket data-set available in CSV format on the City Council's website and on the Open Data Portal and should insert controls into the system to ensure that the data is collected in a manner that results in clean data that reduces chances of human error. This may require drop-down fields for items such as the purpose of the ticket use and type of recipient.

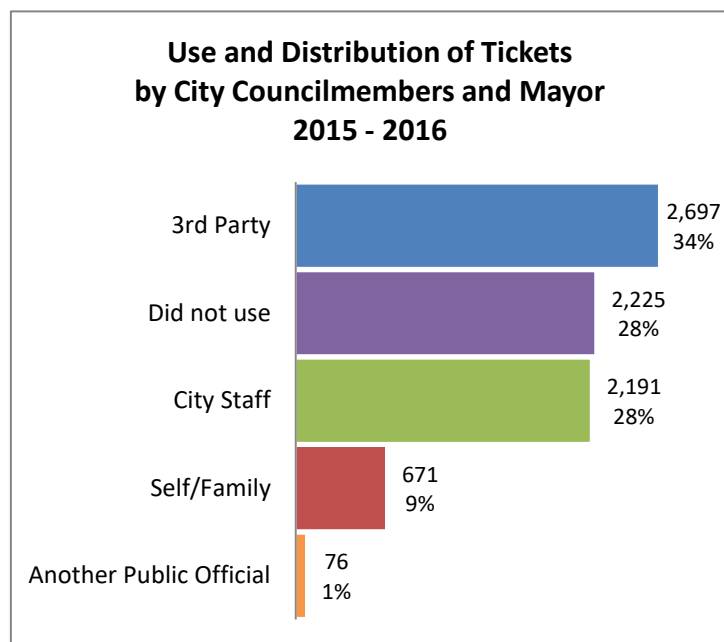
Meanwhile, despite the above data integrity concerns, this report summarizes the available information from the online Form 802 filings as provided in raw data form by the City's Department of Information Technology, along with records maintained by the Council Assistant.

City Ticket Use and Distribution by Elected Officials

Overall, City records indicate that over 11,000 Oakland Coliseum and Oracle Arena tickets were given to the City and made available to Councilmembers and the Mayor in 2015 and 2016. Of those, approximately 7,860 tickets were reported through the Form 802 filing process. Again, this means roughly 3,770 tickets were used or distributed with no reporting as to what happened to the ticket, such as to whom the ticket was given and for what purpose.

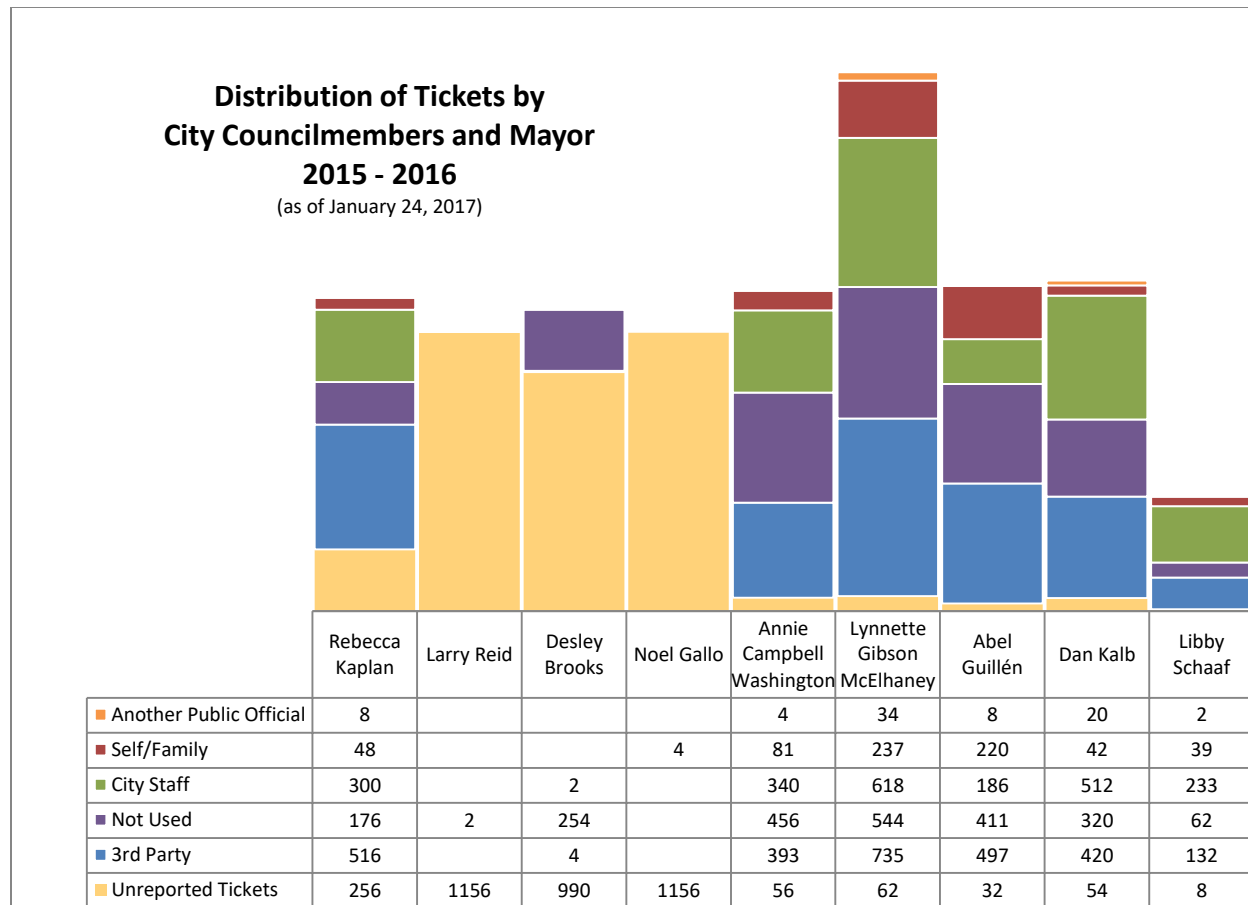
For the 7,860 tickets for which reports were filed, the graph to the right shows the breakdown, by recipient, for all tickets reported by Councilmembers and the Mayor. Roughly one-third of tickets went to a third party, with 28% going to City staff and another 28% reported as not being used, and 9% of all tickets being used by the public official and/or their immediate family.

Below is a comprehensive summary of the distribution and reporting of tickets per official, based on Form 802 data combined with Council Assistant records of ticket distribution and reporting to include data on tickets that were signed out but not reported via the City's online filing system.^{20 21}



²⁰ As noted earlier in this report, most numerical representations for "City tickets" in this report are based on data available through the City's Form 802 database as of January 24, 2017, provided in raw data format by the City's Information Technology Department. This information can be found in piecemeal form on the City Council's website: <http://www2.oaklandnet.com/government/o/CityCouncil/index.htm>, which represents information as it was reported by City officials and confirmed by the Council Assistant. Form 802 data represented in this report may contain duplicate reporting or data entry errors made by persons reporting or confirming the information. Additional data from the Council Assistant's records has been added into this report to compare the raw 802 data with available records showing which tickets were signed out by the Mayor or Councilmembers, or their staff, for the time period of January 1, 2015 through December 31, 2016. Submissions received after January 24, 2017, for tickets used between 2009 and 2016 are not included in the data for this report.

²¹ Note that Councilmember McElhaney, as Council President in 2015-16, typically received four tickets to every event, rather than the 2 received by every other Councilmember.



Most notable in the above chart is the lack of reporting of tickets,²² indicated in yellow, based on records provided to the Commission by the Council Assistant who distributes the tickets. This concern has already been discussed in the above sections on ticket delivery and reporting.

The graph also shows that, of the data that was reported, 747 tickets were used personally by Councilmembers and the Mayor or another public official, in 2015 and 2016, as shown in orange and red. Personal use of these tickets, including historical trends of the number of tickets used personally, alongside the value of the tickets that were used, is discussed in detail below.

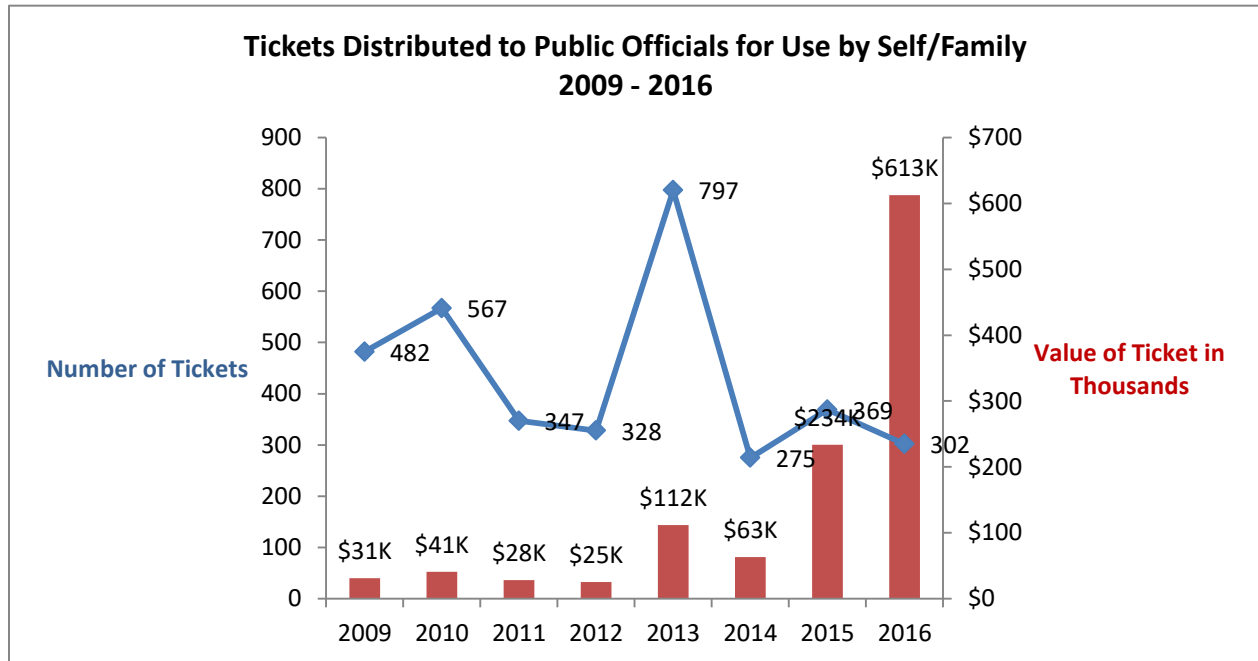
Meanwhile, other notable observations of the above chart are the extent to which tickets are used by City staff (green), the extent to which tickets are left unused (purple), and the number of tickets going to third parties (blue) – all points to be discussed below.

Value of Tickets Personally Used by Officials

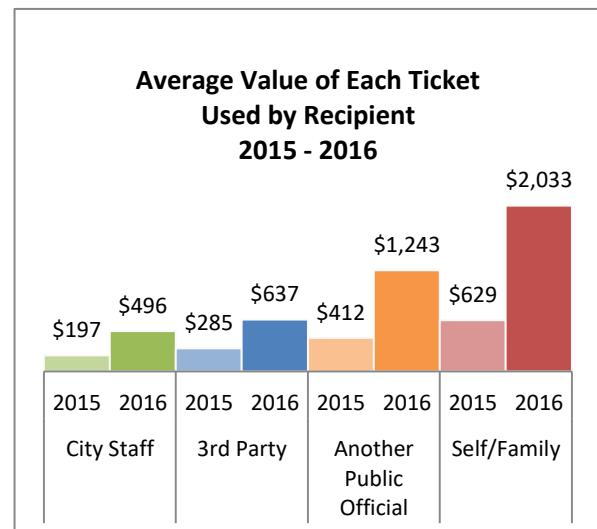
While the data above indicates that Councilmembers and the Mayor, or another public official, used a combined total of 747 tickets in 2015 and 2016, a closer look at the trends of reported information over

²² In March 2017, after the Commission released a draft of this report, at least one Councilmember returned to the Council Assistant a large number of unused tickets that previously had not been reported in the Form 802 database. Submissions received after January 24, 2017 for tickets used between 2009 and 2016 are not included in the data for this report.

the years shows a general decline in the total number of tickets used by public officials, with the exception of a spike in the year 2013.²³ While there has been an overall decline in the number of tickets personally used, the total reported face value of tickets used by public officials increased dramatically in recent years, seemingly in correlation to the success of the Golden State Warriors and the Oakland Raiders, with some tickets valued at \$5,000 or \$10,000 each.



While the graph above shows the overall decrease in number of tickets being personally used by officials compared with the increase in overall value of tickets they used, we further see that public officials have been the greatest beneficiaries of the higher value tickets in the graph to the right, which displays the breakdown of the value of City tickets used by each type of recipient. Tickets going to elected officials average more than double the face value of tickets going to City staff and third parties in 2015 and 2016. This suggests that public officials have been using the more expensive tickets themselves, for the purpose of “reviewing facilities,” while providing the less expensive tickets to City staff and third party individuals.



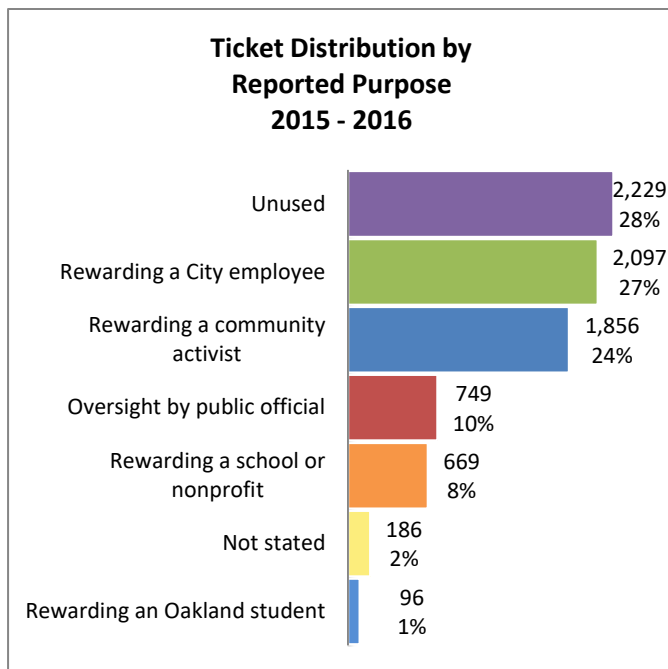
²³ In 2013, roughly 1,000 more A's tickets were provided to the City and reflected in the number of tickets used by elected officials and other recipients alike.

Reasons for Personal Use by Officials

According to the Form 802 data reported by Councilmembers and the Mayor, all of the 747 tickets that were used by Councilmembers were for oversight-related purposes. Two Councilmembers personally used more than 200 tickets over the two-year period for the purpose of reviewing facilities, with the remaining officials reporting roughly 40 or 80 tickets each for the two-year period.

Although “oversight or review of facilities”²⁴ was the identified reason for elected official use of City tickets, during the Commission’s review, some public officials commented that they do not attend games and events to oversee facilities or review operations, rather, they go to enjoy the show or they viewed tickets as a perk of office.

Based on its review, the Commission believes that one or two games or events per year, per facility, would be sufficient to enable an official to oversee or review the stadium/arena facility and its operations, and to advance the City’s interests. Furthermore, the Commission does not believe that “reviewing facilities” should be an allowable purpose for using a high-value ticket, such as a playoff game.



Other cities in California, some following newspaper reports of ticket overuse by city officials, have more recently adopted policies limiting the number of tickets given to city officials, requiring that almost all tickets be distributed out for community purposes, expanding the substantive list of reasons for tickets to be used by outside individuals, and providing levels of priority for certain city purposes.²⁵ Oakland is overdue for a revision to its Ticket Policy in light of the evolution of reforms occurring statewide on this issue, and in light of the abuse of the “reviewing facilities” exception in the City’s policy.

Distribution to City Staff

As shown in the graph on page 11, ticket data indicates that 2,209 tickets went to City staff in 2015-16. According to reported Form 802 data, the typical reason that tickets are provided to City staff is “rewarding a City of Oakland employee for his/her exemplary service to the City.” However, ticket use

²⁴ “Oversight or review of facilities” appears in the data in the following different forms: “Oversight of facilities or events that have received City funding or support,” “Oversight of facilities or events that may require City funding or support in the near future,” “Reviewing a facility’s contribution to blight abatement within a Redevelopment Area,” “Reviewing the ability of a facility & its operator & or a local sports team to attract business and contribute to the local economy,” “Reviewing the ability of a facility or its operator to participate in the City’s job creation goals or job training programs,” and “Reviewing the contribution of a facility or an event to the City’s goals for fostering arts and culture opportunities for City Residents.”

²⁵ See Sacramento, Los Angeles, and San Diego Ticket Policies.

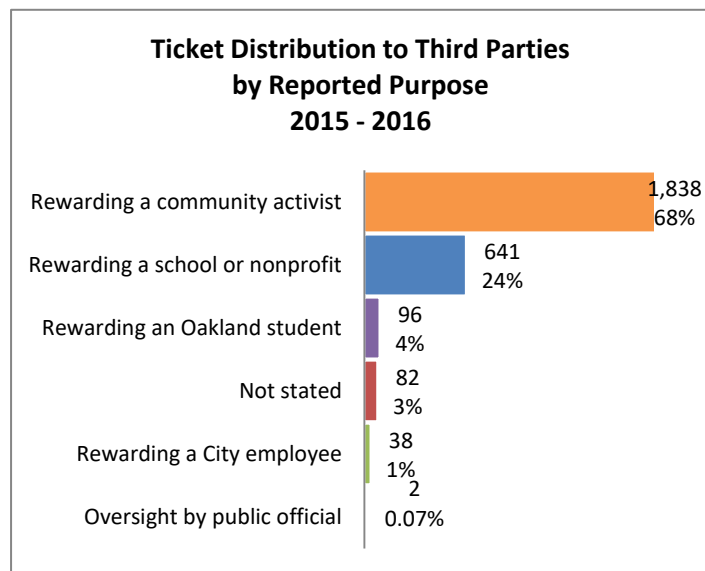
by City staff shows certain staff receiving large numbers of tickets to events – with at least a dozen employees receiving 40 or 50 tickets each, and a few receiving 80 or 90. Two of these top ticket recipients provide direct administrative assistance with the ticket distribution process, and most of the top ticket recipients, other than elected officials, consist of Council or Mayor’s office aides. These individuals are also among the ticket recipients who have received the highest value tickets. Anecdotally, the Commission heard an example that likely occurs across offices: that a Council aide responsible for distributing tickets for their Councilmember may decide to go to a game last-minute because they were unable to find someone to use the tickets. Again, this points to flaws in the system by which Councilmembers receive batches of tickets and are then responsible for distributing them. But it also speaks to the need for express limitations as this level of tickets distribution puts these individuals at risk of violating the public purpose of the City policy and other laws.

Similar to the need for a limit on the personal use of tickets by elected officials, the Commission believes the same is true for tickets provided to staff in reward for their service – one or two tickets per event or facility, per year, would provide plenty of reward for City employee service or to support employee morale. Staffers who are responsible for distributing tickets should not be allowed to distribute tickets to themselves and should not be using tickets to attend events, and certainly not dozens of events, unless they are part of the specific public purpose for which the distribution is made.

Distribution to Other Third Parties

In addition to City staff, the data shows that 2,697 tickets went to a third party, such as an organization or individual outside of City government. Again, the data is difficult to rely on here due to the variation in how the Form 802 was filed and who the filer considered as a “third party,” which appears to occasionally include City staff as well.

Furthermore, Form 802 information regarding third parties is inconsistent and often lacks detail to show exactly where and why the ticket was distributed to the third party. Sometimes, the data will indicate the organization’s name and description, but most often, only an individual third-party’s name and the reason for the distribution are listed. For tickets going to a third party, the name of the individual ticket recipient, his or her organization, and a description of the organization should be mandatory (name, address, and organization description are required by state law), and tickets should not be provided to any third party without receiving this information.



Under the current system, elected officials, with their batches of tickets they automatically receive and are expected to distribute, are in a position to give many hundreds to thousands of dollars away to friends and family, or persons contributing to their campaigns, or any other third party as a “reward” for their service, achievement, or contributions to the community, leaving a gaping hole for officials to

discretionarily share a City resource with little to no accountability. This bolsters the Commission's view that the distribution of tickets must be centralized within the City executive branch, so that all persons seeking tickets go through the same process Citywide. Better reporting and more centralized, neutral, and consistent management of the distribution of tickets will help resolve some of the issues with distributing tickets to third parties.

Unused Tickets

The Form 802 data further reveals that 2,229 tickets were left unused during the 2015 and 2016 calendar years, representing a surprising 28% of tickets reported as received by Councilmembers and the Mayor. This number is conservative as it does not include unused tickets that were unreported by officials.

The Commission learned that the Council Assistant distributes tickets every 30 days based on an understanding that the relevant rules and regulations require the City to determine within 30 days of the event where the tickets are going. This distribution schedule applies even if tickets were delivered all at once at the start of the sports team's season. Occasionally, for playoff games or other late-scheduled events, tickets may be delivered the week or day of the event.

Such a distribution schedule, which potentially results in an inefficient use of tickets, is unnecessary. The City policy merely requires that the Form 802 data be submitted within 25 days of the Councilmember *receiving* the ticket (the FPPC allows 45 days to report); it does not prohibit the tickets from being *distributed* sooner than 25 days before the event.

If all season tickets were made available at the start of the season, or as soon as received, presumably the tickets could be more easily and effectively distributed with advance notice to potential ticket recipients in order to maximize the available value to Oaklanders. Providing a catalog of available games as soon as tickets are available, and, more importantly, requiring all Form 802 data to be submitted before any ticket is handed out, could lead to better utilization and reporting outcomes.

Indeed, to avoid wasted tickets when Councilmembers or the Mayor declines to use tickets or do not pick them up, there should be a program in place for alternate distribution of the leftover tickets.

Mills College Students' Recommendation for the Distribution of Leftover Tickets

Graduate students enrolled in Professor Betsy Block's Public Policy (PPOL 230) course at Mills College, Lokey School of Business & Public Policy, assisted with the Commission's policy review. One of the Mills College students recommended, among other things, that the Commission consider the Community Access Ticket Service (CATS) as a recipient of unused tickets. According to its website, CATS is a nonprofit organization that aims to strengthen communities by providing positive arts and cultural opportunities to disadvantaged individuals by receiving donated tickets and distributing them to underserved populations. Specifically, CATS is committed to the following:

- Creating a more inclusive community through shared cultural experiences,
- Reducing the rate of recidivism with those clients currently involved with CATS partner agencies, and
- Creating a fan base and future patrons for cultural events throughout the Bay Area.

Community Access Ticket Service. Website accessed January 23, 2017. <http://www.communitytickets.org/index.html>.
The Commission thanks the students in Professor Block's class for their contributions to this report.

Policy and Process Needs Reform, Enforcement

Given all of the problems described above, the Commission recommends a number of changes to the City's policy and process for distributing City tickets, including the following: revising the City Ticket Distribution policy to more clearly define and limit the use of tickets for public purposes, imposing specific limits on the use of tickets by elected officials, and shifting the receipt and distribution of tickets from the Council offices to the City's executive branch.

Other California cities have instituted changes, restrictions and oversight on the receipt and use of tickets by elected officials, including declining tickets entirely from the local sports arena (Santa Clara), authorizing the local ethics commission to oversee and enforce the ticket distribution policy (Los Angeles), creating a ticket distribution program in the executive branch of City government (Sacramento), setting priorities for how the tickets are to be used (San Diego), and limiting the number of tickets that public officials receive (San Diego and Sacramento).

The City of Oakland is in a position, with its expanded ethics commission and renewed focus on ensuring that effective ethics policies and procedures are in place, to redesign its process for receiving and distributing the thousands of tickets it receives each year so that this City resource is put to its highest and best public purpose and in a manner that complies with state and local law.

While the above sections focus on the process by which City tickets are distributed by the City of Oakland, the next section discusses the process by which the Coliseum Authority distributes its set of tickets to a few Oakland officials pursuant to the Authority's own process and ticket distribution policy.

COLISEUM AUTHORITY TICKET POLICY AND PROCESS

Coliseum Authority Distributes Tickets to the City Administrator, City Attorney, and Two Councilmembers

As mentioned above, aside from the tickets the City receives directly pursuant to its contract with the teams, the Coliseum Authority receives its own set of tickets (Suites M-39 and L-16) that are distributed directly through to Authority Board members and other individuals upon request on a first come, first served, basis.

Two City Councilmembers sit on the Coliseum Authority Board as representatives of the City and are eligible to receive 2 suite tickets to every game and event. The Authority tickets received by these two Councilmembers are in addition to the City tickets provided through the large batch given to the City, as described in the earlier section of this report. Thus, these two Councilmembers have the ability to receive double the amount of tickets for each event, albeit the Authority tickets are distributed to the Councilmembers upon request rather than automatically.

In addition, the Authority distributes 2 of its suite tickets to every event to City Administrator Sabrina Landreth and 2 suite tickets to every event to City Attorney Barbara Parker as additional “Authority Officials” who assist in the administration of the Coliseum Authority.

Authority Ticket Recipients

In 2016, members of the Authority Board included the following individuals:

1. Christopher Dobbins
2. Aaron Goodwin
3. Rebecca Kaplan (Oakland City Councilmember)
4. Scott Haggerty (Alameda County Supervisor)
5. Yui Hay Lee
6. Nate Miley (Alameda County Supervisor)
7. Larry Reid (Oakland City Councilmember)
8. Mary Warren

Other “Authority Officials” who are entitled to receive Authority tickets include the following:

1. City Administrator Sabrina Landreth
2. City Attorney Barbara Parker

Scott McKibben, Executive Director, Oakland Alameda County Coliseum Authority, Oral testimony to the Public Ethics Commission, November 30, 2016.

For all individuals who receive tickets directly from the Authority, the required Form 802 is filed with the Authority and made available to the public on the Authority’s website.²⁶ Based on this data, Oakland city officials received 1,127 tickets to events in the single year of 2016 (as opposed to the data in the prior section, which reviewed the two-year span of 2015-16).

Coliseum Authority Policy

Authority tickets are governed by the *Oakland Alameda County Coliseum Authority Policy for the Distribution of Tickets* (Coliseum Authority Policy) which provides the following “public purpose” reasons for the distribution of Authority tickets to “Authority Officials:”

1. To supervise the managing agent,
2. To ensure that all duties of the Licenses are fulfilled,
3. To investigate the efficiencies of the operations of the various sporting and other events that occur at the Coliseum Complex,

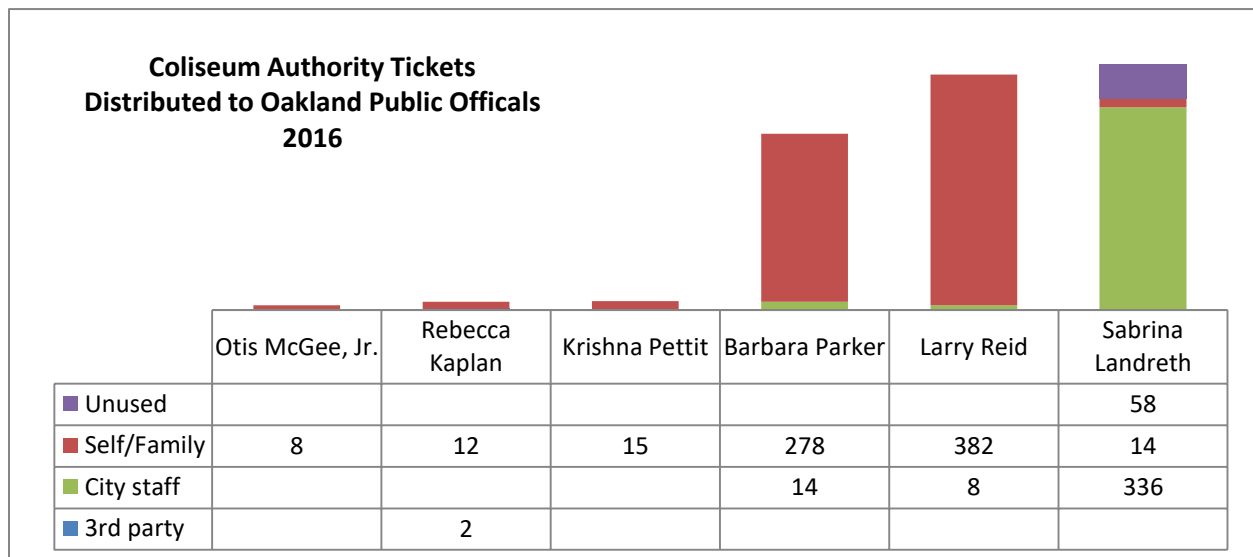
²⁶ Oakland Alameda County Coliseum Authority, *Public Information*, <http://www.oraclearena.com/oacca/public-information>, accessed on November 14, 2016.

4. To promote the Coliseum Complex for use by the general public and businesses to maximize revenues,
5. To provide opportunities to community groups to utilize the facility,
6. To review the performance of food and beverage concessionaires,
7. To observe the conduct of the managing agents' employees and subcontractors,
8. To provide incentives to City and County employees that provide services to the Authority, and
9. To investigate complaints of the Warriors, the Raiders and the A's about the Complex

A copy of the Coliseum Authority Policy is appended to this report.

Use and Distribution of Authority Tickets by Oakland Officials

Below is a summary of Coliseum Authority tickets given to City of Oakland staff and officials, based on data reported on Form 802s that are posted on the Coliseum Authority's website.²⁷



City Administrator Sabrina Landreth reported receiving 408 tickets in 2016, using 14 tickets herself/family, distributing 336 tickets to City staff, and leaving 58 tickets unused. The City Administrator's office has put a comprehensive program in place to reward City staff for their service, taking nominations from City departments for staff who are deserving of City tickets, and distributing the tickets to these staff, who, according to City Administrator Analyst Serenity Mlay, often are excited and honored to receive the tickets.

According to the Form 802 filings submitted to the Coliseum Authority, the Oakland City Attorney Barbara Parker received 292 tickets in 2016, using 278 herself/family to "investigate the efficiencies of the operations of the various sporting and other events that occur at Coliseum Complex," and distributing the remaining 14 tickets to City staff.

²⁷ Otis McGee, Jr. and Krishna Pettit are staff in the City Attorney's Office.

Councilmember Larry Reid received 390 tickets in 2016, using 382 for himself/family to “investigate the efficiencies of the operations of the various sporting and other events that occur at the Coliseum Complex” or “to promote the Coliseum Complex for use by the general public and businesses to maximize revenues.” He distributed 8 tickets to City staff.

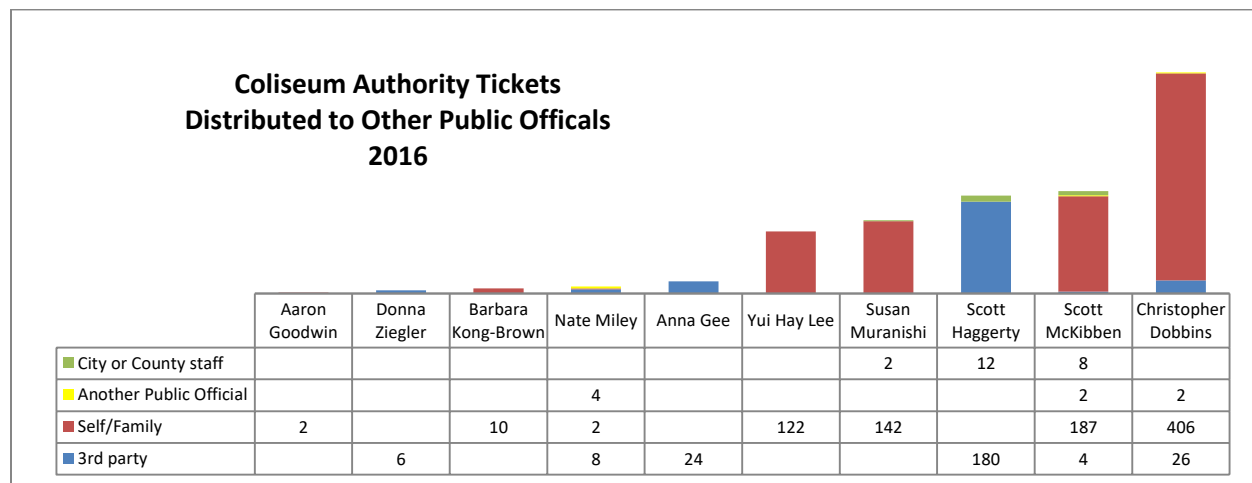
Councilmember Rebecca Kaplan received 14 tickets in 2016, using 12 for herself/family to “promote the coliseum for use by the general public and business to maximize revenues.” She distributed 2 tickets to a third party.

Also included in the above graph are two employees in the City Attorney’s office who received tickets as a result of their assistance on Coliseum Authority business.

Similar to the Commission’s conclusion regarding limits on the personal use of tickets in the prior section, the Commission reiterates its view that one or two games or events per year, per facility, would be sufficient to enable an official to oversee or investigate the stadium/arena facility and its operations, and to promote the Coliseum Complex. Furthermore, the Commission does not believe that “investigating efficiencies of the operations” of the facility should be an allowable purpose for using a high-value ticket, such as a play-off game.

Commission Concerns Regarding Authority Tickets

Tickets provided by the Authority to Oakland elected officials are not within the purview of the Public Ethics Commission, except to the extent that failure to adhere to the Authority Policy results in an unlawful gift to the public official under the Oakland Government Ethics Act. In addition, the Commission notes that the City, as a partner in the Coliseum Authority, should be aware of the extent of the use of Coliseum Authority tickets. Below is a summary of the data for all recipients of Authority tickets in 2016.



In sum, as part of the process of reviewing the City’s policy and process, the Commission learned about the Coliseum Authority’s process – and its overlap with the City’s process – and makes the following observations to the Mayor, City Administrator, City Attorney, and City Council who are the City’s

representatives in relation to the Coliseum Authority and who are in a position to effect policy changes within the Coliseum Authority:

1. The Form 802 data is buried on the Authority's website, in one large, scanned ".pdf" document for each month; the data is not provided in an open data format that is easily searchable by the public.
2. The Authority's ticket policy does not limit the number of tickets provided to "authority officials," nor does it require any activity by each authority official to conduct a written review or summary of observations made by the authority official attending each event to ensure that they are providing a service to the Authority each time they attend an event with their guest.
3. The Authority's ticket policy should be amended to more clearly articulate the public purpose and limit the number of tickets available to authority officials so that the use of the tickets is for a specific public purpose and not merely as a perk of authority membership.
4. The Coliseum Authority is a joint operation between the City of Oakland and the County of Alameda, partly funded with taxpayer money, so tickets received by the Authority are public resources and should be managed effectively and utilized for the public good.

CONCLUSION AND RECOMMENDATIONS

The Commission's review of the City's distribution and reporting of tickets received by the Oakland Coliseum and Oracle Arena identified multiple problems that need to be addressed, including the following:

- The City receives and distributes thousands of tickets each year in a manner that is poorly managed, allows tickets to be handed out to officials despite some officials failing to report ticket information as required by law, and permits public officials and other ticket recipients to claim purported reasons for the use of each ticket that is inconsistent with the nature or extent of their ticket use.
- The receipt and use of tickets by City officials who are involved in negotiating, drafting, and approving the contracts under which the tickets are provided to the City presents significant, inherent ethics concerns in the area of conflicts of interest and self-dealing.
- City tickets have been viewed as a perk of office or employment rather than a public asset to be managed and utilized for a public purpose as required by law.
- Form 802 (ticket use) data is incomplete, with several officials failing to file legally-required information; the data also is difficult to find and not provided to the public in an open data format that is searchable and easily consumed by the public.
- Thousands of luxury suite tickets go unused by the City each year, wasting thousands of dollars in City resources, and, due to the design of the distribution process, elected officials have been required to submit hundreds of unnecessary reports of unused tickets.
- The City ticket policy provides vague and questionable reasons for attending events and lacks limitations on the allowable ticket use by officials and distribution to third parties, and the policy lacks an express enforcement mechanism to ensure compliance with the policy and the law.
- Separate from the City's ticket distribution policy and process, the Coliseum Authority's policy, which allows for the distribution and use of hundreds of tickets to certain City and Alameda County officials for facility oversight-related duties, raises many of the same ethical and public purpose concerns as in the City's policy.

The Commission acknowledges that, after the Commission released a draft of this report, Councilmember Kaplan proposed that the City seek to monetize the tickets the City receives through the leases at Oracle Arena and the Oakland Coliseum in lieu of receiving and distributing the tickets. While refusing these tickets would resolve many of the problems raised by this report, it would prohibit the City from distributing tickets that fulfill a public purpose, including staff recognition.

In addition, this report reviewed only tickets provided to the City for events at the Oakland Coliseum and Oracle Arena. It does not include a review of the distribution and reporting of other tickets received or distributed by the City and required to be reported using the Form 802. The revised policy recommended by the Commission in this report must also be designed to address all types of tickets received or distributed by the City and should be in place regardless of what happens with Oakland Coliseum and Oracle Arena tickets.

Recommendations

To resolve the above concerns, the Commission recommends the following actions:

1. The City Council should adopt a revised ticket distribution policy, enforced by the Public Ethics Commission, to govern all tickets received or distributed by the City.
2. The revised ticket distribution policy should expand and diversify the allowable public purposes to reflect the full array of legitimate City purposes for which City tickets may be distributed, and the policy would limit the number of tickets that can be used by an individual elected official, City employee, or third party.
3. City tickets to Oakland Coliseum and Oracle Arena events should be received by a designated “ticket administrator” within the City’s executive branch. The Mayor or City Administrator should designate a staff person as a “ticket administrator” to receive, control, track and distribute Oakland Coliseum and Oracle Arena tickets according to the ticket policy, and the “ticket administrator” should not release any ticket without first receiving the required Form 802 information from the ticket recipient.
4. The “ticket administrator,” with assistance from the Department of Information Technology and the Public Ethics Commission, should ensure that the Form 802 filing system comports with the policy and provides appropriate drop-down choices and other controls to maximize the quality of the data that is collected by the system. Form 802 data should be provided to the public on the City Council website and on the City’s Open Data Portal (Socrata) in an open, searchable, downloadable, CSV format for easy public access.
5. The City Council, Mayor, and City Administrator should advocate for changes to the Coliseum Authority’s policy and process for distributing the sets of tickets received and distributed separately by the Coliseum Authority so that the Authority policy comports with state law and so that mass numbers of tickets, arguably provided at public expense, are not used by Coliseum Authority officials under the guise of “reviewing facilities” and similar purposes to the extent noted in this report.
6. City officials, including the City Attorney, City Administrator, and City Councilmembers, who also serve as Coliseum Authority members or support staff, should decline to receive tickets provided to them directly from the Coliseum Authority pursuant to the Coliseum Authority’s ticket policy. Instead, these City officials should request tickets solely through the City’s executive branch to ensure that all Oakland officials adhere to the policy, follow City laws, and use tickets for City of Oakland “public purposes,” which differ from the purposes allowable for Coliseum Authority members.

The Commission is committed to ensuring that the above recommendations are considered and implemented. The Commission’s *ad hoc* Ticket Policy subcommittee has already developed an initial draft of a revised ticket distribution policy for the City and is working with City staff and officials to ensure that the policy is properly designed to cover all tickets received and distributed by the City – not just tickets to Oakland Coliseum and Oracle Arena events. The Commission will continue to collaborate with City administrative staff and elected officials to ensure that the ticket distribution policy and process are effective, comply with state and local law, and are appropriately used for legitimate public purposes.

APPENDIX 1 – CITY OF OAKLAND TICKET POLICY

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 MAY 26 PM 2:11

APPROVED FOR FORM AND LEGALITY

[Signature]
CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION No. **82032** C.M.S.

RESOLUTION ENACTING A POLICY FOR THE RECEIPT AND DISTRIBUTION OF PASSES AND TICKETS BY CITY OF OAKLAND OFFICIALS AND REPEALING RESOLUTION NUMBER 75052 C.M.S., ADOPTED JUNE 15, 1999

WHEREAS, Resolution number 75052 C.M.S. was adopted June 15, 1999, enacting a policy to enable City of Oakland officials to receive certain passes and tickets without these passes and tickets being considered gifts pursuant to the Political Reform Act; and

WHEREAS, the Fair Political Practices Commission amended their regulation upon which the City's existing pass and ticket policy is based; and

WHEREAS, Resolution number 75052 C.M.S. should be repealed to provide for the adoption by new resolution of a revised policy for the receipt and distribution of passes and tickets by public officials that reflects the new regulation; now, therefore be it

RESOLVED: The Council of the City of Oakland hereby repeals Resolution number 75052 C.M.S., and enacts the policy attached hereto as "Attachment A" for the distribution and receipt of passes and tickets pursuant to state law (Gov. Code, 89503 and Cal. Code of Reg., Tit. 2, Div. 6 §§ 18940.2 and 18944.1); and be it

FURTHER RESOLVED: That the Council hereby adopts the City of Oakland Policy for Receipt and Distribution of Passes and Tickets attached hereto as Attachment A, which is incorporated by reference in its entirety in this Resolution as if fully set forth herein.

IN COUNCIL, OAKLAND, CALIFORNIA, **MAY 19 2009**

PASSED BY THE FOLLOWING VOTE:

AYES - KERNIGHAN, NADEL, ~~ROXAS~~, DE LA FUENTE, ~~BRUNNER~~, ~~REID~~, KAPLAN, AND PRESIDENT BRUNNER - 5

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Quan, Reid, Brooks - 3

ATTEST:

[Signature]
LATONDA SIMMONS
Interim City Clerk and Clerk of the Council
of the City of Oakland, California

ATTACHMENT A

CITY OF OAKLAND POLICY FOR RECEIPT AND DISTRIBUTION OF PASSES AND TICKETS

I. INTRODUCTION

The purpose of this policy is to describe the “governmental purpose” to be achieved by way of the distribution of tickets or passes to City officials, and to provide the procedures for distribution of tickets to and from the City and its officials, by which those tickets or passes will not be considered gifts under the Political Reform Act.

A. Certain Passes or Tickets Not Gifts

The Fair Political Practices Commission in interpreting the Political Reform Act has established that, “‘ticket or pass’ means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose,” and that such a ticket or pass that is provided to an agency official **is not a gift to the official whenever** they are received or distributed in compliance with Regulation 18944.1 of the Fair Political Practices Commission, Title 2, Division 6, of the California Code of Regulations.

Passes or tickets received by the City of Oakland (“City”) or City officials may be used under conditions set forth in this policy to comply with Fair Political Practices Commission Regulation 18944.1. All City agencies, offices, departments, boards and commissions affected should appoint an individual responsible for records management and for receipt and distribution of tickets or passes in order to meet the standards of this Fair Political Practices Commission regulation.

B. Political Reform Act Gift Definition

The Political Reform Act defines a gift, with certain enumerated exceptions as:

“any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.” (Gov. Code § 82028 subd. (a).)

The enumerated exceptions to the gift definition of Government Code section 82028, subdivision (a) are found in subdivision (b) and include:

- “(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement f or any expenses shall be deemed "informational material."
- (2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.
- (3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a

gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 of this title.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250)."

C. **Political Reform Act Gift Ceiling**

The Political Reform Act places a ceiling on the value of gifts that may be received by certain local officials, including: the Mayor, City Council members, the City Attorney, and the City Auditor, and candidates for those offices; City Manager, City Treasurer, employees who manage public investments and the Planning Commission. All employees, consultants and members of boards or commissions included in the City's Conflict of Interest Code are subject to the gift ceiling as well.

The cumulative gift ceiling per single source is four hundred twenty dollars (\$420) each calendar year for the period January 1, 2009, through December 31, 2010. The Fair Political Practices Commission effective may adjust the gift ceiling effective January 1, 2011, and annually after that.

II. **EXEMPTIONS**

According to the California Code of Regulations, Title 2, Division 6, Section 18944.1, tickets that are distributed under the following circumstances will not be classified as gifts:

A. **Ticket or pass provided by source other than official's agency - Section 18944.1 (a)**

Where a ticket or pass is provided **directly to the official by a third party**, it will not be considered a gift where the ticket or pass is provided for the official's admission to an event at which the official performs a ceremonial role or function on behalf of the agency. In this case, the distribution of the ticket or pass is **not required** to be posted on FPPC Form 802 (See Attachment 1) on the agency's website.

B. **Ticket or pass provided to official by official's agency - Section 18944.1 (b)**

A ticket or pass will not be considered a gift to the official when it is provided to the official **from the City of Oakland** (i.e., not from a third party) under the following circumstances:

- (1) Where the official treats the ticket or pass as income consistent with applicable state and federal income tax laws, and the agency reports the distribution of the ticket or pass as income to the official;
- (2) Where the City obtained the ticket or pass pursuant to the terms of a contract for use of public property (such as the Oakland Coliseum);
- (3) Where the City controls the event;
- (4) Where the City purchased the ticket or pass at fair market value;
- (5) Where the City receives the ticket or pass from a third party, and the ticket or pass is not earmarked by the third party for use by a particular official, and the City determines, in its sole discretion¹, which official may use the ticket or pass.

In all five cases above, the distribution of the ticket or pass must be made in furtherance of a "governmental purpose" listed in Section III herein, and the City must post the ticket distribution

¹ The "City" for this purpose includes the Mayor, The City Administrator, or the Council President.

information on an FPPC Form 802 (see Attachment 1) in a prominent fashion on the agency's website, within 30 days after the distribution. See Section V herein for the procedures to be followed.

III. **“GOVERNMENTAL PURPOSE”**

In accordance with FPPC Regulation 18944.1, the distribution of any ticket or pass by the City to one of its officials, or distributed to a third party at the request of one of its officials, must accomplish a “governmental purpose” of that agency. The “governmental purposes” of the City to be accomplished by the distribution of tickets or passes include:

- Oversight of facilities or events that have received City funding or support;
- Oversight of facilities or events that may require City funding or support in the near future;
- Reviewing a facility’s contribution to blight abatement within a Redevelopment Area;
- Reviewing the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;
- Reviewing the ability of a facility or its operator to participate in the City’s job creation goals or job training programs;
- Reviewing the contribution of a facility or an event to the City’s goals for fostering arts and culture opportunities for City residents;
- Rewarding a City of Oakland employee for his/her exemplary service to the City;
- Rewarding a community activist for his or her service to the City of Oakland;
- Rewarding a school or nonprofit organization for its contributions to the community; and
- Rewarding an Oakland student for outstanding scholastic achievement.

IV. **PROHIBITED TRANSFERS**

Once a ticket has been distributed by the City to one of its officials in accordance with FPPC Regulation 18944.1, that official may not transfer that ticket to any other person other than members of the official’s immediate family solely for their personal use. If more than one ticket is distributed to the official, the official may use the extra ticket(s) to bring a guest (or guests) to the ticketed event, if the official is also in attendance. Please see Section V(B) below for the procedures by which the City may transfer a ticket to a third party at the request of a City official.

V. **PROCEDURES AND GUIDELINES**

A. **When the City Distributes Tickets to a City Official.**

The following procedures will be followed when the City distributes a ticket or pass to a City official:

- (1) Upon distribution of the ticket or pass on behalf of the City, the public official who receives the ticket or pass (“Recipient Official”) will sign for the ticket or pass and acknowledge that the ticket is for use by herself or himself, his or her spouse or immediate family.
- (2) Within twenty-five (25) calendar days of receiving the ticket or pass, the Recipient Official will complete the City’s online form that is similar to FPPC Form 802, which may be found at: <http://www.oaklandnet.com>. The completed online form will include all of the following information:
 - (a) the name of the official receiving the ticket or pass;
 - (b) a description of the event;
 - (c) the date of the event;
 - (d) the face value of the ticket or pass;

- (e) the number of tickets or passes provided to each person;
 - (f) a description of the public purpose under which the distribution was made, in accordance with Section III herein, or, alternatively, that the ticket or pass was distributed as income to the official.
- (3) Upon completing the online form, the Recipient Official will submit it to the Executive Assistant to the City Council ("Distributing Official") for his/her approval.
 - (4) Within five (5) days of receiving the completed online form, the Distributing Official will approve the completed form and post it in a prominent fashion on the City's website.

B. Distributing Tickets to a Third Party on Behalf of a City Official.

No City official may transfer a ticket or pass distributed to such official pursuant to this policy, to any other person, except to members of the official's immediate family solely for their personal use. However, a ticket or pass may be distributed to any person or organization by the City at the request of a City or Agency official if the distribution of the ticket or pass accomplishes one of the public purposes listed in Section III herein and where the following procedures are followed:

- (1) The City official requesting the distribution ("Requesting Official") will make a written (or emailed) request that the Distributing Official distribute the ticket to a third party.
- (2) The Distributing Official will distribute the ticket or pass to the third party, either in person or by mail.
- (3) Within twenty-five (25) calendar days of making the written request for the distribution of a ticket or pass to a third party, the Requesting Official will complete the City's online form that is similar to FPPC Form 802, which may be found at: <http://www.oaklandnet.com>. The completed online form will include all of the following information:
 - (a) the name of the person to receive the ticket or pass, except that if the ticket or pass is distributed to an organization, the requesting official will provide the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;
 - (b) a description of the event;
 - (c) the date of the event;
 - (d) the face value of the ticket or pass;
 - (e) the number of tickets or passes provided to each person;
 - (f) the name of the official who requested that the ticket or pass be distributed to the third party; and
 - (g) a description of the specific public purpose under which the distribution was made, in accordance with Section III herein.
- (4) Upon completing the online form, the Recipient Official will submit it to the Executive Assistant to the City Council ("Distributing Official") for his/her approval.
- (5) Within five (5) days of receiving the completed online form, the Distributing Official will approve the completed form and post it in a prominent fashion on the City's website.

VI. TICKETS AND PASSES THAT DO NOT MEET THE STANDARDS OF SECTION 18944.1

A gift of a tickets or pass which does not meet the standards of section 18944.1 is subject to the disclosure, reporting and disqualification requirements of the Political Reform Act. Such gifts must be declared by a City Official on his or her Annual Statement of Economic Interests. The Political Reform Act limits gifts to elected local officials to a cumulative amount of \$420 from each donor per calendar year. Since 1993, the Fair Political

Practices Commission adjusts the gift limitation on January 1, of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the next nearest ten dollars (\$10). (Gov. Code § 89503.) The Fair Political Practices Commission has adjusted the **annual gift limitation amount to \$420** for the period **January 1, 2009, to December 31, 2010**. (Cal. Code of Reg. Tit 2, Div. 6, §18940.2.)

VII. CAVEAT

These policies and guidelines are not a substitute for legal advice. Only the Fair Political Practices Commission can provide immunity from prosecution for the legal advice that it offers. Please consult the City Attorney's Office if you have questions about reporting, disclosure and disqualification requirements regarding tickets and passes and the City Attorney and his staff can provide advice and assist you in obtaining advice from the Fair Political Practices Commission.

APPENDIX 2 – COLISEUM AUTHORITY TICKET POLICY

OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY

POLICY FOR THE DISTRIBUTION OF TICKETS

ADOPTED IN ACCORDANCE WITH FPPC REGULATION §18944.1

Background

Tickets Received by the Authority pursuant to a Contract. The Oakland Alameda County Coliseum Authority (the "Authority") is the lessor and manager of the Oakland Alameda County Coliseum Complex (the "Complex"). Pursuant to a Management Agreement between the Authority, as lessor under a Master Lease, and the City of Oakland (the "City") and the County of Alameda (the "County"), as joint lessees under the Master Lease and pursuant to license agreements (collectively, the "Licenses"), the Authority licenses the Oracle Arena (the "Arena") located at the Complex to the Golden State Warriors (the "Warriors") and the Stadium located at the Complex to the Oakland Raiders (the "Raiders"). Each of the Licenses excludes three suites used by the City, the County and the Authority and provides that the Raiders, the A's and the Warriors, respectively, will provide tickets of admission in such suites to their respective events and events for which they control the distribution of suite tickets. Additional events are occasionally held at the Coliseum Complex under the control of the Authority for which the Authority's agent provides tickets to the suites. In addition, occasionally promoters provide additional tickets to unsold events to the Authority, the City and the County for distribution.

Authority Officials. The Authority is organized pursuant to an Amended and Restated Joint Exercise of Powers Agreement (the "Agreement") between the City and the County. The Agreement establishes a Board of Commissioners as the governing body Authority and names the County Auditor as the Authority Auditor and the City Finance Director (now the Director of Finance and Budget) as the Authority's Secretary and Treasurer. In addition, the Agreement requires that the County Administrator and the City Manager (now City Administrator) provide administrative support to the Authority. The Agreement requires that the City Attorney and the County Counsel act jointly as the legal advisor to the Commissioners. The Authority, under its power to employ or engage other officers, also appoints an Executive Director. For purposes of this policy, the Commissioners, the Auditor, the Secretary/Treasury, the Executive Director, the City Administrator, the County Administrator, the County Counsel and the City Attorney are considered "Authority officials."

FPPC Regulations. Generally, the California Fair Political Practices defines a gift as anything received without equivalent remuneration. Public officials are required to file annually Statement of Economic Interests reporting all gifts over an annual limit. There are exceptions to this general rule, some promulgated by regulation of the Fair Political Practices Commission. Section 18944.1 of the Commission's regulations provides certain exceptions to the rule regarding the receipt of tickets or passes for admission to certain events and entertainment. This section requires that the Authority adopt a policy regarding the distribution of tickets to Authority officials. The rule also requires that the Authority post a form listing the recipients of tickets distributed by the Authority within 30 days of the date of distribution.

Public Purpose of the Authority is the Operation of the Coliseum Complex.

Under an Amended Management Agreement, dated as of July 31, 1996 (the "Management Agreement"), among the City of Oakland (the "City"), the County of Alameda (the "County") and the Oakland Alameda County Coliseum Authority (the "Authority"), the Authority contracts with the City of Oakland and the County of Alameda to manage the Coliseum Complex. The Management Agreement requires that the Authority to perform the operations of the Coliseum Complex and under the Licenses. The Authority subcontracts certain operational duties to a managing agent. To fulfill its management responsibility and its public purpose, the Authority has the continuing duty (1) to supervise the managing agent; (2) to insure that all duties of the Licenses are fulfilled; (3) to investigate the efficiencies of the operations of the various sporting and other events that occur at the Coliseum Complex; (4) to promote the Coliseum Complex for use by the general public and businesses to maximize revenues; (5) to provide opportunities to community groups to utilize the facility; (6) to review the performance of food and beverage concessionaires; (7) to observe the conduct of the managing agents' employees and subcontractors; (8) to provide incentives to City and County employees that provide services to the Authority; and (9) to investigate complaints of the Warriors, the Raiders and the A's about the Complex. To the extent the Authority distributes to an Authority official tickets for any of the foregoing purposes, the use of such tickets by such Authority official shall accomplish a public purpose of the Authority.

Distribution of Tickets

The Executive Director or the Authority official designated by the Commissioners shall distribute all tickets received pursuant to the Licenses or in connection with events that the Authority or its agent controls to the Authority officials from time to time as required to accomplish the public purpose of the Authority as described in the preceding paragraph. The Authority officials may request that the Executive Director distribute tickets directly to specific persons or organizations that are not Authority officials provided that such distribution accomplishes the public purpose of the Authority as described in the preceding paragraph.

Use of tickets provided to the Authority pursuant to the Licenses or in connection with events the Authority controls

No Authority official shall transfer any ticket provided to such Authority official to any other person; provided, however, that an Authority official may transfer any ticket provided to such Authority official to any member of such official's immediate family solely for personal use.

APPENDIX 3 – PUBLIC ETHICS COMMISSION

About the Public Ethics Commission...

The Public Ethics Commission (Commission) fosters transparency, promotes open government, and ensures compliance with ethics laws through a comprehensive approach that emphasizes prevention, enforcement, and collaboration. The Commission consists of seven Oakland residents who volunteer their time to participate on the Commission. Three members are appointed by the Mayor, City Auditor, and City Attorney, subject to City Council veto, and four members are recruited and selected by the Commission itself.

The Commission was created in 1996 with the goal of ensuring "**fairness, openness, honesty and integrity**" in City government and specifically charged with overseeing compliance with the following laws and policies:

- Oakland Government Ethics Act
- Oakland Campaign Reform Act
- Conflict of Interest Code
- City Council Code of Conduct
- Sunshine Ordinance
- Limited Public Financing Act
- Lobbyist Registration Act
- Oakland False Endorsement in Campaign Literature Act

Some of these ordinances grant the Commission specific powers of administration and enforcement. The citizens of Oakland have also entrusted the Commission with the authority to set the salary for Oakland City Council Members and the duty to adjust the salary by the Consumer Price Index annually. The Commission administers compliance programs, educates citizens and City staff on ethics-related issues, and works with City staff to ensure policies are in place and are being followed. The Commission also is authorized to conduct investigations, audits and public hearings, issue subpoenas, and impose fines and penalties to assist with its compliance responsibilities.

Beyond prevention and enforcement, the Public Ethics Commission enhances government integrity through collaborative approaches that leverage the efforts of City and community partners working on similar or overlapping initiatives. A collaborative approach recognizes that lasting results in transparency and accountability are achieved not through enforcement alone, but through a comprehensive strategy that aligns all points in the administration of City government – including clear policies and process, effective management and provision of staff resources, technology that facilitates the process, and public engagement. This policy review is an example of such a collaborative approach.

The Commission meets on the first Monday of every month at 6:30 p.m. in City Hall, and meetings are open to the public and broadcast locally by KTOP, Oakland's cable television station.

ACKNOWLEDGMENTS

The Commission thanks its staff, including Executive Director Whitney Barazoto, Ethics Analyst Suzanne Doran, and Commission Intern Kelcie Brown, for their work in drafting this report and compiling the supporting data. The Commission also thanks the following individuals for their testimony during the Commission's November 2016 City Ticket Policy hearing: Scott McKibben, Executive Director of Oakland Alameda County Coliseum Authority; Susan Sanchez, Executive Assistant to the Oakland City Council; Serenity Mlay, City Administrator Analyst for the City of Oakland; Sukhi Brar, Senior Commission Counsel for the California Fair Political Practices Commission; and JoAnne Speers, Professor of Ethics and Public Policy at the University of San Francisco.

City of Oakland Public Ethics Commission



Lobbyist Registration Act Guide

2022

Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Room 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593



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Item 9 - Lobbyist Registration Act Guide

Public Ethics Commission

Oakland Lobbyist Registration Act Guide

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INTRODUCTION

The Oakland Lobbyist Registration Act (LRA or Act) regulates individuals engaged in lobbying activity related to decisions by the City of Oakland.

This **Guide to the Oakland Lobbyist Registration Act** (Guide) is intended to provide a general overview of the Act and does not cover all exclusions and inclusions. The Guide is intended to be **advisory only** and is not a substitute for legal advice. To the extent the Guide conflicts with the Act or other interpretation by the Oakland Public Ethics Commission (Commission), those authorities govern over this Guide in the implementation and enforcement of the Act.

SUMMARY OF THE ACT

The significant features of the Act include:

- Lobbyists intending to influence actions by the City and meeting certain qualifications are required to register with the Commission annually.
- Lobbyists must file quarterly reports detailing their lobbying activities.
- Lobbyists are limited in giving gifts or payments that benefit Oakland officials.
- Lobbyists can be banned or penalized for failure to comply with the Act.
- Lobbyist registration and reports are submitted to the Public Ethics Commission.

The Commission is the administrative body that receives lobbyist filings, provides education and advice, and enforces the Act. If you have any questions about this Guide or your obligations under the Act, contact Commission staff.

Oakland Public Ethics Commission
One Frank H. Ogawa Plaza (City Hall), Room 104
Oakland, CA 94612
(510) 238-3593
(510) 238-3315 (fax)
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov

LOBBYISTS AND LOBBYING DEFINED

LOCAL GOVERNMENT LOBBYIST

The term “lobbyist” is interpreted broadly and includes any individual:

1. Who receives, or is entitled to receive, \$1,000 or more in compensation in a single calendar month to communicate with any public official for the purpose of influencing an action by the City (commonly referred to as a “contract lobbyist”); **or**
2. Whose duties as a paid employee, officer, or director of any corporation, organization, or association include communication with any public official for the purpose of influencing an action by the City (commonly referred to as an “in-house lobbyist”). [Oakland Municipal Code (OMC) 3.20.030(D)]

Who Qualifies as a Lobbyist?

An employee who plans to communicate their employer’s opposition to a proposed decision by a City commission to a member of the City commission **qualifies** as an in-house lobbyist and must register with the Commission before they make the communication.

An unpaid volunteer for a non-profit organization who meets with a member of a City board on the organization’s behalf **does not** qualify as a lobbyist.

A resident who talks to a City public works employee on behalf of a neighborhood association to get a stop sign placed at a busy intersection **does not** qualify as a lobbyist **unless** the person is being paid \$1,000 or more or is a paid employee, officer, or director of the neighborhood association.

If an individual falls into one of the two categories above, they must **register** as a lobbyist with the Commission **before** attempting to lobby Oakland public officials. Both contract and in-house lobbyists have identical filing requirements under the Act.

In determining whether an individual is an in-house lobbyist, the Commission considers the nature and number of the individual’s contacts with public officials, as well as the individual’s roles and responsibilities in their organization.

Note: While the Act only requires individuals to register as lobbyists (and not companies or organizations), each employer and client of a lobbyist must be identified on both the Lobbyist Registration Form and Lobbyist Quarterly Reports.

LOBBYING ACTIVITIES

Lobbying is a broad term that includes any communication, whether direct or through agents, with any **public official**¹, made for the purpose of influencing any proposed or pending action of the City. Only ministerial actions by the City (i.e., decisions requiring no discretion or judgment) are excluded. [OMC 3.20.030(D)]

An **agent** is a person acting on behalf of another person. However, members of the public who are asked to contact public officials regarding a specific issue are not considered agents of the person

¹ A **public official** means any elected or appointed officer or employee or officially designated representative, whether compensated or not, of any federal, state, or local government entity.

making the request. This practice, commonly referred to as “grassroots lobbying,” is not covered by the Act.

Note: A government action can also include a decision to refrain from action, delay action, or delay considering a matter.

WHAT IS NOT LOBBYING ACTIVITY

The Act does not apply to the following:

1. Public Officials acting in their official capacity. Public Officials include all elected and appointed officers, employees, and representatives of federal, state, or local governments. [OMC 3.20.030 (H)]

Example: An elected state official, in their official capacity, communicating with City Councilmembers to authorize a public works project **does not** qualify as lobbying.

2. The publication or broadcast of news, editorials, comments, or paid advertisements that urge government action.
3. Persons who have been specifically invited by a City official or employee to give testimony or information to assist the body or person extending the invitation.

Example: An architect’s expert testimony to City Council, in response to an invitation by City Council, **does not** qualify as lobbying.

4. Attorneys, architects, or civil engineers, whose attempts to influence government action are limited to appearance at, preparation for, or conversations with City employees about a public meeting, public hearing, or public proceeding.

Example: An architect representing an applicant before the Planning Department **does not** qualify as lobbying. However, an attorney contacting a member of the Planning Commission on behalf of a client outside a public meeting to help secure a permit **qualifies** as lobbying and may require the attorney to register and file as a lobbyist.

5. Persons who, without extra compensation and not as part of, or in the ordinary course of, their regular employment, present the position of their organization when that organization already has a registered lobbyist.

6. Designated representatives of employee organizations engaged in collective bargaining negotiations regarding employment terms and agreements.
7. Participation in a public bid, proposal and/or contract award process. This exception does not apply to communication with an elected official or member of any City board or commission.
8. Contacts with representatives of the Oakland Unified School District including trustees, administrative staff, and faculty.

Lobbying:	Not Lobbying:
<ul style="list-style-type: none"> Requesting a variance to the City's zoning laws for a new development qualifies as lobbying and may require the person to register and file reports as a lobbyist. Attempting to influence the award or terms of a contract with the City by communicating with an elected official or member of any City board or commission qualifies as lobbying and may require the person to register and file reports as a lobbyist. 	<ul style="list-style-type: none"> Applying for a business license or library card does not qualify as lobbying because issuing a business license or library card is a ministerial act. Setting up a website that opposes a proposed ordinance does not qualify as lobbying because the person has not communicated with a Public Official. "Grassroots lobbying" is not covered by the Act.

LOBBYIST CLIENTS

The **client** is the person or organization for whose benefit the services of a lobbyist are being performed (the real party in interest). However, a person is not a client if they are simply a member of an organization that is represented by a registered lobbyist. [OMC 3.20.030(A)]

Example: An in-house lobbyist's employer is that lobbyist's client.

Example: The person or organization that hires a contract lobbyist is that lobbyist's client.

Example: An individual member of a union is **not** a client when the lobbyist is representing the union, so long as the individual member does not pay any extra fees for representation by the lobbyist.

REGISTRATION AND REPORTS

INITIAL REGISTRATION

Once a person qualifies as a lobbyist, they are required to register with the Commission **before** beginning or continuing any lobbying activity. [OMC 3.20.040 and 3.20.120]

To register, a lobbyist must provide their name, employer or lobbying firm, contact information, and client information. The lobbyist must include all clients that have a pending interest before the City, regardless of how much the individual client pays the lobbyist. A lobbyist hired by a network of people or organizations should register all individuals or organizations who are part of that network as clients unless the network exists as its own legal entity.



Register and File Quarterly Reports Online

Oakland lobbyists use the Commission's [OakApps](https://apps.oaklandca.gov/oakapps/) Lobbyist Registration and Reporting System for all filing requirements including registration, quarterly reports, annual registration renewal, and termination. See the Quick Start instructions in the appendix to this guide.

Visit <https://apps.oaklandca.gov/oakapps/>.

See the [Lobbyist e-filing quick-start guide](#) (Appendix I) for instructions. More resources are available on our online [FAQ](#).

Example: A person who recently began working as a contract lobbyist should register when the lobbyist receives, or becomes entitled to receive, a total of \$1,000 in any calendar month for lobbying.

ANNUAL REGISTRATION RENEWAL

Once a person qualifies as a lobbyist, they are required to re-register each year by January 31 until they cease to qualify as a lobbyist **and** file a notice of termination with the Commission. The names of all clients and/or employers must be current, and amended registration submitted as necessary. [OMC 3.20.040 and 3.20.050]

NOTE: Even if a lobbyist files their initial registration mid-year (e.g., in June), the lobbyist must still renew their registration in January the following year.

DEBARMENT FOR FAILURE TO REGISTER

If a lobbyist fails to properly register, they can be barred from acting as a lobbyist in addition to facing administrative and criminal penalties. [OMC 3.20.070]

MANDATORY QUARTERLY REPORTS

In addition to initial registration and annual renewal, lobbyists must file quarterly reports that disclose all clients and lobbying activities during each calendar quarter.

Lobbyist Quarterly Reports must be filed within 30 days of the end of each calendar quarter in which the lobbyist is registered or should have been registered. [OMC 3.20.110] A registered lobbyist must file all Quarterly Reports **even if the there is no reportable activity during the quarter.**

Quarter	Reporting Period	Due Date
1	January 1-March 31	April 30
2	April 1-June 30	July 30
3	July 1-September 30	October 30
4	August 1-December 31	January 30

Note: There is no extension when a deadline date falls on a weekend. Reports may be filed prior to the deadline 24/7 using the online system.

LOBBYIST ACTIVITY THAT MUST BE DISCLOSED

Contacts with City Officials

A lobbyist must report all contacts with City Officials seeking to influence a decision on behalf of a client or employer. A lobbyist must report every government action (i.e., municipal decision) that they are paid to influence along with the name of their client or employer. They must also include the name, title, and department of every City official that they contact. All reported contacts must include a description of each position advocated by the lobbyist on behalf of the client.

Employment of a City Official or Candidate

A lobbyist must report when they, or one of their clients, employ any City officeholder, candidate, City employee or their immediate family member. The report must include the name of the person hired, a description of the services performed, and the total payments to the individual.

Employment by a City Official or Candidate

A lobbyist must report if they are employed by any City officeholder, candidate, City employee or their immediate family member. The report must include the name of the City official or candidate who hired the lobbyist. It must also include a description of the service performed and the total payment made to the lobbyist.

Political Contributions

A lobbyist must report any person or organization that they ask to make a campaign contribution to a City officeholder or candidate. The report must include the name of every person that the lobbyist asked to make a campaign contribution. It must also include the name of the officeholder or candidate (including any committee or fund) the request benefitted. **A lobbyist must report the request even if it does not result in a contribution.**

REQUIRED NOTICE OF TERMINATION OF LOBBYING ACTIVITIES

Lobbyists who have stopped **all** Oakland lobbying activity are required to terminate their registration with the Commission. Once a person terminates their registration, they have no further obligations under the Act unless they begin lobbying again. [OMC 3.20.050]

Example: A lobbyist stops working on a campaign for Client A, but they are still engaged in lobbying activities for Client B. The lobbyist would **not** terminate their registration unless they stop performing regulated lobbying activity for **all** their clients.

Until the lobbyist terminates their registration by notifying the Commission, they must continue to file Quarterly Reports and renew their Lobbyist Registration each January. Failing to do so violates the Act and could lead to an enforcement investigation and penalties.

If a lobbyist wishes to begin lobbying Oakland officials again after terminating their registration, the lobbyist must re-register with the Commission.

MANDATORY RECORD RETENTION

Lobbyists must keep all documents related to registration and quarterly reports for **five years**. This includes all books, papers, and documents, including Lobbyist Registration, Lobbyist Quarterly Reports, and Lobbyist Termination forms. [OMC 3.20.100]

If you are in doubt, it is better to keep all documents. It is the lobbyist's responsibility to provide copies of records to the Commission upon an investigation, and it is a violation of the Act if required records are missing. While records are saved in the Lobbyist Registration and Reporting System, it is still recommended that lobbyists keep copies for their own records.

PROHIBITED ACTIVITIES

The Act prohibits lobbyists, clients, contractors, and persons doing business with the City from engaging in certain activities. The following section summarizes types of activities prohibited by the Act. Please consult the Act for specific details and a complete list of restrictions.

PERSONAL OBLIGATION

Lobbyists, clients, contractors, and persons doing business with the City may not take any action that places a City official or employee under personal obligation to the lobbyist, client, contractor, or person doing business with the City. [OMC 3.20.130]

Example: A lobbyist may not make a monetary loan to a City employee. A lobbyist may not make an investment in a City project in exchange for a favorable vote by a City Councilmember on future legislation.

DECEPTION

A lobbyist, client, contractor, or person doing business with the City may not attempt to deceive a City official or employee regarding facts about a government action (pending or proposed). [OMC 3.20.140]

Example: A lobbyist may not provide false data that supports their position on pending legislation.

IMPROPER INFLUENCE

A lobbyist may not cause or influence a government action for the purpose of creating future lobbying business for the lobbyist. [OMC 3.20.150]

Example: A lobbyist may not influence the introduction of legislation when the lobbyist hopes to be later retained to promote or oppose that very legislation.

FALSE APPEARANCES

A lobbyist may not attempt to create a false appearance of public favor or disfavor of any government action. A lobbyist may not cause any communication to be sent to a City official or employee in the name of any fictitious person or in the name of a real person without that person's consent. [OMC 3.20.160]

Example: A lobbyist may not submit a letter in support of a proposed development on behalf of a neighborhood group that does not exist or on behalf of a neighborhood group that does exist without that group's consent.

PROHIBITED REPRESENTATIONS

A lobbyist may not represent that they can control or obtain the vote or action of any City officer or employee. [OMC 3.20.170]

Example: A lobbyist may not tell a potential client that the lobbyist can convince City Councilmember A to support a specific ordinance.

RESTRICTIONS ON PAYMENTS AND GIFTS

Lobbyists and their clients may not make payments to, or incur expenses for, any officeholder, candidate, employee, or family member thereof, that exceed \$240 in any single calendar year. [OMC 3.20.180]. This restriction includes gifts, honoraria, and any other form of compensation, but does not include political contributions.

Example: The client of a lobbyist is prohibited from giving the Mayor's spouse a \$300 ticket to a musical concert.

"REVOLVING DOOR" RESTRICTIONS

A City officer, department head, or budget director may not act as a lobbyist for **one year** after leaving office. [OMC 3.20.190] This restriction applies to the Mayor, City Administrator, City Councilmembers, City Attorney, City Clerk, City Auditor, and executive officers and members of City boards and commissions.²

Example: A member of a City board or commission may not engage in lobbying for one year after leaving their board seat. However, they may speak on their own behalf in support of a proposed ordinance.³

OTHER APPLICABLE OAKLAND LAWS — CONTRACTOR BAN

The Oakland Campaign Reform Act (OCRA) prohibits a person who contracts with the City from making contributions to candidates. The restriction applies until 180 days after the completion or termination of negotiations for such a City contract. [O.M.C. 3.12140(A)] For entities such organizations or businesses, the restriction applies to anyone authorized to represent the entity before the City

² **City officer** is defined by City Charter section 400.

³ There are additional "revolving door" restrictions in the Oakland Government Ethics Act. See OMC 2.25.050.

regarding the contract, including a paid lobbyist. Before making a campaign contribution, a lobbyist must determine the end of the contract period to avoid breaking the law.

Example: A lobbyist was hired by a local business to help the business get selected for a City contract. The lobbyist cannot contribute to a City candidate until the 180-day contract period has ended.

ENFORCEMENT

Persons who violate the Act are subject to administrative and criminal penalties. The Commission's Complaint Procedures and Complaint Forms are available from the Commission and are posted on its website.

ADMINISTRATIVE PENALTIES

The Commission is responsible for enforcing the Act and is authorized to impose administrative penalties of up to \$1,000 for each violation. [OMC 3.20.200]

CRIMINAL PENALTIES

In addition to potential for administrative penalties, any person who knowingly or willfully violates the Act is guilty of a misdemeanor. No person convicted of a misdemeanor violation of the Act may act as a lobbyist, advise a client, or otherwise attempt to influence a government action for compensation for one year after the conviction. [OMC 3.20.220]

APPENDIX I: LOBBYIST REGISTRATION AND REPORTING SYSTEM QUICK START GUIDE

The City of Oakland's Lobbyist Registration and Reporting System allows users to register as an Oakland lobbyist, maintain a client list, enter lobbyist activity, draft disclosure reports, and submit them online.

CREATE OAKAPPS ACCOUNT

1. First time users must first create an [OakApps](#) account (OakApps provides access to numerous City of Oakland applications). Click **REGISTER** in the upper right side of the page. Provide the requested information to create your account. Note: Lobbyists should select "Business" as the account type.
2. Verify your email and set your password.

REGISTRATION

1. From [OakApps](#) click on the **PUBLIC ETHICS COMMISSION** button or enter <https://apps.oaklandca.gov/pec/> in your browser to proceed to Lobbyist Registration and Reporting.
2. Click the **REGISTRATION** icon and then the **REGISTER** link within the text.
3. Enter your contact and employer information.
4. Enter clients.
5. Contract lobbyists: Add information for each client.
6. In-house lobbyists: Your employer will automatically be entered as a client. Please click **EDIT** to complete the client information.
7. When the information is complete, click **REVIEW** to check your draft registration form for accuracy. Click the **BACK** button if you need to add, edit, or delete any data.
8. If the draft is satisfactory, check "I agree" in the declaration box at the bottom of the page and then click **REGISTER**.
9. Your registration is complete! You will receive a confirmation by email. You may print or download a copy of your registration for your records from your Profile page.

DRAFTING AND SUBMITTING LOBBYIST ACTIVITY REPORTS

1. Go to <https://apps.oaklandca.gov/pec/>. Click the **MY ACTIVITY REPORTS** icon and then the **REPORTS** link in the text below. If you are already logged in to your account, you can click **REPORTS** on the main menu.
2. Select the reporting period from the dropdown list in the upper right corner to start a new report. When a new report is added a draft is saved and will be displayed in the Drafts table until submitted.
3. In the Clients Represented section, click the **ADD** icon to add the clients you represented during the period, compensation received, and whether you have reportable activity on behalf of that client. Note: If you added a new client after submitting your registration, add the client from the Registration page and amend your registration before proceeding.
4. In the Contacts with City Officials section, click the **ADD** icon to make an entry for each contact with a City Official made to influence a government (municipal) decision on behalf of a client

or employer. Enter elected officials and board and commission members by name. Enter City employees by Department and Title only.

5. In the Employment of a City Official or Candidate section, click the **ADD** icon to enter a City officeholder, candidate, employee, or member of their immediate family employed by you (or a client at your behest) during the reporting period.
6. In the Employment by a City Official or Candidate section, click the **ADD** icon to enter a City officeholder, candidate, employee, or member of their immediate family, who employed you during the reporting period.
7. In the Political Contributions section, click the **ADD** icon to enter each person or organization you solicited for political contributions to a City officeholder or candidate during the reporting period.
8. You may exit the system and return to continue editing your draft report by locating the draft on the Reports page and clicking **VIEW**. You may also print out your draft from the Reports page.
9. Once the draft is complete, click **REVIEW REPORT** to check your report for accuracy. Click the **BACK**
10. button to continue editing.
11. If the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **SUBMIT**.
12. Your Quarterly Activity Report is filed! You will receive a confirmation of your filing by email. Submitted filings are shown in the bottom section of both the Reports page and your Profile page. You may print or download a copy of your report for your records from either location.

AMENDING YOUR REGISTRATION

Any time your registration information changes, such as contact, employer or client information, you must amend your registration. It is a violation of the Lobbyist Registration Act to lobby on behalf of an employer or client before registering them with the Public Ethics Commission, so keep your registration information current.

1. Go to <https://apps.oaklandca.gov/pec/>. Click the **REGISTRATION** icon and then the **REGISTER** link within the text. If you are already logged in to your account, you can amend your registration by clicking **PROFILE** on the main menu and then the **AMEND** button to edit your registration information.
2. Make edits to your contact, employer, and client information, then click **REVIEW** to check your amended registration form for accuracy. Click the **BACK** button to continue editing.
3. If the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **AMEND**.
4. Your amended registration is complete! You will receive a confirmation of your amended registration by email. You may print or download a copy of your registration for your records from your Profile page.

AMENDING YOUR REPORT

1. Go to <https://apps.oaklandca.gov/pec/>. Click the **MY ACTIVITY REPORTS** icon and then the **REPORTS** link in the text below. If you are already logged in to your account, you can click **REPORTS** on the main menu.

2. Locate the report you want to amend in the Reports Filed section and click **AMEND**. You may exit the system and return to continue editing your draft amendment by locating the draft on the Reports page and clicking **VIEW**. You may also print out your draft.
3. Use the **ADD**, **EDIT** and **DELETE** functions to revise your report.
4. Once the draft is complete, click **REVIEW REPORT** to check your report for accuracy. Click the **BACK** button to continue editing.
5. If the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **SUBMIT**.
6. Your Amendment is filed! You will receive a confirmation of your amendment by email. Submitted filings are shown in the bottom section of both the Reports page and your Profile page. You may print or download a copy of your report for your records from either location.

TERMINATING YOUR REGISTRATION

If you will no longer be lobbying City of Oakland officials, you must notify the Public Ethics Commission by submitting a final Termination Report to be relieved of registration and reporting obligations.


Remember, once you terminate your registration it is a violation of the Lobbyist Registration Act to engage in any lobbying activity with the City of Oakland until you reactivate your registration.

1. Go to <https://apps.oaklandca.gov/pec/>. Log into your account and click **PROFILE** from the main menu items.
2. Click the **TERMINATE** button on the right side of the page.
3. Complete the Termination Report covering activities up to the date of termination.
4. When the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **SUBMIT**.
5. Your registration is terminated! You will receive a confirmation by email. Your lobbyist status will be updated to terminated and you will no longer receive notices. However, you will still be able to log-in to access your account information and filing history. You may also submit reports and amendments for periods prior to your termination. You may re-register at any time.


MAIN MENU

The Oakland Lobbyist Registration and Reporting System main menu displays on each page and contains the following options:

- **HOME** - Returns your browser to the Lobbyist Registration and Reporting home page with links to Registration, Resources, and My Activity Reports.
- **PROFILE** - Displays your most recent registration status, registration information, and filing history. Allows you to amend or terminate your registration and print submitted registration and reports documents.
- **REGISTRATION** - Allows you to update registration information and client list, submit registration and amendments, and print or download your most recent registration.
- **REPORTS** - Allows you to draft and submit reports. Allows you to view, edit, print, and delete draft reports as well as view, print and amend submitted reports.

LOGGING OUT: Click the  OakApps logo in the upper right corner to log out of your account.

GET HELP

- **Tool Tips** – Throughout the system you will see tool tips. Simply hover over the icon  to open a floating window with instructions and information specific to the section you are viewing
- **Additional Resources** – From the Home page, click Resources to find links to the Lobbyist Registration Act, the Commission's Lobbyist Guide, and our searchable [FAQ](#) page.
- **Email Assistance** – Contact Commission staff for support. Send an email to ethicscommission@oaklandca.gov.

**Lobbyist Registration**

Amendment 2

Lobbyist: Quetzalli Lara

**FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION****12/8/2021 1:16 PM**

Lobbyist

Name	Quetzalli Lara
Address	1 Frank H Ogawa Plaza Room 104 Oakland, CA 94601
Phone	(510) 238-2257
Email	alarafranco@oaklandca.gov

Employer

Lobbyist Type	Contract Lobbyist
Name	Xochipilli
Address	1 Frank H Ogawa Plaza 1st Floor, Rm 104 Oakland, CA 94612 USA
Phone	(510) 238-3593
Email	alarafranco@oaklandca.gov



Lobbyist Registration

Amendment 2

Lobbyist: Quetzalli Lara

**FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/8/2021 1:16 PM**

Clients

Name	Address	Phone	Email	Website	Business Interest
Xochipilli Inc. Type: Business	1 San Sebastian Road, Oakland, CA 94601, USA	(510) 238-3593	alarafranco@oaklandca.gov		Interest: Construction
Ana Lara Type: Business	123 San Sebastian Road, Oakland, CA 94612, USA	(510) 238-3593	alarafranco@oaklandca.gov		Interest: Accommodation and Food Services

Verification

I, Quetzalli Lara, have reviewed this registration and agree to comply with all requirements pursuant to the Oakland Lobbyist Registration Act. I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge the information contained herein is true, complete and correct.

APPENDIX III: SAMPLE COMPLETED QUARTERLY LOBBYIST REPORT

Quarterly Lobbyist Activity Report

Oct 01 to Dec 31, 2020

Lobbyist: Quetzalli Lara
FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/14/2021 12:42 PM

Filed by Lobbyist

Type Contract Lobbyist
Name Quetzalli Lara
Address 1 Frank H Ogawa Plaza
Room 104
Oakland, CA 94601
Phone (510) 238-2257
Email alarafranco@oaklandca.gov

Employer

Name Xochipilli
Address 1 Frank H Ogawa Plaza 1st Floor,
Rm 104
Oakland, CA 94612
USA
Phone (510) 238-3593
Email alarafranco@oaklandca.gov

Clients Represented

Name	Address	Reportable Activity	Payment to Lobbyist
Xochipilli Inc.	1 San Sebastian Road, Oakland, CA 94601, USA	No	Not Stated
Ana Lara	123 San Sebastian Road, Oakland, CA 94612, USA	Yes	\$ 20,000.00

Item 9 - Lobbyist Registration Act Guide

Quarterly Lobbyist Activity Report

Oct 01 to Dec 31, 2020

Lobbyist: Quetzalli Lara
FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/14/2021 12:42 PM

Contacts with City Officials (Schedule A)

Contacts by lobbyist with City Officials to influence a governmental (municipal) decision on behalf of a client or employer.

Client	Municipal Decision	Subject	Position	City Official
Ana Lara	Land Use (Permit, Zoning, Study)	Accessibility	Support	Noel Gallo, Council Member, District 5
<i>Narrative:</i> approve permits for housing				
Ana Lara	Public Contract	Airport	Support	Rebecca Kaplan, Council Member, At-Large
<i>Narrative:</i> approve new airport terminal				
Ana Lara	Ordinance, Policy, or Other Legislative Matter	Cannabis regulation/taxation	Informational meeting	City Administrator's Office - Assist to the City Administrator
<i>Narrative:</i> met with Cannabis dept				
Ana Lara	Other Permits, Administrative Decisions	Recreation and Parks	Oppose	City Council - Chief of Staff, Council District 3
<i>Narrative:</i> oppose permits for new aprk				

Quarterly Lobbyist Activity Report

Oct 01 to Dec 31, 2020

Item 9 - Lobbyist Registration Act Guide
Lobbyist: Quetzalli Lara
**FILED WITH CITY OF OAKLAND
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12/14/2021 12:42 PM**

Schedule B - Employment of a City Official or Candidate (Schedule B)

City officeholder, candidate, employee or immediate family member, employed by lobbyist, or by a client at the lobbyist's behest, during the reporting period.

No Activity Reported...

Schedule C - Employment by a City Official or Candidate (Schedule C)

City officeholder, candidate, employee or immediate family member who employed the lobbyist during the reporting period.

No Activity Reported...

Schedule D - Political Contributions (Schedule D)

Persons or organizations solicited for contributions to a City officeholder or candidate during the reporting period.

No Activity Reported...

Verification

Quarterly Lobbyist Activity Report

Oct 01 to Dec 31, 2020

Item 9 - Lobbyist Registration Act Guide
Lobbyist: Quetzalli Lara
**FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/14/2021 12:42 PM**

I, Quetzalli Lara, have reviewed this Quarterly Lobbyist Activity Report and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true, complete, and correct.



Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Room 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593

Item 10a - Staff Memorandum



Arvon Perteet, Chair
Michael MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: January 20, 2022
RE: Mandated Campaign Contribution and Expenditure Limit Adjustment

The Public Ethics Commission (PEC or Commission) is responsible for adjusting Oakland's Campaign Contribution and Expenditure Limits annually according to the increase in the Consumer Price Index (CPI) for the preceding year pursuant to the Oakland Campaign Reform Act.

This memorandum provides background information about the annual adjustment and memorializes publication of the updated contribution and expenditure limits for 2022.

Background

The Oakland Campaign Reform Act (OCRA) imposes limits on campaign spending and seeks to reduce the influence of large contributions on election outcomes. OCRA tasks the Commission with annually adjusting the Contribution and Expenditure Limits for campaigns and campaign related actions in Oakland. Below are the applicable sections of the Oakland Campaign Reform Act (attached):

- Limitations on Contributions from Persons (O.M.C. Sec. 3.12.050)
- Limitations on Contributions from Broad-Based Political Committees (O.M.C. Sec. 3.12.060)
- Expenditure Ceilings for candidates who voluntarily agree to expenditure ceilings (O.M.C. Sec. 3.12.200)
- Amount of Independent Expenditures that lift the Expenditure Ceilings (O.M.C. Sec. 3.12.220)

The above sections establish a framework by which contributions to a candidate are limited to \$100 per contributor, unless the candidate voluntarily agrees to limit their overall spending for the entirety of their campaign (expenditure ceiling) to a set amount provided by OCRA. By accepting the expenditure ceiling, the candidate can then receive up to \$500 in contributions from an individual. The same is true for contributions from a broad-based political committee, as defined in OCRA, for which the statutory contribution limits are \$250 and \$1,000, respectively.¹

In addition to these limits, OCRA provides a mechanism by which the candidate expenditure ceiling is lifted if and when a person reaches a certain threshold of spending on independent expenditures on a particular race. The threshold amounts are as follows:

¹ These statutory amounts of \$100, \$500, \$250, and \$1,000 are adjusted each year as described on the next page.

Item 10a - Staff Memorandum

Candidate	Independent Expenditure Threshold
District City Council or School Board	\$15,000
City Attorney, Auditor, Councilmember-at-Large, or Mayor	\$70,000

All of these contribution limit and expenditure ceiling amounts are adjusted each year according to the increase in the Consumer Price Index (CPI), as provided in each of the above OCRA sections. Now, for example, the prior statutory \$100 limit for candidates who do not accept the expenditure ceiling is \$200 in practice, and for those who accept the expenditure ceiling, the statutory \$500 limit is \$900 as a result of annual CPI increases over time.

Annual Adjustment

OCRA specifies the timing and nature of the annual increase, providing that the amounts listed in each of the above sections must be increased annually according to the CPI “for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics.” The increase of the contribution limitation amounts “shall not exceed the CPI increase,” and the adjustment “shall be rounded to the nearest one hundred (100).” The calculations shall be based on 1999 as the index year for contribution limits, and 1998 as the index year for expenditure ceilings and the independent expenditure threshold.²

OCRA also requires that the expenditure ceiling amounts be published no later than February 1st of each year.³ OCRA further specifies that these amounts are based on population figures from the latest decennial census, which are also dependent upon the district boundaries as established by the Oakland Redistricting Commission under City Charter Section 220. New boundaries have not yet been established by the Redistricting Commission, which continues to meet as of the date of this memorandum; however, given that the PEC is statutorily required to publish the updated limits by February 1, the PEC is calculating the updated limits based on the existing district numbers from the prior decennial census, until the new boundaries and subsequent figures are formally established. At that time, the PEC will republish the new district figures with updated limits, if applicable.

Conclusion

The CPI data for 2021 was released by the U.S. Department of Labor, Bureau of Labor Statistics, on January 12, 2022. Commission staff used this data to calculate the increase for the 2022 contribution and expenditure limits and independent expenditure thresholds as required by the Oakland Campaign Reform Act and is publishing the 2022 limits here. Commission staff will distribute the new information widely and will update and re-distribute as necessary upon any changes made to the district figures by the Redistricting Commission.

Attached is the Commission’s published spreadsheet for 2022. Also attached is the format that Commission staff used to insert the data point for the annual average CPI increase for all urban consumers in 2021 and make the corresponding calculations for 2022. No further Commission action is necessary.

² O.M.C. Sections 3.12.050(G), 3.12.060(G), 3.12.200, and 3.12.220, referring to sec. 3.12.200.

³ O.M.C. 3.12.200.

Item 10a - Staff Memorandum

Attachments:

1. Campaign Contribution and Expenditure Limits 2022
2. Spreadsheet for Calculating Campaign Contribution and Expenditure Limits 2022
3. U.S. Department of Labor, Bureau of Labor Statistics, CPI All Items, All Urban Consumers (CPI-U) 2011-2021 ⁴

⁴ https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS49BSAo,CUUSS49BSAo

**CITY OF OAKLAND
CAMPAIGN CONTRIBUTION AND EXPENDITURE LIMITS PER THE OAKLAND CAMPAIGN REFORM ACT
2022**

LIMITATIONS ON CONTRIBUTIONS FROM PERSONS (§3.12.050)

Consumer Price Index (CPI) Values*

1999 (index year)	172.5	Annual Avg CPI
2021	309.721	Annual Avg CPI
Adjustment Factor	179.55%	

Position	Codified Limit	CPI Adjustment Factor	CPI Adjusted Expenditures	New Limit After Rounding**
Contributions from Persons				
For candidates who do not adopt the expenditure ceilings (3.12.050(A))	\$100	179.55%	\$180	\$200
For candidates who adopt the expenditure ceilings (3.12.050(B))	\$500	179.55%	\$898	\$900

* CPI is the Consumer Price Index - All Urban Consumers, Not Seasonally Adjusted, San Francisco-Oakland-San Jose, CA, All Items, Annual Value

** Per Municipal Code the CPI Adjusted Contribution amount must be rounded to the nearest one hundred (100).

LIMITATIONS ON CONTRIBUTIONS FROM BROAD-BASED POLITICAL COMMITTEES (§3.12.060)

Consumer Price Index (CPI) Values*

1999 (index year)	172.5	Annual Avg CPI
2021	309.721	Annual Avg CPI
Adjustment Factor	179.55%	

Position	Codified Limit	CPI Adjustment Factor	CPI Adjusted Expenditures	New Limit After Rounding**
Contributions from Broad-Based Political Committees				
For candidates who do not adopt the expenditure ceilings (3.12.060(A))	\$250	179.55%	\$449	\$400
For candidates who adopt the expenditure ceilings (3.12.060(B))	\$1,000	179.55%	\$1,795	\$1,800

* CPI is the Consumer Price Index - All Urban Consumers, Not Seasonally Adjusted, San Francisco-Oakland-San Jose, CA, All Items, Annual Value

** Per Municipal Code the CPI Adjusted Contribution amount must be rounded to the nearest one hundred (100).

EXPENDITURE CEILINGS FOR MAYOR AND OTHER CITYWIDE OFFICES WHO VOLUNTARILY AGREE TOP EXPENDITURE CEILINGS (§3.12.200)

Consumer Price Index (CPI) Values*

1998 (index year)	165.5	Annual Avg CPI
2021	309.721	Annual Avg CPI
Adjustment Factor	187.14%	

Position	Codified Limit	2010 Census Population**	Total Expenditures	CPI Adjustment Factor	CPI Adjusted Expenditures
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Data extracted on: January 18, 2022 (1:18:05 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS49BSA0


Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.698
2012		236.880		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.201
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.152
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.463
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.421
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.777
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.542
2018		281.308		283.422		286.062		287.664		289.673		289.896	285.550	282.666	288.435
2019		291.227		294.801		295.259		295.490		298.443		297.007	295.004	293.150	296.859
2020		299.690		298.074		300.032		300.182		301.736		302.948	300.084	299.109	301.059
2021		304.387		309.419		309.497		311.167		313.265		315.805	309.721	306.724	312.718

Item 10b - Campaign Contribution and Expenditure Limits 2022

Public Ethics Commission

2022

CITY OF OAKLAND CAMPAIGN CONTRIBUTION AND EXPENDITURE LIMITS PER THE OAKLAND CAMPAIGN REFORM ACT 2022

LIMITATIONS ON CONTRIBUTIONS FROM PERSONS (§3.12.050)

For candidates who do not adopt the expenditure ceilings (3.12.050(A))	\$200
For candidates who adopt the expenditure ceilings (3.12.050(B))	\$900

LIMITATIONS ON CONTRIBUTIONS FROM BROAD-BASED POLITICAL COMMITTEES (§3.12.060)

For candidates who do not adopt the expenditure ceilings (3.12.060(A))	\$400
For candidates who adopt the expenditure ceilings (3.12.060(B))	\$1,800

EXPENDITURE CEILINGS FOR MAYOR AND OTHER CITYWIDE OFFICES WHO VOLUNTARILY AGREE TOP EXPENDITURE CEILINGS (§3.12.200)

Mayor	\$512,000
City Auditor	\$366,000
City Attorney	\$366,000
Council Member At-Large	\$366,000
District 1 Council Member	\$161,000
District 2 Council Member	\$160,000
District 3 Council Member	\$161,000
District 4 Council Member	\$153,000
District 5 Council Member	\$153,000
District 6 Council Member	\$153,000
District 7 Council Member	\$155,000
District 1 School Board Director	\$107,000
District 2 School Board Director	\$107,000
District 3 School Board Director	\$107,000
District 4 School Board Director	\$102,000
District 5 School Board Director	\$102,000
District 6 School Board Director	\$102,000
District 7 School Board Director	\$103,000

INDEPENDENT EXPENDITURE COMMITTEE THRESHOLD/EXPENDITURE CEILINGS LIFTED (§3.12.220)

Citywide offices	\$131,000
District offices	\$28,000

Item 11 - Disclosure Report



Arvon J. Perteet, Chair
Michael B. MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: January 28, 2022
RE: Disclosure and Engagement Monthly Report for the February 9, 2022, Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities since the last monthly meeting. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as required. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Compliance with Disclosure Requirements

Campaign finance disclosure – A general election is scheduled this year, on November 8, 2022. Eight Oakland offices are up for election: Mayor; City Auditor; Councilmembers for Districts 2, 4 and 6; and School Board Directors for Districts 2, 4 and 6. So far 16 candidates have declared their intention to run and 9 have registered campaign committees.

In an election year, there are four major filing deadlines for campaign statements, two semi-annual statements and two pre-election statements. The first 2022 deadline is January 31, and all registered committees must submit semi-annual campaign statements for the period from July 1 through December 31, 2021. Outreach to filers this month included email notices of the upcoming deadlines and reminders via our social media accounts.

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

Lobbyist disclosure – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Public Ethics Commission before conducting any lobbying activity. It also requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. January 31 is the deadline for annual lobbyist registration renewal and January 30 is the deadline for quarterly lobbyist activity reports covering the period from October 1 through December 31, 2021. Outreach to lobbyists this month included email notices of the upcoming deadline and reminders via our social media accounts.

Item 11 - Disclosure Report

An up-to-date list of registered lobbyists and lobbyist activity reports with links to view and download individual reports is available at the PEC's [Lobbyist Dashboard and Data](#) webpage.

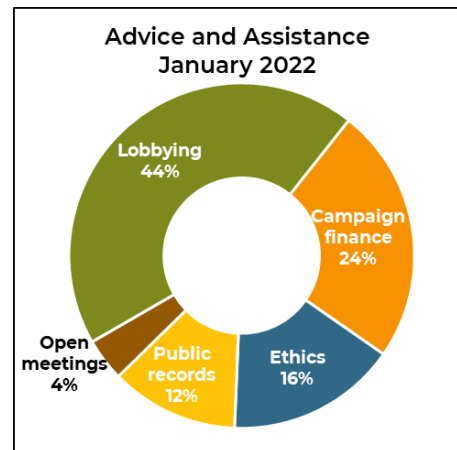
Illuminating Disclosure Data

Open Disclosure – Commission staff continues to act as team leader for the campaign finance website project [OpenDisclosure](#), produced in partnership with Open Oakland volunteers. The project team began plans to update the site for the November 2022 Oakland election this month and is recruiting volunteer developers. For more information or to join our volunteer team, visit the [OpenOakland](#) website.

Advice and Engagement

Advice and Technical Assistance – In January, Commission staff responded to 25 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues.

New Employee Orientation – Staff continues to make presentations at the City's monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). On January 19, staff trained 58 new employees on GEA provisions.



Ethics Onboarding and Exit Process – In January, staff met with the Assistant Human Resources Director, Resource Operations Supervisor, and Citywide Training Manager to develop processes to ensure that departments are communicating ethics training and Form 700 information to every employee and consultant hired by their department. Staff shared ethics onboarding and exit checklists that will be integrated with the City's NEOGOV platform so that all employees are informed and monitored for compliance with local ethics training and Form 700 requirements. In addition, staff is collaborating with HR to integrate PEC training assets onto the City's new NEOGOV Learn platform to utilize features to assign training, notice employees, and track compliance ahead of this year's Form 700 filing deadline.

Lobbyist Registration Act Guide – Commission staff updated the PEC's comprehensive guide to the Lobbyist Registration Act, designed to assist the regulated community in complying with local law. The guide provides a summary of the Lobbyist Registration Act provisions and was updated to reflect the new filing process since implementation of the online Lobbyist Registration and Reporting System as well as minor edits covering issues encountered during staff advice and technical assistance calls.

Online Engagement

Social Media – Each month Commission staff post social media content to highlight specific PEC policy areas, activities, or client-groups. In January, our posts focused on campaign finance disclosure deadlines, lobbyist registration and disclosure deadlines, introducing the new Commission chair, vice chair, and new members.

Website – This month, Commission staff began implementation of the City's new service webpage features. The revised service pages upgrade communication of key processes to PEC client groups.

Item 12a - Enforcement Report



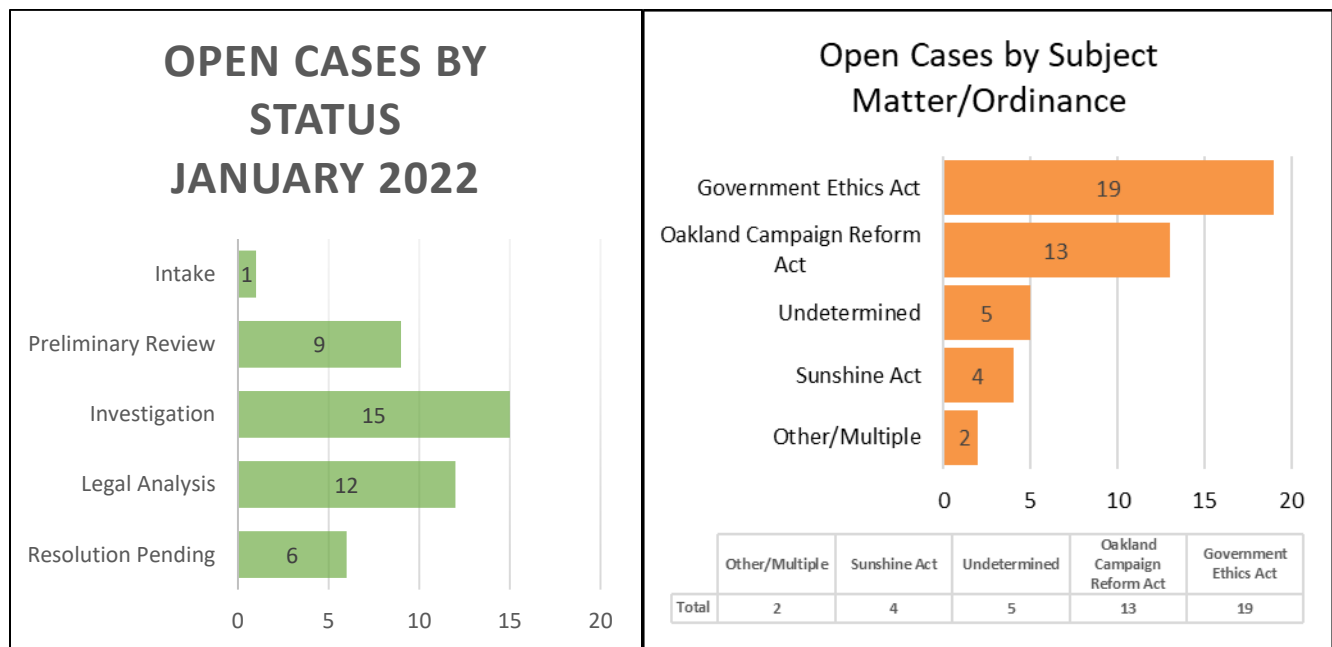
Arvon Perteet, Chair
Michael MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: January 24, 2022
RE: Enforcement Program Update for the February 9, 2022, PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on January 12, 2022, Commission staff received four new complaint(s). This brings the total Enforcement caseload to 43 open cases: 10 matters in the intake or preliminary review stage, 15 matters under active investigation, 12 matters under post-investigation analysis, and 6 matters in settlement negotiations or awaiting an administrative hearing.



Since the last Enforcement Program Update in January 2022, the following status change(s) have occurred:

1. ***In the Matter of John Marlette and the City of Oakland Planning and Building (Case No. 22-01)***. On January 3, 2022, the City of Oakland Public Ethics Commission (PEC) received a formal complaint which alleged that Respondent City of Oakland Planning and Building Inspector, John Marlette violated the Government Ethics Act (GEA) when he allegedly failed to conduct inspections of a property due to an alleged friendship with the owner. Staff completed its review of the matter and after reviewing the facts, relevant law and Enforcement Procedures, the Staff found that the allegations failed to establish that the Respondent violated any provision of the Government Ethics Act or any other provision within the jurisdiction of the PEC. Pursuant to Enforcement Procedures the complaint was dismissed. (See Attachments)

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-5239
FAX (510) 238-3315
TDD (510) 238-3254

Emily Leese

Re: PEC Complaint No. 22-01; Dismissal Letter Regarding John Marlette, City of Oakland Planning and Building

Dear Ms. Leese:

On January 3, 2022, the City of Oakland Public Ethics Commission (PEC) received your complaint (Complaint No. 20-01) that John Marlette, an Inspector with the City of Oakland Building and Planning Department, may have violated an unspecified provision of the Government Ethics Act, by failing to enforce building code violations against the owner of your residence. The complaint further alleged that Mr. Marlette was “friends” with the residence owner and by implication refused to enforce building code violations. After a close review of your report and relevant law, we found that there are insufficient facts to establish that the allegations against John Marlette allege conduct that constitutes a violation of the Government Ethics Act or any other provision within the jurisdiction of the PEC.

The Oakland Government Ethics Act prohibits a Public Servant from making, participating in making, or seeking to influence a decision of the City in which the Public Servant has a financial interest.

The investigation confirmed that, on or about November 8, 2021, the City of Oakland Building and Planning Inspector, John Marlette conducted an inspection of reported property and made a finding that the roof had leak damage and that repair was required. On that same date, Inspector Marlette took photos of the damage and issued the residence owner a “Notice of Violation” with notice that the property would be re-inspected between December 15-21, 2021. On December 23, 2021, a reinspection was conducted, and it was determined that the owner failed to repair the roof damage. On that same date the Inspector issued a re-inspection notice to occur on January 18, 2022 and imposed an administrative fine of \$216. Outside of his alleged “friendship” with the residence owner, there was no verifiable information to establish that he engaged in any inspections, refused an inspection or attempted to influence any decisions of the City in a matter in which he had a financial interest.

Item 12b - 22-01 Dismissal Letter

The preliminary investigation confirmed that Mr. Marlette did, in fact, conduct inspections of the property, made findings that the property had leak damage, and imposed an administrative fine against the owner for his failure to repair the damage before re-inspection. There was no information to establish that the Inspector had a financial interest in the owner's property or that he was promised or given money in exchange for conducting an inspection or declining inspections.

Because Mr. Marlette's alleged conduct does not constitute a violation of the Government Ethics Act, or any other provision within the jurisdiction of the PEC, we are dismissing the allegations against him in the complaint pursuant to the PEC's Complaint Procedures. The PEC's Complaint Procedures document is available on the PEC's website.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on February 9, 2022, at 6:30 p.m. by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Kellie Johnson,
Enforcement Chief

Item 13a - Executive Director's Report



Arvon Perteet, Chair
Michael B. MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: January 28, 2022
RE: Executive Director's Report for the February 9, 2022, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects in 2022 for each program area. (Commission Programs and Priorities attached)

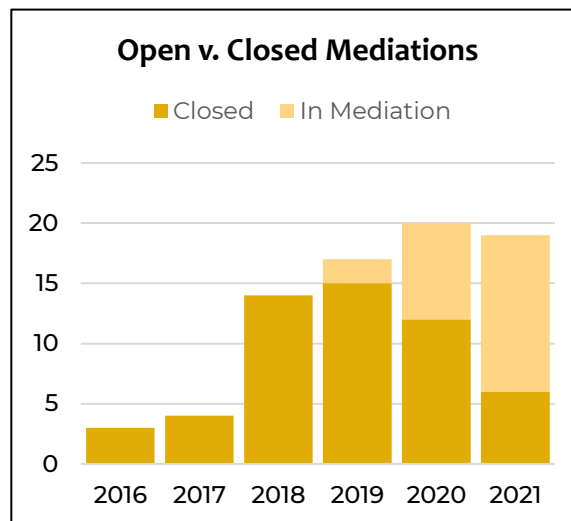
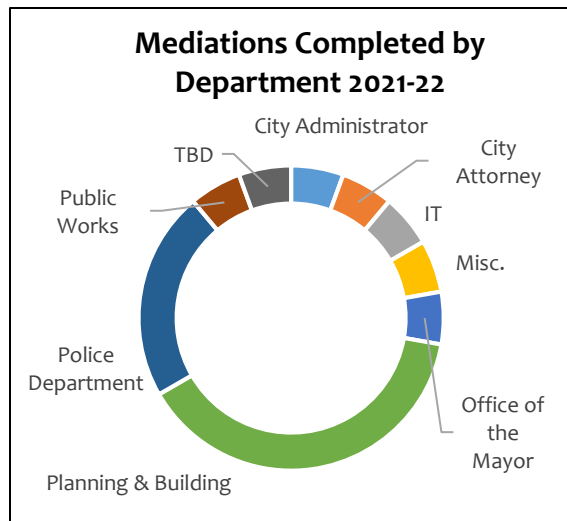
Commissioner Recruitment and Onboarding

Welcome to our newest Commissioner Charlotte Hill, who was sworn in on January 24, 2022, following her appointment by the full Commission at its December 6, 2021, regular meeting.

Mediations

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. The PEC has 23 open mediations. Following a mediation, Commission staff provides a written summary of the mediation to the Commission and can also make recommendations for further Commission action. The following mediation was conducted by staff and subsequently closed this past month (reports attached):

1. In the Matter of the City Administrator's Office (M2019-08); (Mediation Summary attached)
2. In the Matter of the Oakland Police Department (M2019-14); (Mediation Summary attached)



PUBLIC ETHICS COMMISSION
Programs and Priorities 2022

Program	Goal	Desired Outcome	Key Projects for 2022
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. City Ticket Policy Ordinance 2. Limited Public Financing Act Amendment 3. Campaign Public Finance Redesign 4. Public Records Performance Tool
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Ethics onboarding/exit process improvement 2. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 3. Campaign Finance Training 4. Limited Public Financing Act Training and Program Implementation 5. Sunshine training – Open meetings; public records 6. New trainings as needed for diversion
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Public Records mediations 2. PEC Outreach – Commissioner-led public outreach 3. Communications/outreach to client groups – targeted and training and compliance 4. PEC social media outreach – focused on sharing ethics-related data and PEC services and outcomes 5. Website – PEC dashboards for enforcement cases and mediations
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Filing Officer/Compliance – assess, follow-up, and refer 2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App, Behested Payments 3. Open Disclosure – continue coordination and development 4. Campaign Finance Data – focus on pushing out data using Socrata, City Open Data Portal, and PEC dashboards where possible for the 2022 Election
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Investigations 2. Collaborate with other government law enforcement agencies

Item 13a - Executive Director's Report

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC 2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources. 3. Resolve all 2016 and 2017 cases 4. Enforcement Subcommittee – discussion of process improvements
Administration/Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Annual Report 2. Budget – new Administrative Analyst position 3. Enforcement database upgrade 4. Review data to adjust activities throughout the year 5. Ongoing: professional development and staff reviews

Item 13b - M2019-08 Mediation Summary



Arvon Perteet, Chair
Michael B. MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: January 25, 2022
RE: *In the Matter of the City Administrator's Office (Case No. M2019-08); Mediation Summary*

I. INTRODUCTION

On May 14, 2019, the Commission received a request for mediation alleging that Richard Luna (Respondent) failed to disclose records in response to two public records requests made by the Requester on April 24, 2019. On May 22, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the Respondent provided the responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

III. SUMMARY OF FACTS

On April 24, 2019, the City received, via web, the following public records request (No. 19-2065):

All documents and emails referencing official city policies and protocols for "community cabins"/Tuff Sheds concerning the following:

- standards around outside temperature fluctuations, seasonal protocols, i.e, specific guidelines for specific recorded outside temperatures
- provisions of shower, with dedicated days for each encampment, frequency
- provision of porta-potty by self-identified gender, or non-gender.

The request covers city encampments at Castro, Northgate, Lake Merritt and Miller sites, and for any planned sites, such as Mandela Pkwy and Jack London Square. These should all be in the possession of Joe Devries.

On April 24, 2019, the City received, via web, the following public records request (No. 19-2066):

Please provide any and all lease agreements; and/or draft lease agreements; and or proposals for lease agreements; and/or addenda or MOUs with Caltrans for the purpose of emergency homeless shelter and/or the city's "community cabins" projects.

Both public records requests (19-2065 and 19-2066) were assigned to the Office of the City Administrator.

On May 9, 2019, the Requester responded to both public records requests stating:

California Public Records Act requires a response to this request within 10 calendar days. It has been over 10 days. Please comply with the law and respond.

On May 13, 2019, the Respondent released two lease agreement documents to the Requester in response to public records request 19-2066. Subsequently, the public records request was closed stating:

We released all of the requested responsive documents.

On May 13, 2019, the Requester responded:

There should be at least one more lease agreement here for the "Castro" encampment. Please re-open and provide it.

On May 13, 2019, the Respondent sent a message to the Requester via NextRequest stating:

Per CAO staff, there were not documents in the City Administrator's Office. Human Services may have the documents related to this request.

On May 14, 2019, Kathy Hicks from the Human Services Department replied:

Item 13b - M2019-08 Mediation Summary

We are creating one as we speak per request from Council. We are currently incorporating interventions such as additional blankets, warming gloves, clothing of various kinds, hand warmers, leg warmers, and looking into the feasibility/safety of using warming blankets, however, we will work off of common standardized inclement weather triggers for the protocol itself which is:

1. The temperature is forecast to fall below 40 degrees (39 or lower) the inclement weather protocols will be implemented (40 on the nose means not open).
2. When significant rain is forecast – defined as a greater than 50% chance of showers – the inclement weather protocols will be implemented.
3. If the temperature is expected fall below 39 degrees any time before 5am the inclement weather protocols will be implemented.
4. If a greater than 50% chance of rain is expected any time before 5am the inclement weather protocols will be implemented.
5. On Fridays, the decision to operationalize the inclement weather protocols on the weekend nights (Saturday and Sunday) will be determined and notifications will be made by 4pm on Friday.

--provisions of shower, with dedicated days for each encampment, frequency

They are currently operating at the following sites one day per week:

- Northgate community cabins
- lake Merritt community cabins
- Miller community cabins
- 5th and Webster Way; near our portapotties site in Jack London area

--provision of porta-potty by self-identified gender, or non-gender:

This decision has been site specific as requested/agreed by each community. For example, at Miller Community Cabins there is no such designation, but at Lake Merritt there is. Each site has one unit dedicated to staff.

On May 14, 2019, the public records request (19-2065) was closed stating:

We released all of the requested documents.

On May 14, 2019, the Commission received a complaint alleging that the Respondent had failed to provide all the requested documents in response to public records requests Nos. 19-2065 and 19-2066.

On May 22, 2019, Staff initiated its mediation program and notified the Respondent of the mediation request seeking confirmation that all responsive records had been provided for PRR 19-2066 but received no response.

On January 24, 2022, Staff followed up with the Respondent to confirm that all responsive documents had been provided for PRR 19-2066. The Respondent replied:

At the time we processed the request we provided all the responsive documents.

Item 13b - M2019-08 Mediation Summary

The Requester sought mediation because he thought there should be an additional document in response to his request pertaining to a homeless encampment. The Requester alleged that there was an additional document, but the Respondent confirmed that the two leases that were released were all the responsive documents that pertained to the request, and these documents had been provided prior to mediation commencing.

On January 25, 2022, Staff followed up with the Requester regarding the Respondent's confirmation that all records were provided per his request and informed the Requester that the mediation would be closed. The Requester acknowledged closure of the mediation and thanked Staff.

IV. RECOMMENDATION

Because the Respondent provided the responsive records for the public records requests, Staff closed the mediation without further action.

Item 13c - M2019-14 Mediation Summary



Arvon Pertee, Chair
Michael B. MacDonald, Vice-Chair
Charlotte Hill
Jessica Leavitt
Ryan Micik
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: January 25, 2022
RE: *In the Matter of the Oakland Police Department (Case No. M2019-14); Mediation Summary*

I. INTRODUCTION

On August 2, 2019, the Commission received a request for mediation alleging that the Oakland Police Department failed to disclose records in response to a public records request made by the Requester on July 13, 2019. On August 13, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department provided responsive records per the request, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

III. SUMMARY OF FACTS

On July 13, 2019, the Police Department received, via email, the following public records request (No. 19-3541):

Please send me all records recorded from shotspotter for today, July 13, in Oakland

On August 14, 2019, the Police Department changed the due date for the public records request with no detailed explanation. Subsequently, the Police Department changed the due date nearly every month for approximately 20 months.

On April 30, 2021, the Police Department changed the due date a final time stating:

A follow up email has been sent to the Shotspotter Unit. You will be updated once a response is received. We apologize for the delay and thank you for your continued patience.

On May 3, 2021, the Police Department closed the public records request stating:

After a diligent search and reasonable inquiry, OPD does not possess any documents that are responsive to this request.

On August 18, 2021, Staff followed up with the Requester regarding their public records request and informed them that their mediation request would be closed. The requester responded:

Why did it take more than a year and a half to determine there were no records?

They repeatedly told me that they needed more time to respond then came back after all that time and said ShotSpotter only retains the records for a specific limited duration. That is something they should have known right away. It seems like they just ran out the clock until they could say the documents were no longer available.

On September 23, 2021, Staff inquired further with OPD's Public Records Liaison, Alisha Banda, who suggested contacting Trevelyan Jones of OPD's ShotSpotter Unit to provide further information for the delay in responding to the records request as well as ShotSpotter's records retention policy.

On October 5, 2021, Staff received an email from OPD stating:

Good Afternoon Sir.

Regarding PRR 19-3541 we may have found a responsive result.

Please call me regarding this PRR.

On October 15, OPD released a document of Shotspotter records via NextRequest. The Requester responded to the released document stating:

Item 13c - M2019-14 Mediation Summary

Hi. This doesn't show me anything about locations. What was redacted? It doesn't show a reason.

On October 18, 2021, OPD uploaded a revised document of the same ShotSpotter data that also included a reason for the redacted information stating:

Good Morning.

I will upload your document shortly. Some records are not being released, or have been redacted pursuant to Gov. Code Sec, 6255(a) as the public interest in nondisclosure clearly outweighs the public interest in disclosure; City of San Jose vs Superior Court (1999) 74 Cal.App.4th 1008.

On October 26, 2021, Staff followed up the Requester to see if their request had been satisfied and to inform them that the mediation case would be closed. Staff also informed the requester that further investigation into the reason for the delay would continue. The Requester replied:

Thanks for checking in. The extreme delay is troubling but I'm also perplexed at why they redacted the information that was released. As far as I can tell, the redacted information was the location of the report. How can that possibly be justified because "public interest in nondisclosure clearly outweighs the public interest in disclosure"?

Someone should have to explain how not disclosing the location of gunshots is in the public interest.

On October 29, 2021, after receiving no response to initial email, Staff reached back out to Trevelyan Jones with the following email:

Hi Trevelyan,

Our office is trying to close out the mediation case for PRR [19-3541](#) and need to speak with you or someone in the department that coordinates with ShotSpotter. There are still some questions that we need answered including:

- When was the Request sent to ShotSpotter?
- What was the reason for the extreme delay?
- What is ShotSpotter's record retention policy, or if none, what are OPD's requirements for retention of records by ShotSpotter? Please provide us with a copy of any relevant policies or agreements between ShotSpotter and OPD.
- What departmental policies are in place to ensure that ShotSpotter public records requests are responded to within the required timeframe?

Would you be able to provide answers to these questions? If not, can you direct us to someone in the department who can?

On October 29, 2021, Trevelyan Jones responded stating:

Please contact Vijay Norfleet regarding this.

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On November 19, 2021, OPD Records Division Manager, Vijay Norfleet, provided the following response to Staff's inquiry:

Good morning-

- When was the Request sent to ShotSpotter?
 - o **The request was sent for responsive data on 7/19/2019**
- What was the reason for the extreme delay?
 - o **Conflicting opinions as to the releasability of requested information**
 - o **Eventually with the overwhelming volume of request this didn't get resolved in a timely manner**
- What is ShotSpotter's record retention policy, or if none, what are OPD's requirements for retention of records by ShotSpotter? Please provide us with a copy of any relevant policies or agreements between ShotSpotter and OPD.
 - o **This is still pending. I'll forward as soon as the information is received.**
- What departmental policies are in place to ensure that ShotSpotter public records requests are responded to within the required timeframe?
 - o **The department is working with the City Attorney's Office to streamline the process for complying with all Public Records Request.**
 - o **In April 2021 we had 4668 pending Public Records Request. Currently we 985 pending.**
 - o **It has been determined that the data in this request is public information therefore subsequent request for the same type of data should not be delayed.**

On November 19, 2021, Staff also spoke with Vijay Norfleet via phone. During this conversation, she explained that when the request initially came, the Ceasefire Unit (OPD unit that oversees ShotSpotter) did not believe that the info was releasable. There was a lot of back and forth with the department and the City Attorney's office about the requested record. Vijay informed Staff that the request just fell through the cracks during that time.

When the request resurfaced, it was determined that it was releasable. They were then informed by ShotSpotter that they only keep data for two years. Subsequently, Vijay had the Records Division team do a search to see if the data had been released in another request. When the specific date was found in another data batch request ([PRR 20-4506](#)), it was released to the Requester. She was not sure why ShotSpotter data was released in another request and not PRR 19-3541. She expressed that it was likely due to the switch in commanding officers during the time of the two requests.

She informed Staff that it is now clear to the department that ShotSpotter data must be released.

On December 8, 2021, Staff followed up with Vijay Norfleet via phone with additional questions about measures that are being taken by the department to ensure that delays in releasing records doesn't occur in the future. During the conversation Staff was informed that there are currently two public records lawsuits against the department that are being settled. The Plaintiff won in both lawsuits which now require that the department adopt policies to streamline their process for responding to public records requests.

IV. RECOMMENDATION

Because the Police Department provided a responsive record for the public records request, Staff closed the mediation without further action. However, Staff will continue working with the department's records liaison to ensure that procedures are put in place to avoid this outcome in the future.