

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Regular Commission Meeting  
Teleconference  
Wednesday June 8, 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://uso2web.zoom.us/j/88171471481>
  - 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://uso2web.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](mailto:ethicscommission@oaklandca.gov). If you have any questions about how to participate in the meeting, please email [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) before or during the meeting.

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Commissioners: Arvon Perteet (Chair), Michael MacDonald (Vice-Chair), Charlotte Hill, Ryan Micik, Joseph Tuman and Francis Upton IV.

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.**
  - April 13, 2022 Regular Meeting Minutes ([Meeting Minutes](#))
  - April 21-22, 2022 Special Meeting Minutes ([Meeting Minutes](#))
- 6. In the Matter of Ener Chiu (Case No. 18-16).** On May 9, 2018, the City of Oakland Public Ethics Commission received a complaint alleging that Respondent, Ener Chiu, an employee of the East Bay Asian Local Development Corporation (EBALDC) violated the Oakland Campaign Reform Act by making a contribution to Council member Abel Guillen within months of the City signing a Disposition and Development Agreement (DDA) with EBALDC. Around the same time the Respondent actively engaged in lobbyist activity in



the City but failed to register as a lobbyist, in violation of the Oakland Lobbyist Registration Act. Based on the allegations in the complaint, staff opened an investigation to determine whether the Respondent violated the Oakland Campaign Reform Act's Contractor Contribution Ban by making contributions to City of Oakland elected officials, candidates, or their controlled committees and by lobbying City elected officials. The investigation confirmed that the Respondent made a contribution to Councilmember Guillen and actively engaged in lobbyist activity in the City but failed to register as a lobbyist with the City. Staff recommends that the Commission schedule this matter for an administrative hearing. ([Staff Memorandum](#))

## **DISCUSSION ITEMS**

7. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work.
  - a. **Enforcement Subcommittee** (*ad hoc*, created on November 1, 2021) – Arvon Perteet (Chair), Ryan Micik and Joseph Tuman.
  - b. **Public Records Performance** (*ad hoc*, created on January 12, 2022) – Michael MacDonald (Chair) and Francis Upton.
  - c. **Fair Elections Act Subcommittee** (*ad hoc*, created on April 13, 2022) – Charlotte Hill (Chair), Ryan Micik, and Arvon Perteet.

## **INFORMATION ITEMS**

8. **Oakland Campaign Reform Act Contribution Limit and Expenditure Ceiling Annual Adjustment for 2022 – Updated.** 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 and readjusted per the new redistricting process completed since then. Staff has made the required adjustments and re-published the 2022 limits for the public. ([Staff Memorandum](#); [Campaign Contribution and Expenditure Limits 2022](#))
9. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides an overview of education, outreach, disclosure and data illumination activities for this past month. ([Disclosure Report](#))

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10. **Enforcement Program.** Enforcement Chief Kellie Johnson provides a monthly update on the Commission’s enforcement work since the last regular Commission meeting. ([Enforcement Report](#))
11. **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](#); [PEC Performance Plan and Priorities](#); [M2202-02 Mediation Summary](#);) )
12. **Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

**CLOSED SESSION**

13. **Personnel.** Pursuant to California Government Code section 54957(b), the Commission will meet in Closed Session to consider the appointment or employment of the next Executive Director.

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](http://www.oaklandca.gov/pec).

5/27/2022

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Approved for Distribution

Date



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¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a [alarafranco@oaklandca.gov](mailto:alarafranco@oaklandca.gov) o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

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



**CITY OF OAKLAND**  
**Public Ethics Commission**



**RESOLUTION NO. 22-01**  
**[Proposed renewal 6-8-22]**

**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 6-8-22]**

**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 6-8-22]**



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**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 June 8, 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: 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 MINUTES**

### **1. Roll Call and Determination of Quorum.**

The meeting was held via teleconference.

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

Members present: Perteet, MacDonald, Hill, Leavitt, and Micik. Tuman was absent.

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

City Attorney Staff: Tricia Shafie.

### **2. Staff and Commission Announcements.**

There were no staff announcements

### **3. Open Forum.**

There was one public speaker

## **PRELIMINARY ACTION ITEMS**

### **4. Virtual meetings by the Public Ethics Commission.**

There were no public speakers.

Hill moved, and MacDonald seconded to approve the renewal of RESOLUTION NO. 22-01.

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Ayes: Perteet, MacDonald, Hill, Leavitt, Micik.

Noes: None

Absent: Tuman

Vote: Passed 5-0

### **ACTION ITEMS**

#### **5. Approval of Commission Meeting Draft Minutes.**

- a. March 9, 2022 Regular Meeting Minutes

There were no public speakers.

Micik moved, and Leavitt seconded to approve the March 9, 2022 meeting minutes.

Ayes: Perteet, Hill, Leavitt, Micik.

Noes: None

Abstain: MacDonald, was not present at meeting.

Absent: Tuman

Vote: Passed 4-0

#### **6. Bay Area Political Equality Collaborative's Proposed Oakland Fair Elections Act.**

The Commission heard from members of the Bay Area Political Equality Collaborative (BayPEC) on the proposal to amend Oakland's campaign finance, public financing, and lobbyist registration laws under a broad reform measure called the Oakland Fair Elections Act.

Panel presenters included Jonathan Mehta Stein, Executive Director, California Common Cause; liz suk, Executive Director, Oakland Rising; and Gail Wallace, Co-Chair, Action Committee, League of Women Voters-Oakland, as well as Renee LeBeau, from Seattle.

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Commissioners asked questions and discussed the proposal.

There were nine public speakers.

MacDonald moved, and Hill seconded to support the proposal and to direct staff to create an *ad hoc* subcommittee to continue working with BayPEC.

Ayes: MacDonald, Hill, Leavitt, and Micik.

Noes: Perteet.

Absent: Tuman

Vote: Passed 4-1

### **DISCUSSION ITEMS**

#### **7. Reports on Subcommittees and Commissioner Assignments.**

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

Perteet shared that they did not meet last month but will do so in May.

- b. **Public Records Performance** (*ad hoc*, created on January 12, 2022) - Michael MacDonald (Chair) and Jessica Leavitt.

MacDonald had no updates. He asked if the new commissioner has been appointed by the City Auditor and that perhaps the new member may be interested in serving on this subcommittee.

Perteet created the *ad hoc* Fair Elections Subcommittee. Members are Hill (Chair), Micik, and Perteet.

There were no public speakers.

### **INFORMATION ITEMS**

#### **8. Limited Public Financing Program Guide 2022.**

Suzanne Doran, Lead Analyst, shared that the expenditure limits have been revised

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after the redistricting committee finalized new district boundaries and district population counts.

There were no public speakers.

## 9. Disclosure and Engagement.

Ms. Doran provided an overview of education, outreach, disclosure and data illumination activities for this past month.

There were no public speakers.

## 10. Enforcement Program.

Kellie Johnson, Enforcement Chief, provided a monthly update on the Commission's enforcement work since the last regular Commission meeting.

There were no public speakers.

## 11. Executive Director's Report.

Whitney Barazoto, Executive Director, reported on overall projects, priorities, and significant activities since the Commission's last meeting.

There were no public speakers.

## 12. Future Meeting Business.

Perteet shared that the retreat will be on April 21 and April 22, 2022. The meeting will be conducted remotely on Zoom.

Future meetings will be held via Zoom at least until 2024.

There were no public speakers.

The meeting adjourned at 8:54 p.m.

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DRAFT

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

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

City Attorney Staff: Trish Shafie, Deputy City Attorney

## **PUBLIC ETHICS COMMISSION SPECIAL MEETING MINUTES**

**This is a two-day meeting to occur on April 21, 2022, from 5:00 – 8:30 p.m.,  
and on April 22, from 5:00 – 8:30 p.m.**

### **1. Roll Call and Determination of Quorum.**

The meeting was held via teleconference.

The meeting was called to order at 6:33 p.m.

Members present: Perteet, MacDonald, Hill, Leavitt, Micik, Tuman and Upton. Leavitt arrived at 5:30 p.m.

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

City Attorney Staff: Tricia Shafie.

Guest Facilitator: Trent Wakenight.

### **2. Staff and Commission Announcements.**

Whitney Barazoto, Director, welcomed new commissioner, Francis Upton. She also announced her departure. Her last day will be June 10, 2022.

Ms. Barazoto also shared that the ticket policy passed the first rules meeting and will be presented for the second reading on May 3<sup>rd</sup>, 2022.

### **3. Open Forum.**

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There was one public speaker.

### PRELIMINARY ACTION ITEMS

- 4. Virtual meetings by the Public Ethics Commission.** The Commission will review and take possible action to renew Resolution 22-01, initially 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](#))

There were no public speakers.

MacDonald moved, and Tuman seconded to approve the renewal of **RESOLUTION NO. 22-01.**

Ayes: Perteet, MacDonald, Hill, Micik, Tuman and Upton.

Noes: None

Vote: Passed 6-0

Leavitt had not arrived yet.

### ACTION ITEMS

- 5. Public Ethics Commission Retreat.**

The Commission and staff convened on two consecutive evenings for its annual retreat to conduct team development, assess Commission accomplishments and current context, participate in strategic visioning, and identify key opportunities and priorities for 2022-25.

April 21, 2022

Guest facilitator Trent Wakenight, Consultant with The Grove Consultants International, led the discussion with the Commission, Staff, and members of the public, beginning with an introductory activity and review of PEC history and growth, as well as a discussion of more recent project accomplishments.



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7:02 p.m. - Public Comment was called. There was one public speaker.

7:03 p.m. – Perteet called for a recess

7:15 p.m. – The meeting returned from recess.

8:07 p.m. – Pubic Comment - There were no public speakers.

8:15 p.m. – Perteet called for a recess for meeting to continue April 22, 2022 at 5:00 p.m.

April 22, 2022

The meeting was held via teleconference.

The meeting began at 5:07 p.m.

Members present: Perteet, MacDonald, Hill, Leavitt, Micik, Tuman and Upton.

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

City Attorney Staff: Tricia Shafie.

Guest Facilitator: Trent Wakenight.

The Commission and staff continued to assess Commission role and responsibilities, discuss current context, and identified key opportunities and priorities for 2022-25.

6:41 p.m. - Public comment was called. There were no public speakers.

6:42 p.m. - Perteet called for a recess.

6:55 p.m. – The meeting returned from recess.

8:30 p.m. – Public comment was called – There were no public speakers.

### **6. Future Meeting Business.**

Perteet shared that he will not be at the May meeting. Upton was assigned to

## Item 5b - Meeting Minutes

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the Public Records Performance *ad hoc* subcommittee. Tuman was assigned to the Enforcement *ad hoc* Subcommittee.

The meeting adjourned at 8:48 p.m.

## Item 6 - Staff Memorandum



Michael MacDonald, -Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Jessica Leavitt  
Ryan Micik  
Arvon Perteet  
Joseph Tuman

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie F. Johnson, Enforcement Chief  
DATE: April 20, 2022  
RE: Case No. 18-16; In the matter of Ener Chiu prepared for the May 11, 2022, Public Ethics Commission Meeting

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### BACKGROUND:

On May 9, 2018, the City of Oakland Public Ethics Commission received a complaint alleging that Respondent, Ener Chiu, an employee of the East Bay Asian Local Development Corporation (EBALCD) violated the Oakland Campaign Reform Act by making a contribution to Council member Abel Guillen within months of the City signing a Disposition and Development Agreement (DDA) with EBALDC. Based on the allegations in the complaint, staff opened an investigation to determine whether the Respondent violated the Oakland Campaign Reform Act's Contractor Contribution Ban by making contributions to City of Oakland elected officials, candidates, or their controlled committees. Staff contacted the Respondent several times between October 2021 and March 2022 to reach a resolution. The Respondent has not responded to Staff since February 2022. After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff recommends that the Commission refer the matter for a hearing.

### SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

#### **Oakland Campaign Reform Act:**

**O.M.C. § 3.12.140 (1) (A)** OCRA prohibits contributions to candidates from City contractors.<sup>1</sup> This prohibition applies to any "person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for," among other things, "purchasing or leasing any

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<sup>1</sup> In January 2017, an amended provision of O.M.C. 3.12.040 went into effect expanding the Contractor Contribution Ban to all principals of an entity, including an individual employee, independent contractor or agent of the entity, that represents is authorized to represent the entity before the City in regards to a contract or proposal contract.

## Item 6 - Staff Memorandum

land or building from the City, whenever the value of such transaction would require approval by the City Council.”<sup>2</sup>

For purposes of this law, “contractor” includes the following provisions:

[a]nyone who contracts or proposes to contract with the City for selling or leasing any land or building to the City, or for purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council.

If a person is an entity, the restrictions of Subsections A also apply to all of the entity's principals, including, but not limited to, the following:

1. The entity's board chair, president, chief executive officer, chief operating officer, chief financial officer, and any individual who serves in the functional equivalent of one or more of those positions;
2. Any individual who owns an ownership interest in the entity of twenty (20) percent or more; and
3. An individual employee, independent contractor, or agent of the entity, that represents or is authorized to represent the entity before the City in regard to the contract or proposal contract.

The prohibition in section 3.12.140 begins with "commencement of negotiations," which is defined as occurring when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any City Official or when a City Official formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.

"Completion of negotiations" occurs when the City or the School District executes the contract or amendment. "Termination of negotiations" occurs when the contract or amendment is not awarded to the contractor or when the contractor files a written withdrawal from the negotiations, which is accepted by a City Official or an appointed or elected School District officer or employee.

Thus, the prohibition applies from the “commencement of negotiations” until 180 days after the “completion of negotiations.”<sup>3</sup> The “commencement of negotiations” occurs when a contractor or contractor’s agent formally submits a bid, proposal, qualifications or contract amendment to any City Official.<sup>4</sup> The “completion of negotiations” occurs when the City executes the contract or amendment.<sup>5</sup>

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<sup>2</sup> See also OMC § 3.12.140(E)(4), which also specifies that “transactions that require approval by the City Council include but are not limited to ... [c]ontracts for the sale or lease of any building or land to or from the City.”

<sup>3</sup> OMC § 3.12.140(A).

<sup>4</sup> OMC § 3.12.140(G).

<sup>5</sup> OMC § 3.12.140(K). For the purposes of this analysis, the period of time in which contributions by contractors are prohibited is referred to as the “blackout period.”

## Item 6 - Staff Memorandum

**Lobbyist Registration Act:** “Any person who receives or is entitled to receive \$1,000 or more in a calendar month to communicate directly or through agents with any public officials, officers, or designated employees, for the purpose of influencing any action of the City of Oakland (City) qualifies as a lobbyist or (2) whose duties as a salaried employee, officer, or director, of any corporation, organization or association, include communication directly or through agents with any public official, officer, or designated employee, for the purpose of influencing any proposed or pending governmental action of the City. No person may act as a lobbyist before registering as a lobbyist with the City. A lobbyist is required to file a lobbyist registration form with the City every year by January 31.<sup>6</sup> The LRA states that all local governmental lobbyists must register annually before January 31, until s/he has ceased to qualify as a lobbyist and files a notice of termination with the City.”<sup>7</sup>

### TIMELINE OF EVENTS:

- 07/14/15 The City issued a Notice of Offer and Intent to convey a vacant property known as the East 12<sup>th</sup> Street Remainder Site.
- 08/20/15 Bid proposals due.
- 03/15/16 The City Council adopted Resolution No. 86056 authorizing the City Administrator to enter into an Exclusive Negotiating Agreement (ENA) with Developer.
- 01/01/17 OCRA expanded the Contractor Contribution ban to include an entity’s principals, employees, independent contractors, and agents that represent or are authorized to represent the entity before the City regarding a contract.
- 02/15/17 A DDA was executed by the City Administrator and Developer.
- 08/14/17 Since negotiations concluded when the DDA was executed on February 15, 2017, the Contractor Contribution ban applied at least to August 14, 2017 (180 days after February 15, 2017).

### FACTUAL SUMMARY AND ANALYSIS:

On or Between July 2016 and February 2017 Chiu was a salaried employee with the East Bay Asian Local Development Corporation making between \$90K and 100K annually. In his role as a co-project manager of the “E 12<sup>th</sup> Street Remainder Parcel Developer Section,” he was an advocate and representative on behalf of East Bay Asian Local Development Corporation and was tasked, along with Jason Vargas, his co-project manager, to lobby the City and City Council to support EBALC projects that were being considered by the City. The Respondent and Vargas were each authorized to represent EBALDC in contract negotiations with the City. Witness Hui-Chang Li, the Project Lead for the City reported to PEC Staff that Chiu appeared with counsel to negotiate the E 12<sup>th</sup> Street, DDA on behalf of

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<sup>6</sup> Oakland Municipal Code (LRA) (O.M.C.) § 3.20.040 and O.M.C. § 3.20.030(D)

<sup>7</sup> O.M.C. § 3.20.110

## Item 6 - Staff Memorandum

EBALDC. The DDA negotiations were detailed negotiations that were conducted both by telephone and in-person meetings. These meetings were held once or twice a month over an eight-month period.

During a Staff interview, Chiu admitted that he lobbied any City official, Councilmember or “anyone and everyone” he had the opportunity to speak to on behalf of EBALDC. When he spoke to members of the City Council about the EBALC Project, he spoke favorably because “you have to be an advocate for your project.” Chiu also admitted that he advocated for all EBALDC’s projects. Before any Council meeting where the project was to be discussed, Chiu reached out to all the Councilmembers to say he hoped he had their support and offered to answer questions or provide further information to help them make up their minds. He believed that he reached out by telephone and had a conference call with CEO of UrbanCore Development, LLC, Michael Johnson and a Councilmember about the Project. Chiu believed he and Johnson also met with other Councilmembers in their respective offices. Chiu did not recall the exact number of meetings he and Johnson had with the Councilmembers.

When asked about the contributions he allegedly made, Chiu acknowledged making a \$250 contribution to Abel Guillen on April 19, 2017, which he has a record of. He acknowledged making at least three other contributions that were outside the time covered by OCRA statute.

Staff also interviewed Anne Robertson, Executive and Board Operations, with EBALDC. Ms. Robertson made clear that Chiu’s contributions were personal and that EBALDC did not have any knowledge of the contributions until they were reported in a news article. Robertson and EBALDC’s Board learned about Chiu’s contributions when the former executive director, Josh Simon, brought the news article to the Board’s attention.

In summary, Chiu’s 2017 contribution was made within 180 days after the execution of the DDA in which he represented EBALDC before the City. Because the negotiations concluded when the DDA was executed on February 15, 2017, the Contractor Contribution ban applied at least until August 14, 2017 (180 days after February 15, 2017). Therefore, under the amended Contractor Ban, Chiu’s \$250 contribution to Guillen on April 19, 2017, was prohibited.

Chiu	04/19/17	Abel Guillen for City Council 2014 Officeholder Account	250.00	EBALDC
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### VIOLATION(S):

Ener Chiu violated the following Oakland Municipal Code(s):

#### **Count 1: Contractor Contribution Ban**

On or about April 19, 2017, Respondent, Ener Chiu, a representative for the East Bay Asian Local Development Corporation, which had proposed to contract with or proposed to amend a contract with the City, violated O.M.C. 3.12.040 of the Oakland Campaign Reform Act when he made a contribution in the amount of \$250, to a City of Oakland elected official/candidate Abel Guillen, before the expiration of the 180 Contractor Contribution prohibition period.

#### **Count 2: Failure to Register as a Lobbyist**

## Item 6 - Staff Memorandum

On or between July 2016 and February 2017, Respondent Ener Chiu, a representative of the entity East Bay Asian Local Development Corporation (EBALDC), was entitled to receive \$1,000 or more in a calendar month to communicate directly or through agents with any public officials, officers, or designated employees, for the purpose of influencing any action of the City of Oakland on behalf of EBALDC (City) and therefore qualified as a lobbyist and acted as a lobbyist prior to registering as a lobbyist with the City.

Ener Chiu's Failure to Register as a lobbyist before he started to lobby City officials on behalf of EBALDC is a violation on O.M.C.3.20.110.

### Contact History

On October 29, 2021, Staff contacted the Respondent by email and proposed a resolution. On November 10, 2021, the Respondent asked for an extension to respond to the offer until December 31, 2021. Staff granted the Respondent's request. On December 31, 2021, the Respondent emailed staff a counter offer. The Enforcement team considered the Respondent's counter offer and determined that more information is needed from the Respondent to determine the appropriate resolution. On January 11, 2022, Staff forwarded an email to the Respondent with a list of questions to then for his review and response. On January 18, 2022, the Respondent emailed Staff and reported he needed time to consider and answer the new questions.

On February 3, 2022, after not hearing from the Respondent for several days, Staff sent an email inquiry requesting a response. On that same day, Staff received an auto-response from the Respondent that reported he was out of the office "dealing with a family illness... but I will be responding lightly to emails." On February 22, 2022, the Respondent emailed Staff and reported his two children were ill and that it had messed up his work scheduled. In that email, the Respondent provided responses to the questions Staff posed back on January 18, 2022. The Enforcement team considered the responses, conducted follow-up investigation and emailed a revised offer to resolve the matter on March 15, 2022. A little over one month later on April 18, 2022, Staff emailed the Respondent and informed him that the offer made on March 15, 2022, will end on April 20, 2022, at 5:00 PM and the matter would be placed on the PEC Agenda with a request for a hearing, if he did not respond. On April 25, 2022, at the time this report was updated, the Respondent has yet to respond to the PEC. In the absence of a resolution, Staff is recommending that the PEC refer this matter for a hearing.

### PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount of the unlawful contribution (whichever is greater), per violation.<sup>8</sup> The Base Level penalty for the OCRA violation is \$1,000. The Lobbyist Registration Act authorizes the Commission to impose a maximum statutory administrative penalty of \$1,000 per violation. The Base Level penalty for an LRA violation is \$750.<sup>9</sup>

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

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<sup>8</sup> See, Public Ethics Enforcement Penalty Guidelines, Page 5.

<sup>9</sup> See also, Public Ethics Enforcement Penalty Guidelines, Page 5.

## Item 6 - Staff Memorandum

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

### **Aggravating Factors**

Here, the circumstances of the Respondent's conduct establish the following aggravating factors that increase the severity of the penalty:

1. The Respondent is an experienced advocate with a history of advocacy in the City of Oakland.

### **Mitigating Factors**

1. Respondent does not have prior Public Ethics Commission Violations.
2. The Respondent cooperated with the Public Ethics Commission enforcement activity.

### **RECOMMENDATION:**

Staff recommends, in the absence of a resolution, that the Commission schedule the matter for an administrative hearing.



# Item 8a - Staff Memorandum



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Jelani Killings, Ethics Analyst  
Whitney Barazoto, Executive Director  
DATE: May 26, 2022  
RE: Revised Contribution and Expenditure Limit Adjustment

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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 for the modified adjustment based on the recently released district boundaries and numbers per the 2020 decennial census. This memorandum memorializes the revised publication and updated contribution and expenditure limits for 2022.

## Background

The Oakland Campaign Reform Act (OCRA) requires that contribution and expenditure ceiling amounts be published annually, no later than February 1<sup>st</sup> of each year.<sup>1</sup> 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.

On February 1, as required by statute, Staff published the 2022 contribution limits using the 2010 decennial census numbers as the new boundaries had not yet been established by the Redistricting Commission. At that time, Staff reported that it will republish the new district figures with updated limits once established by the Redistricting Commission.

## Modified Adjustment

On February 23, 2022, the Redistricting Commission voted to approve and adopt Draft Map F5 which describes the new district boundaries for the City Council and School Board according to the 2020 decennial census. Staff reached out to Planning Department staff to confirm the adopted map and the population data included in Draft Map F5. Subsequently, Staff recalculated the contribution and expenditure limits based on the new population numbers and district boundaries.

The table below displays the 2010 and 2020 decennial census population numbers and changes to the expenditure limits per district:

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<sup>1</sup> O.M.C. 3.12.200.

## Item 8a - Staff Memorandum

Position	2010 Census Population	2020 Census Population	Published Expenditure Ceiling	Modified Expenditure Ceiling	Ceiling Percent Change
Mayor	390,724	441,891	\$512,000	\$579,000	+13.09%
City Auditor	390,724	441,891	\$366,000	\$413,000	+12.84%
City Attorney	390,724	441,891	\$366,000	\$413,000	+12.84%
Council Member At-Large	390,724	441,891	\$366,000	\$413,000	+12.84%
District 1 Council Member	57,221	62,372	\$161,000	\$175,000	+8.70%
District 2 Council Member	57,102	62,534	\$160,000	\$176,000	+10.00%
District 3 Council Member	57,196	64,740	\$161,000	\$182,000	+13.04%
District 4 Council Member	54,662	62,647	\$153,000	\$176,000	+15.03%
District 5 Council Member	54,681	61,628	\$153,000	\$173,000	+13.07%
District 6 Council Member	54,582	65,401	\$153,000	\$184,000	+20.26%
District 7 Council Member	55,280	62,569	\$155,000	\$176,000	+13.55%
District 1 School Board Director	57,221	62,372	\$107,000	\$117,000	+9.35%
District 2 School Board Director	57,102	62,534	\$107,000	\$117,000	+9.35%
District 3 School Board Director	57,196	64,740	\$107,000	\$121,000	+13.08%
District 4 School Board Director	54,662	62,647	\$102,000	\$117,000	+14.71%
District 5 School Board Director	54,681	61,628	\$102,000	\$115,000	+12.75%
District 6 School Board Director	54,582	65,401	\$102,000	\$122,000	+19.61%
District 7 School Board Director	55,280	62,569	\$103,000	\$117,000	+13.59%

### Conclusion

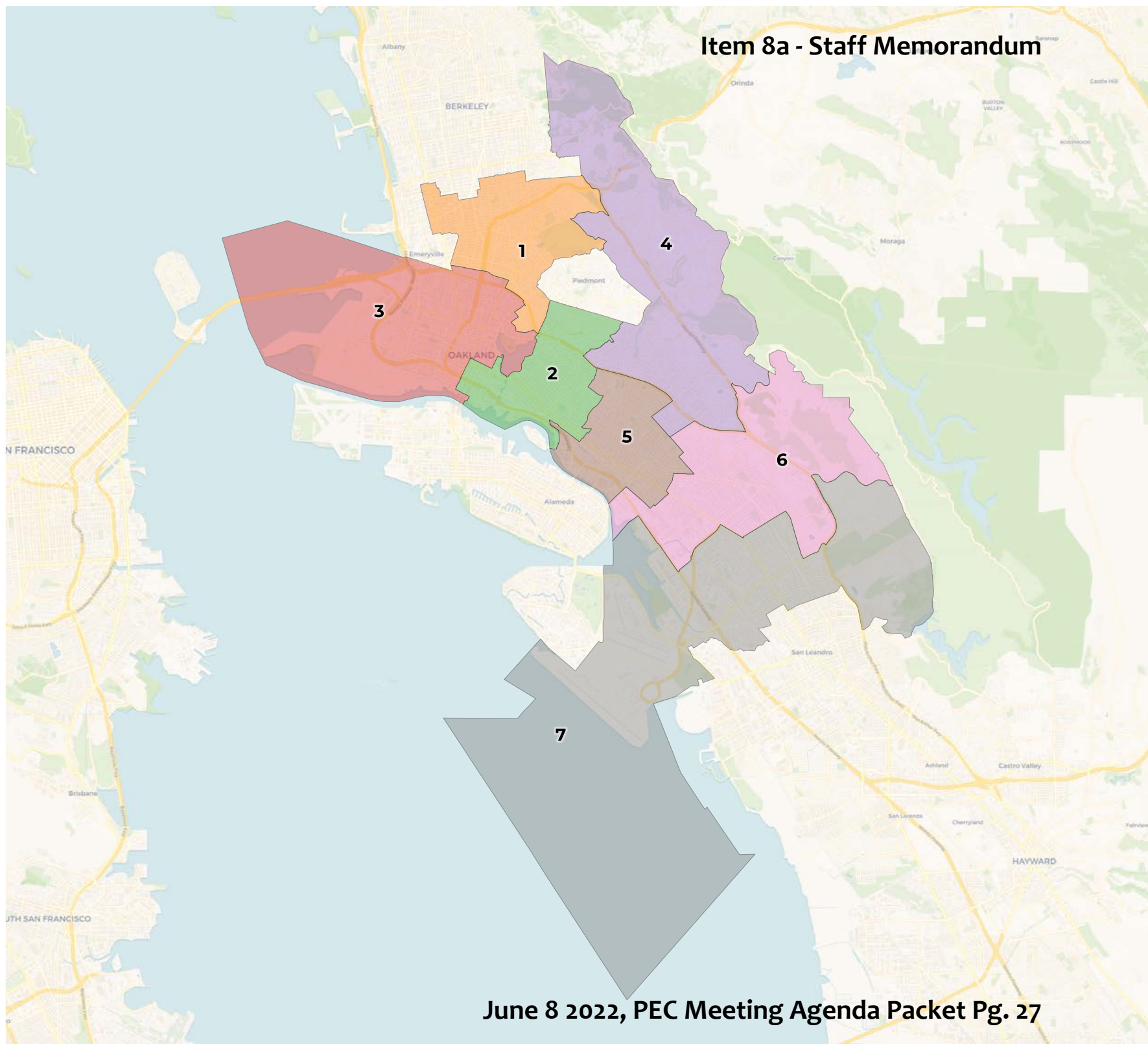
Commission staff used the data from the adopted Map F5 to recalculate the 2022 contribution and expenditure limits and independent expenditure thresholds as required by the Oakland Campaign Reform Act, and is publishing the 2022 limits here. As a result of the recalculation, the expenditure ceilings increased for all Citywide and District seats ranging from 8.70 – 20.26 percent. There were no changes to the contribution limits or the independent expenditure thresholds. Commission staff will distribute the new information widely reflecting the changes made to the district figures by the Redistricting Commission.

Attached is the Commission’s revised published spreadsheet for 2022. Also attached is the Redistricting Commission’s adopted map that Staff used to recalculate the contribution and expenditure limits for 2022. No further Commission action is necessary.

### Attachments:

1. Adopted Map F5
2. Revised Campaign Contribution and Expenditure Limits 2022

Item 8a - Staff Memorandum



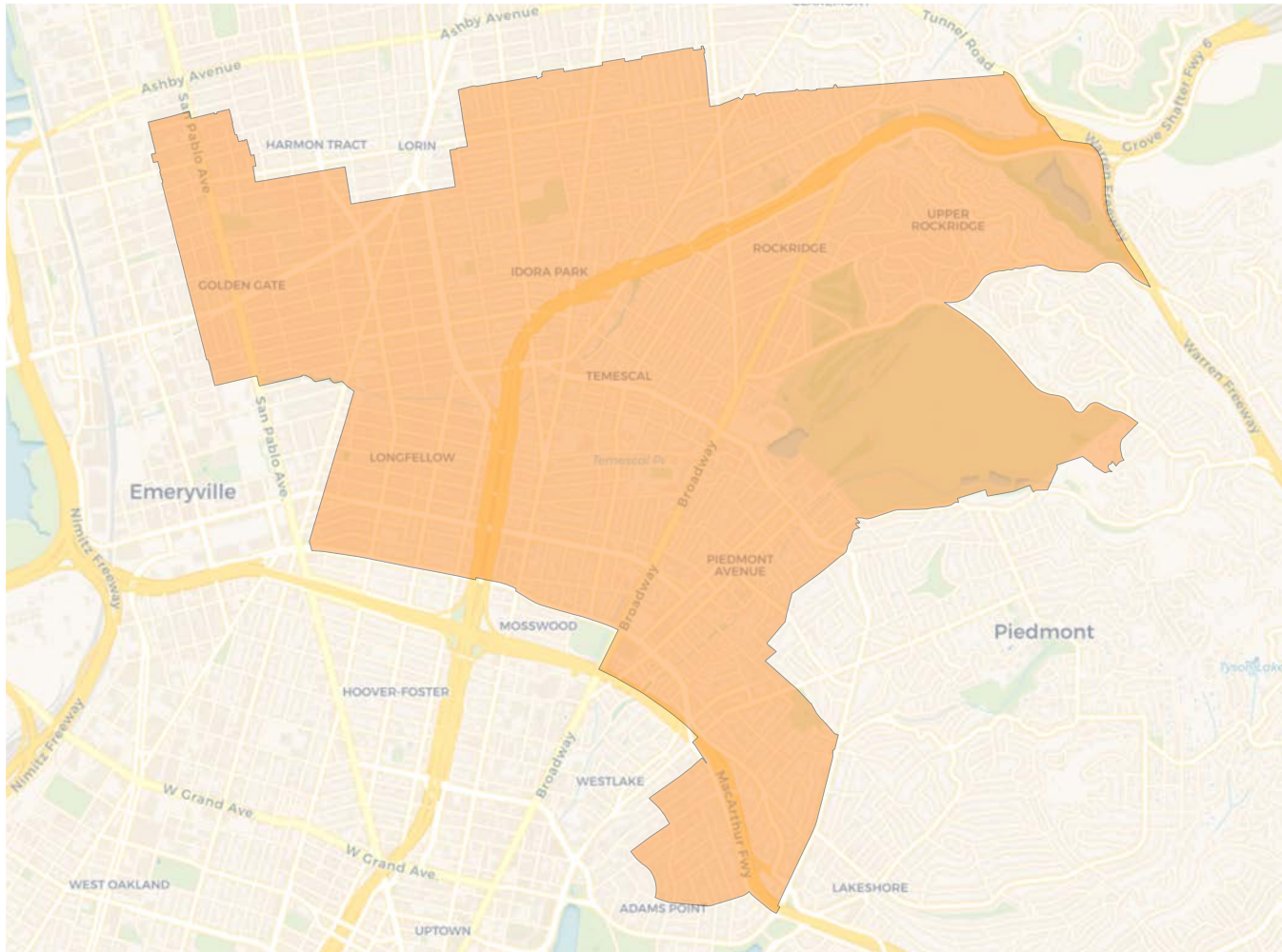
**2020 Census**

	1	2	3	4	5	6	7
Population	62,372	62,534	64,740	62,647	61,628	65,401	62,569
Deviation	-755	-593	1,613	-480	-1,499	2,274	-558
Deviation %	-1.2%	-0.9%	2.6%	-0.8%	-2.4%	3.6%	-0.9%
Other	37,532	21,375	25,305	36,422	10,435	13,837	7,523
Other %	60.2%	34.2%	39.1%	58.1%	16.9%	21.2%	12.0%
Latino	7,315	11,371	10,995	8,654	30,212	24,814	33,662
Latino %	11.7%	18.2%	17.0%	13.8%	49.0%	37.9%	53.8%
Asian	7,067	21,258	11,161	10,739	11,138	5,008	3,549
Asian %	11.3%	34.0%	17.2%	17.1%	18.1%	7.7%	5.7%
Black	10,458	8,530	17,279	6,832	9,843	21,742	17,835
Black %	16.8%	13.6%	26.7%	10.9%	16.0%	33.2%	28.5%

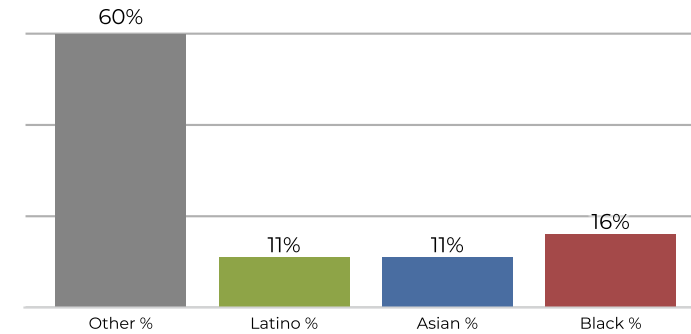
**Citizen Voting Age Population (CVAP)**

	1	2	3	4	5	6	7
Total CVAP	49,087	41,362	43,670	45,586	32,937	41,180	32,124
Other CVAP	30,830	16,192	18,345	28,586	7,083	9,561	5,010
Other CVAP %	62.8%	39.1%	42.0%	62.7%	21.5%	23.2%	15.6%
Latino CVAP	4,158	4,587	5,063	4,077	10,546	8,094	9,399
Latino CVAP %	8.5%	11.1%	11.6%	8.9%	32.0%	19.7%	29.3%
Asian CVAP	5,229	13,926	6,709	7,582	7,426	3,666	1,833
Asian CVAP %	10.7%	33.7%	15.4%	16.6%	22.5%	8.9%	5.7%
Black CVAP	8,870	6,657	13,553	5,341	7,882	19,859	15,882
Black CVAP %	18.1%	16.1%	31.0%	11.7%	23.9%	48.2%	49.4%

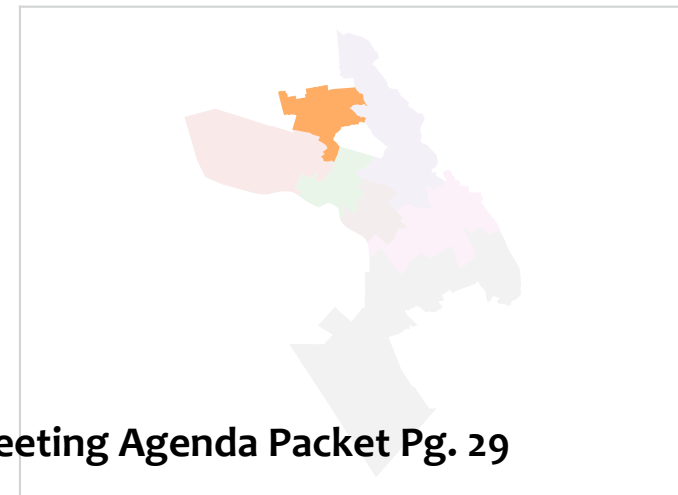
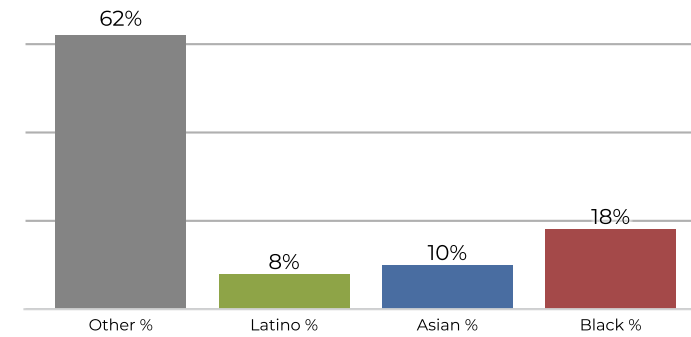
**District 1**



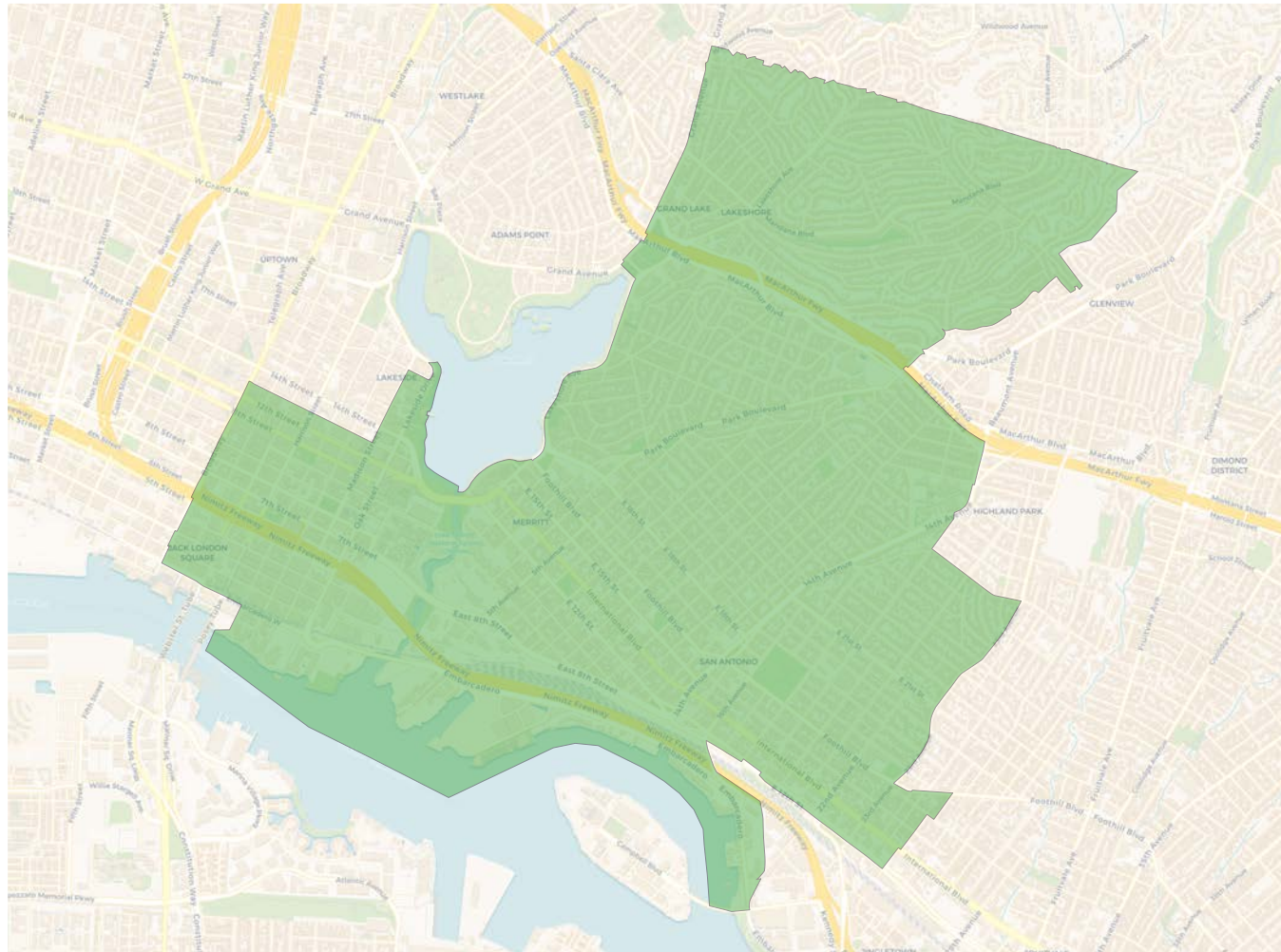
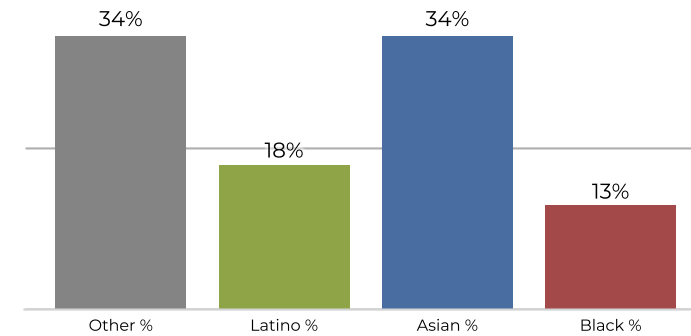
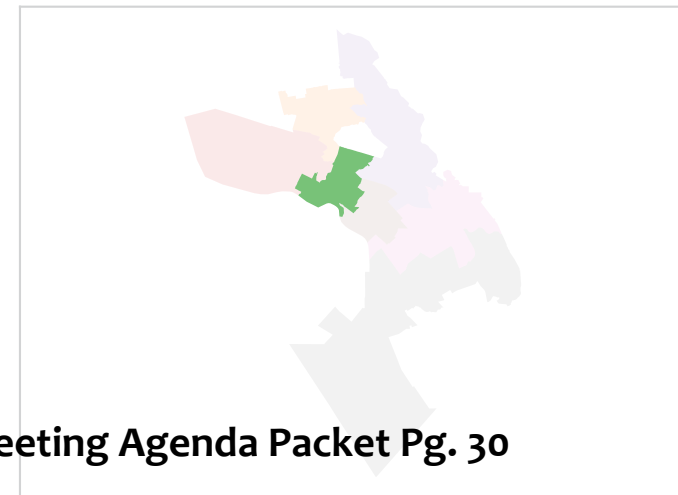
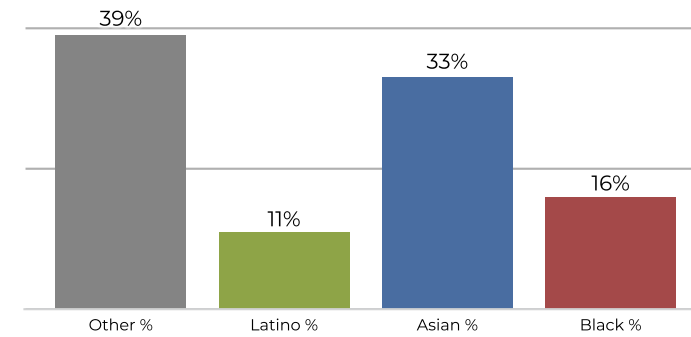
**2020 Census**



**Citizen Voting Age Population**

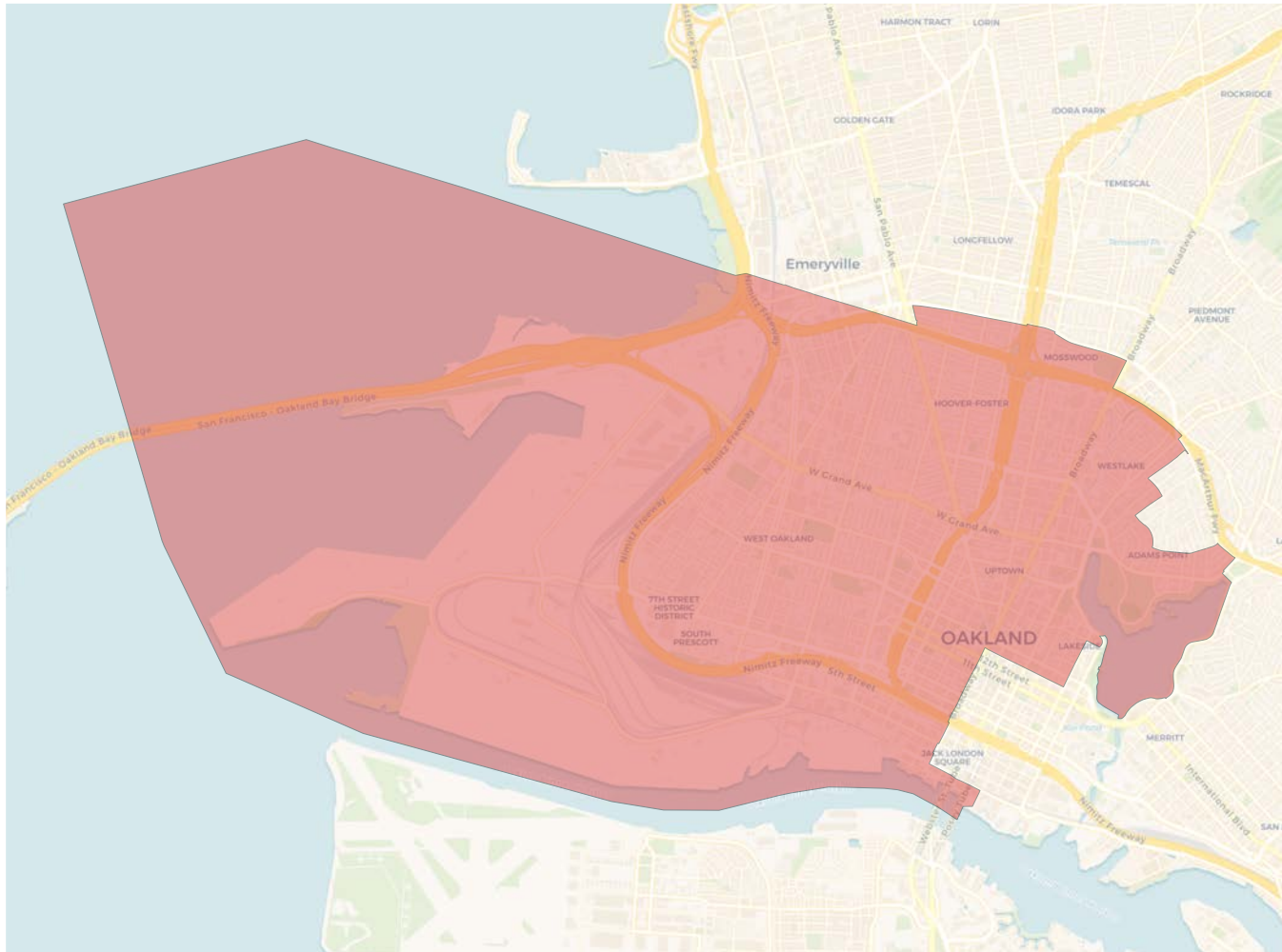


Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
62,372	-755	-1.2%	37,532	60.2%	7,315	11.7%	7,067	11.3%	10,458	16.8%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
49,087	30,830	62.8%	4,158	8.5%	5,229	10.7%	8,870	18.1%		

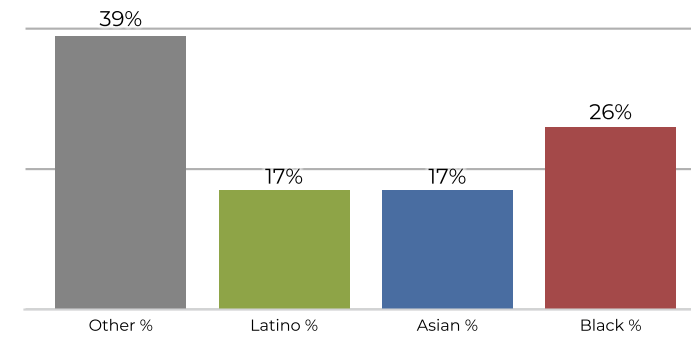
**District 2**

**2020 Census**

**Citizen Voting Age Population**


Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
62,534	-593	-0.9%	21,375	34.2%	11,371	18.2%	21,258	34.0%	8,530	13.6%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
41,362	16,192	39.1%	4,587	11.1%	13,926	33.7%	6,855	16.6%		

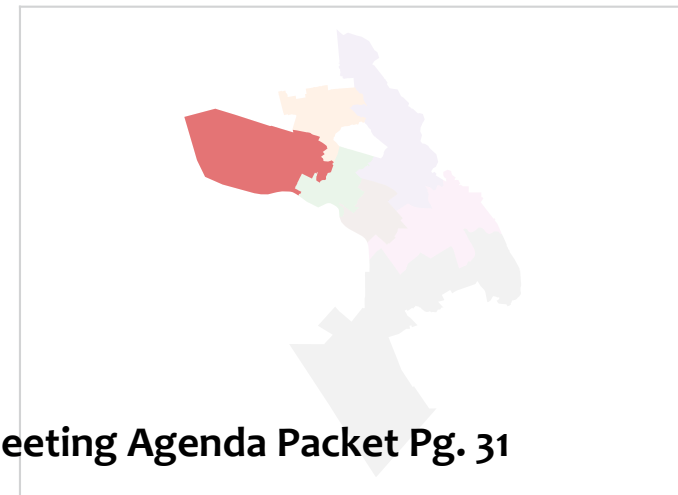
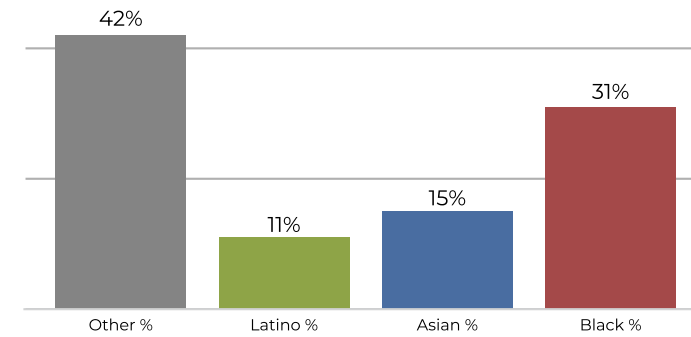
**District 3**



**2020 Census**

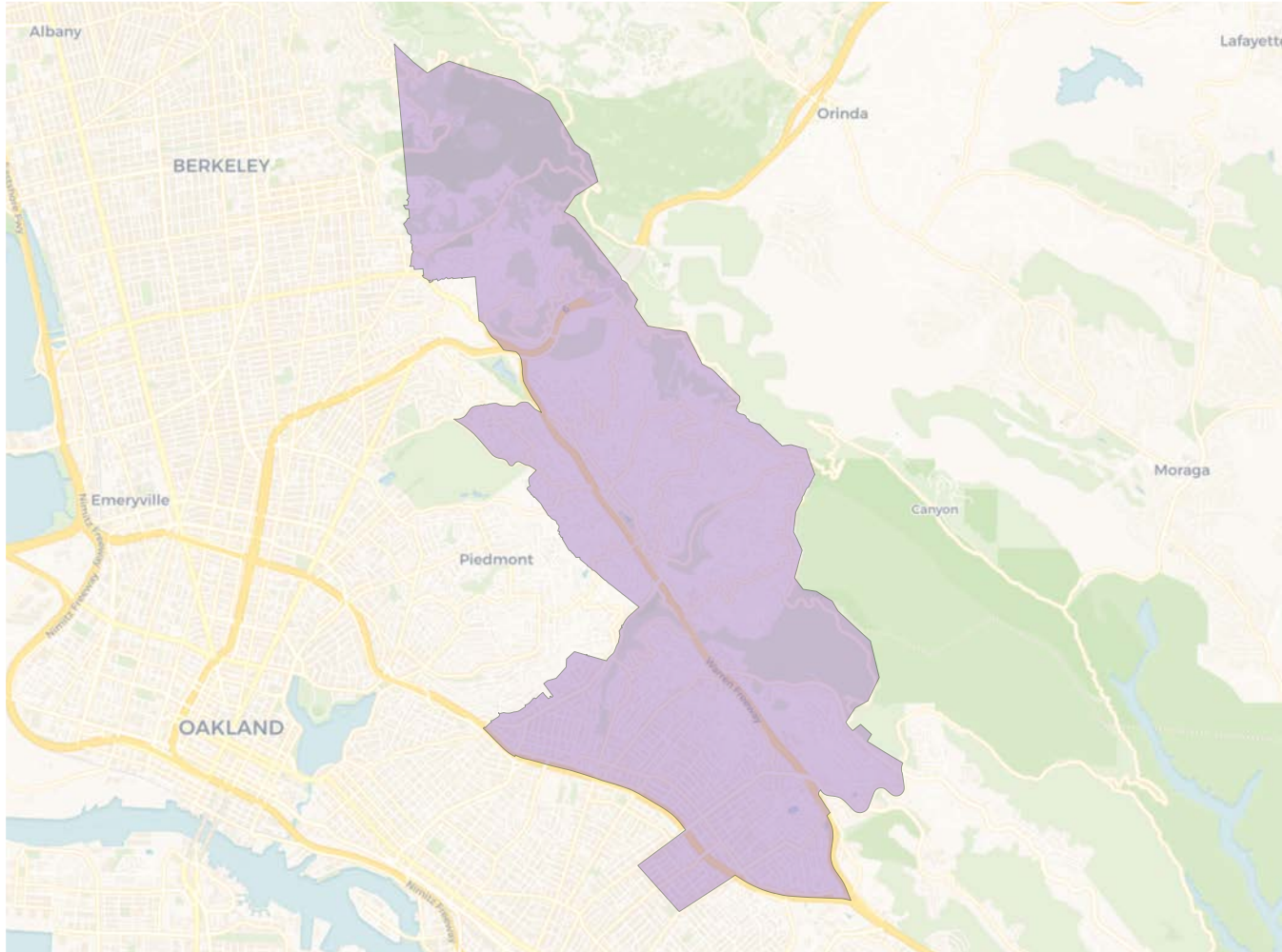


**Citizen Voting Age Population**

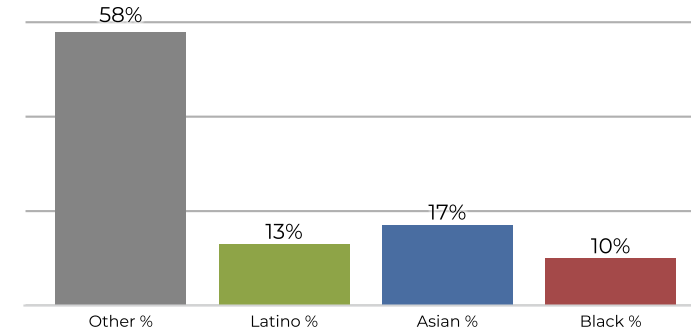


Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
64,740	1,613	2.6%	25,305	39.1%	10,995	17.0%	11,161	17.2%	17,279	26.7%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
43,670	18,345	42.0%	5,063	11.6%	6,709	15.4%	13,533	31.0%		

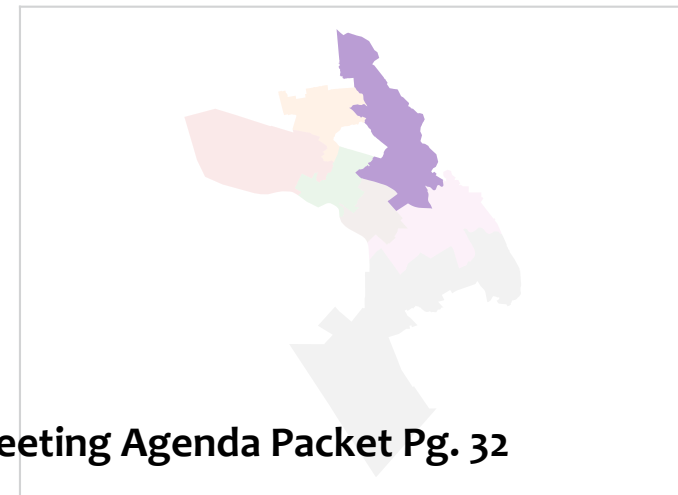
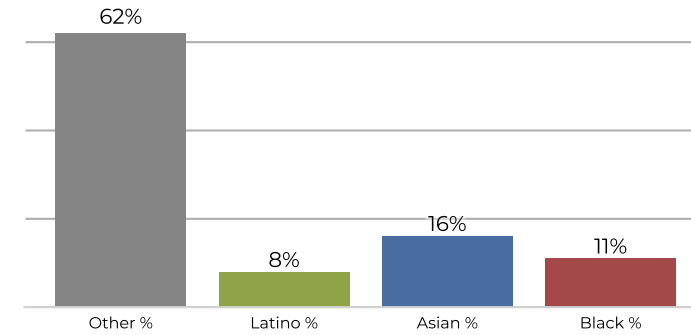
**District 4**



**2020 Census**



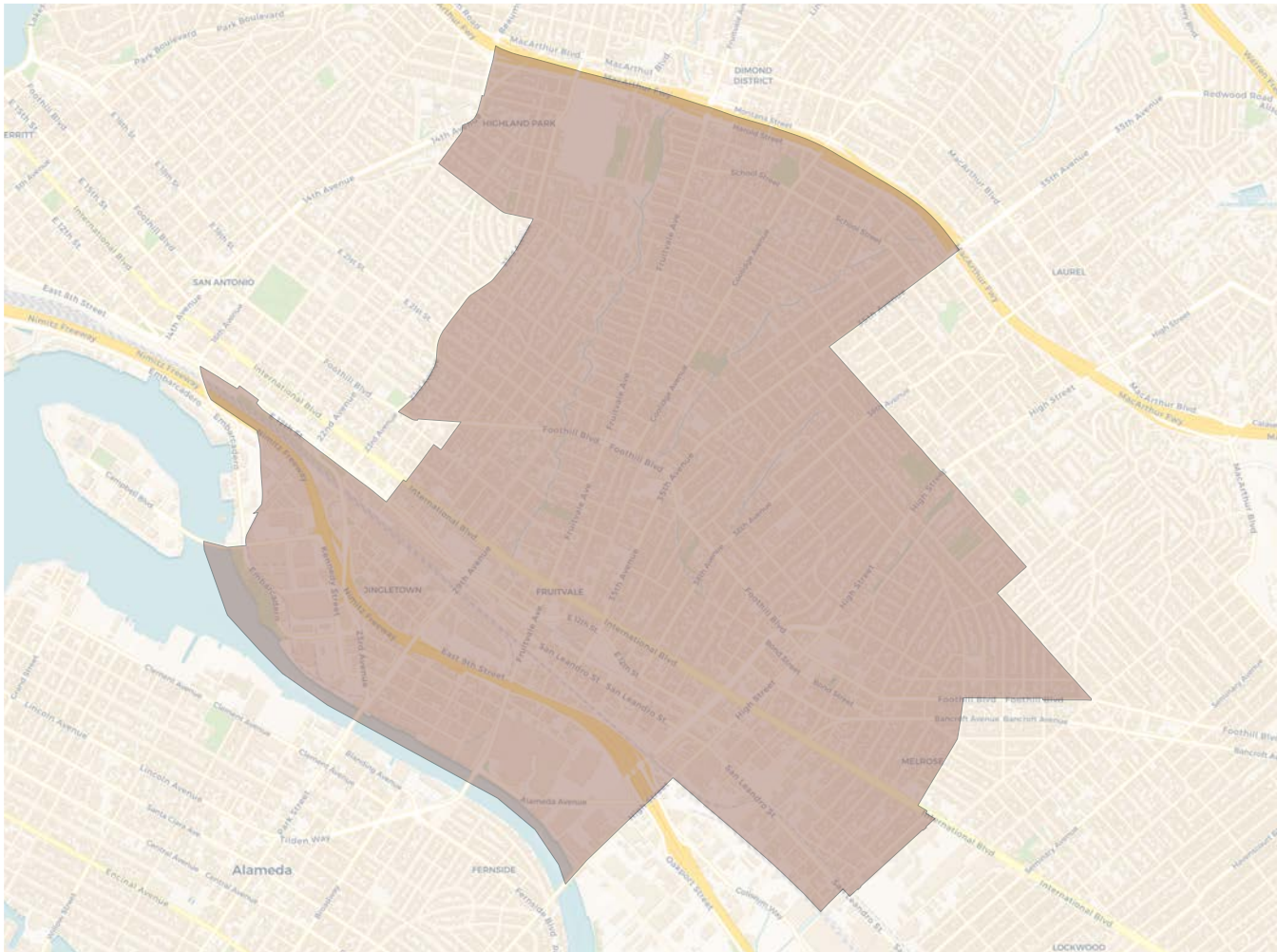
**Citizen Voting Age Population**



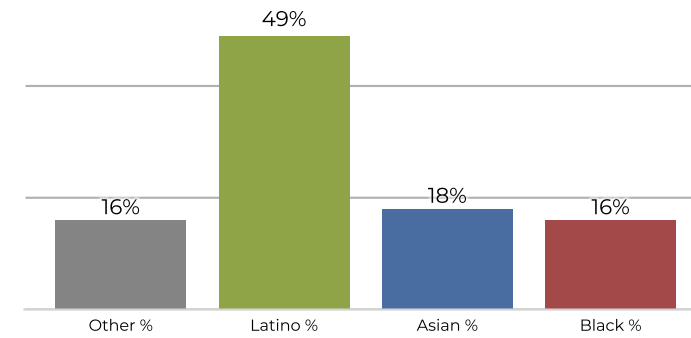
Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
62,647	-480	-0.8%	36,422	58.1%	8,654	13.8%	10,739	17.1%	6,832	10.9%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
45,586	28,586	62.7%	4,077	8.9%	7,582	16.6%	5,441	11.9%		



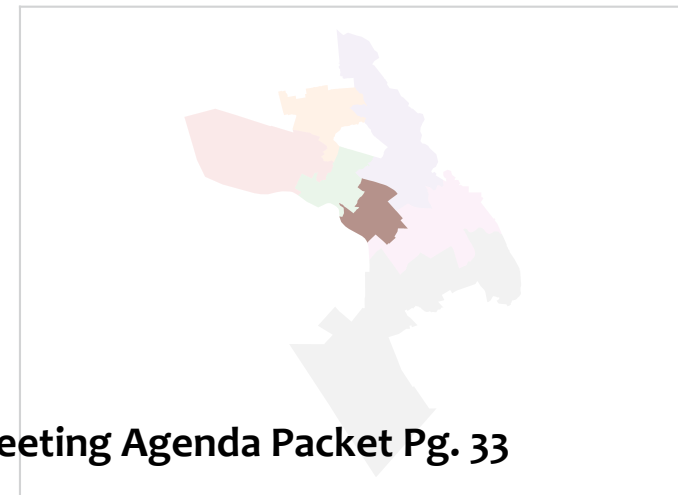
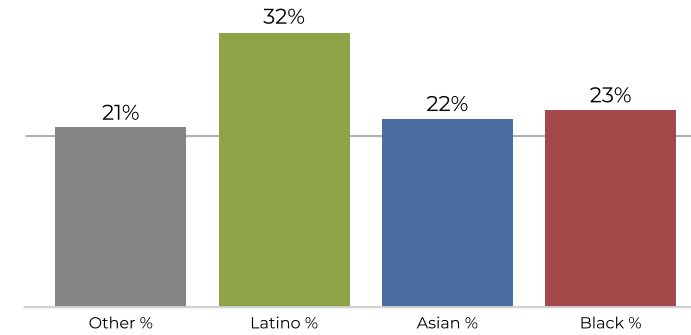
**District 5**



**2020 Census**

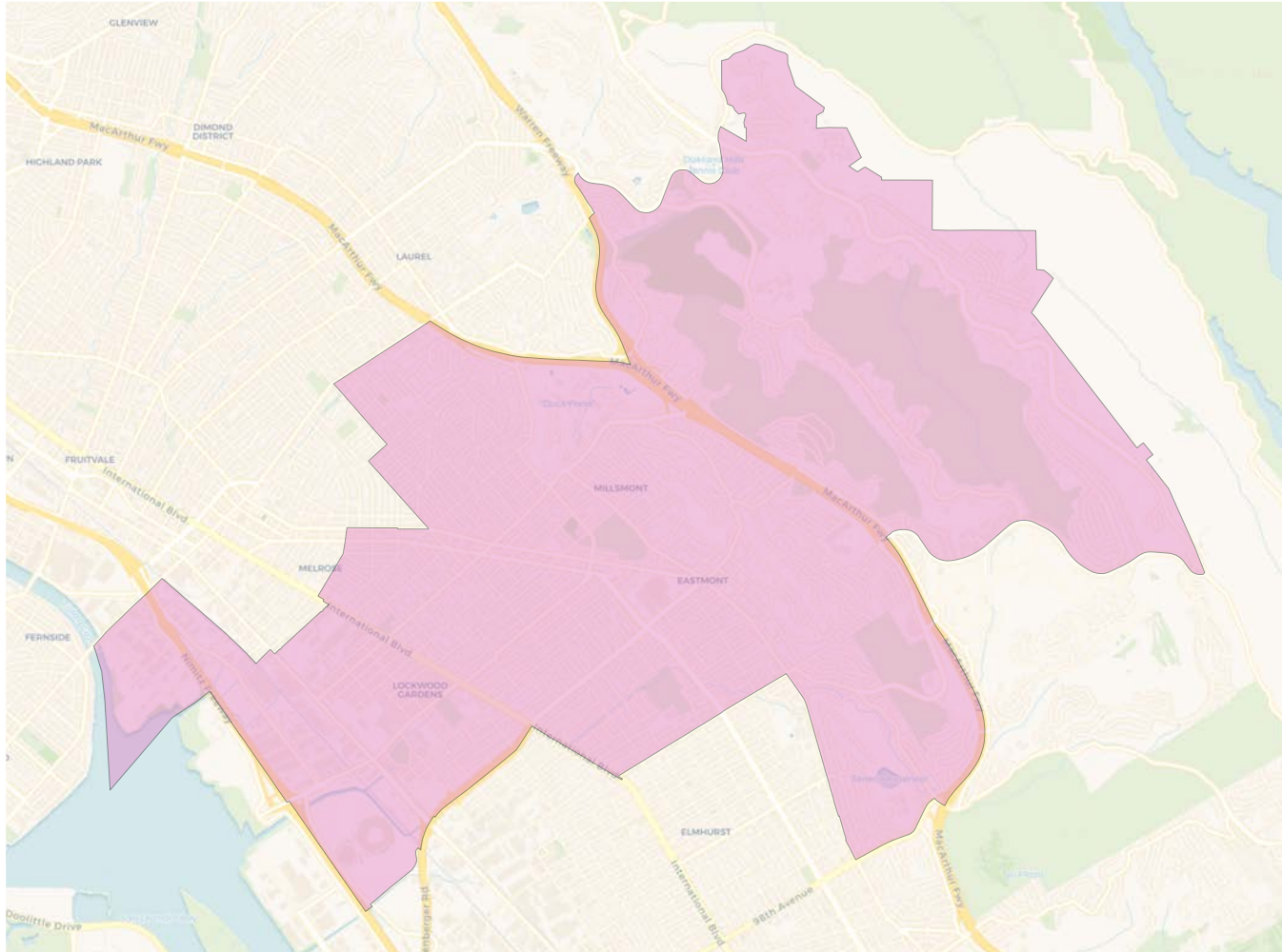


**Citizen Voting Age Population**

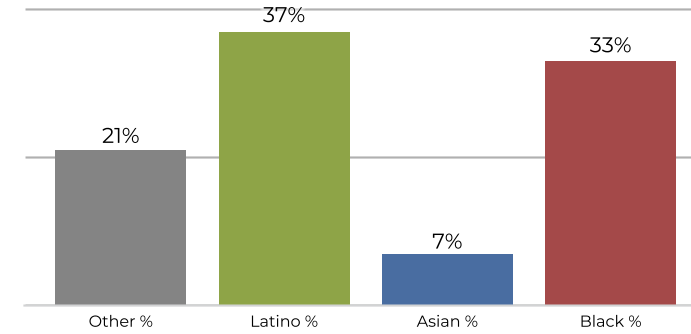


Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
61,628	-1,499	-2.4%	10,435	16.9%	30,212	49.0%	11,138	18.1%	9,843	16.0%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
32,937	7,083	21.5%	10,546	32.0%	7,426	22.5%	7,882	23.9%		

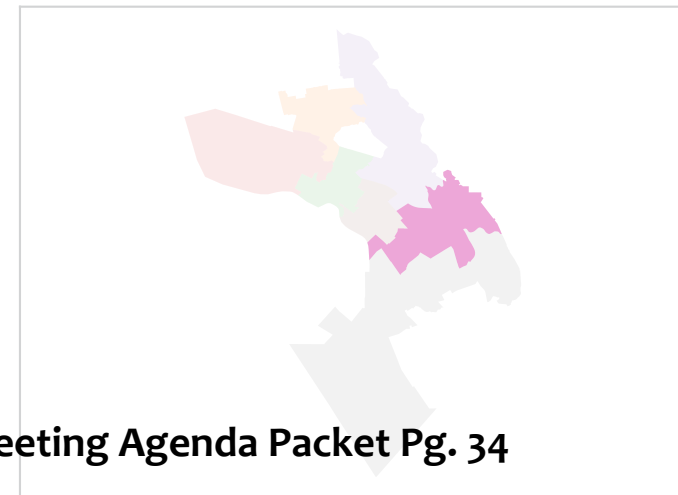
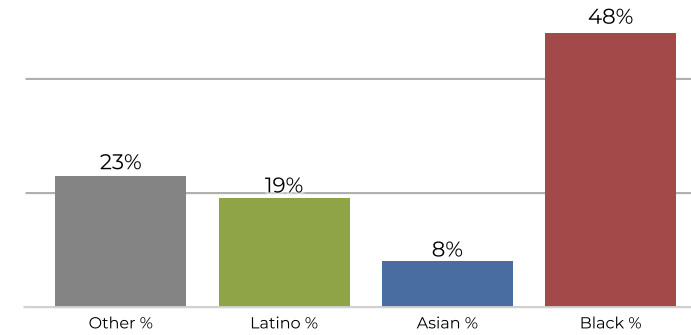
**District 6**



**2020 Census**

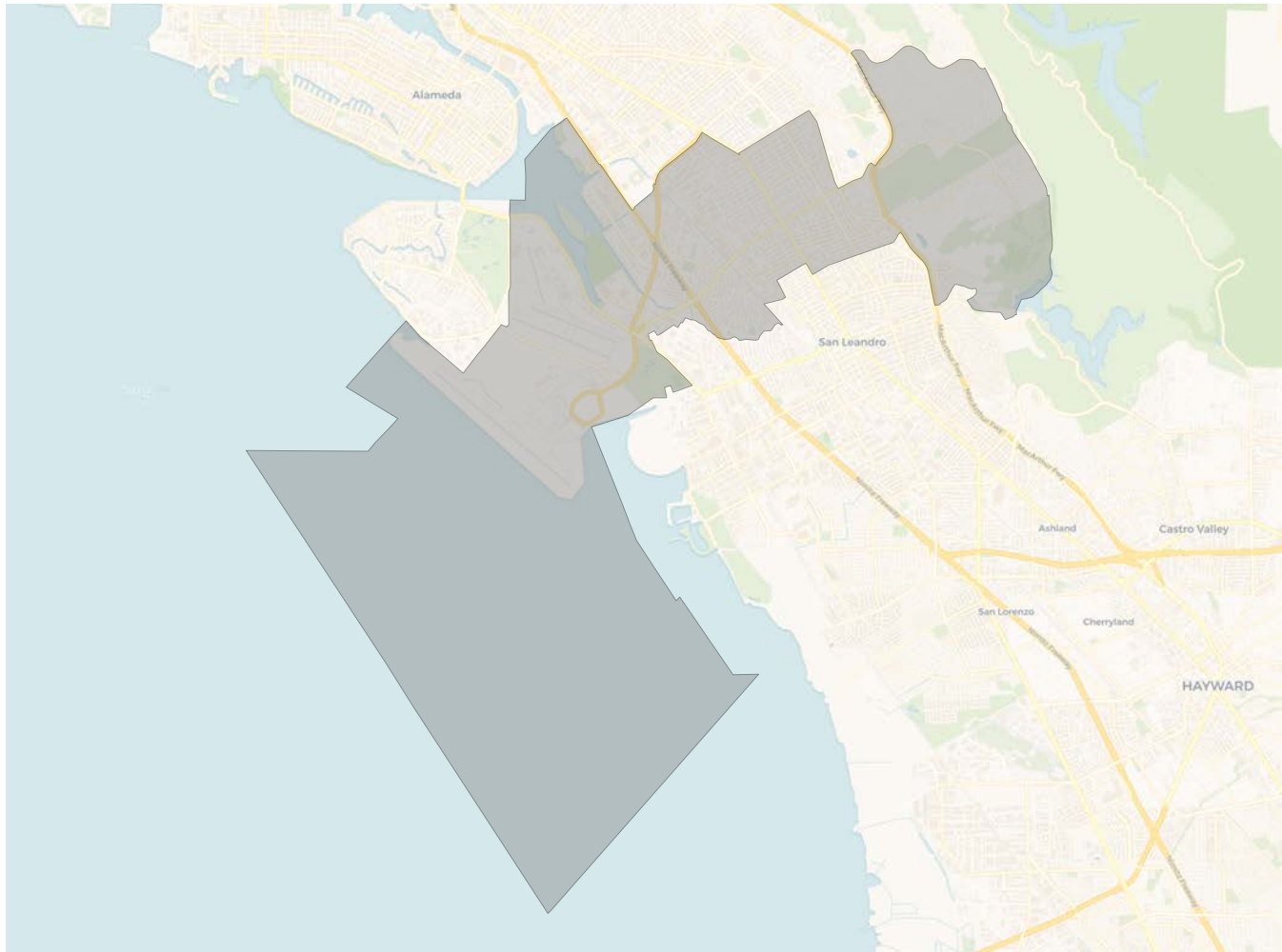


**Citizen Voting Age Population**

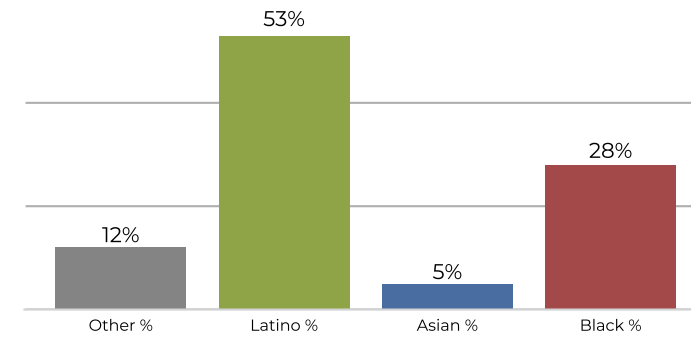


Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
65,401	2,274	3.6%	13,837	21.2%	24,814	37.9%	5,008	7.7%	21,742	33.2%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
41,180	9,561	23.2%	8,094	19.7%	3,666	8.9%	19,359	47.2%		

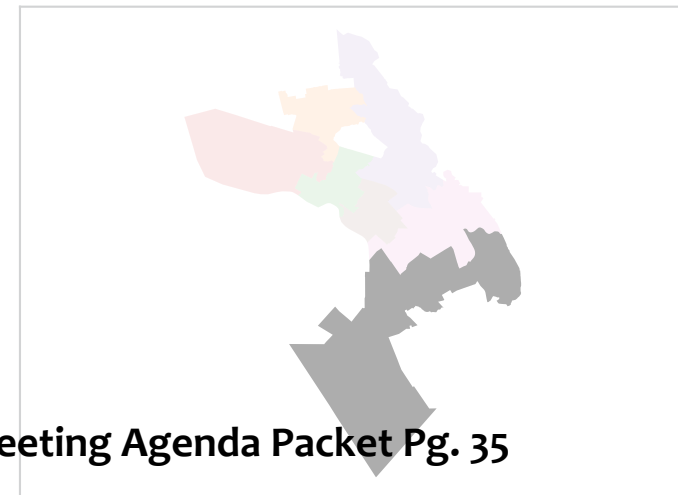
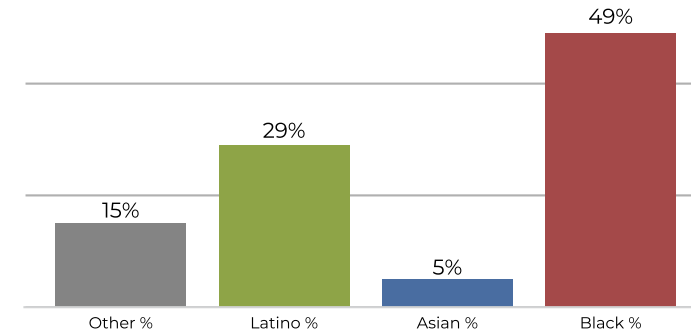
**District 7**



**2020 Census**



**Citizen Voting Age Population**



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
62,569	-558	-0.9%	7,523	12.0%	33,662	53.8%	3,549	5.7%	17,835	28.5%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
32,124	5,010	15.6%	9,399	29.3%	1,833	5.7%	15,882	49.4%		



# Item 8b - Campaign Contribution and Expenditure Limits

**CITY OF OAKLAND  
CAMPAIGN CONTRIBUTION AND EXPENDITURE LIMITS PER THE OAKLAND CAMPAIGN  
REFORM ACT 2022  
REVISED 4/1/2022**

**LIMITATIONS ON CONTRIBUTIONS FROM PERSONS, BUSINESSES, AND OTHER ORGANIZATIONS (§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 CANDIDATES FOR MAYOR AND OTHER CITYWIDE OFFICES WHO AGREE TO VOLUNTARY SPENDING LIMITS (§3.12.200)**

Mayor	\$579,000
City Auditor	\$413,000
City Attorney	\$413,000
Council Member At-Large	\$413,000
District 1 Council Member	\$175,000
District 2 Council Member	\$176,000
District 3 Council Member	\$182,000
District 4 Council Member	\$176,000
District 5 Council Member	\$173,000
District 6 Council Member	\$184,000
District 7 Council Member	\$176,000
District 1 School Board Director	\$117,000
District 2 School Board Director	\$117,000
District 3 School Board Director	\$121,000
District 4 School Board Director	\$117,000
District 5 School Board Director	\$115,000
District 6 School Board Director	\$122,000
District 7 School Board Director	\$117,000

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

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

\*Recalculated based on the adopted map by the Redistricting Commission on February 23, 2022 per the 2020 decennial census.



# Item 9 - Disclosure Report



Arvon J. Perteet, Chair  
Michael B. MacDonald, Vice-Chair  
Charlotte Hill  
Ryan Micik  
Joe Tuman  
Francis Upton IV

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Suzanne Doran, Lead Analyst  
Jelani Killings, Ethics Analyst  
Whitney Barazoto, Executive Director  
DATE: May 27, 2022  
RE: Disclosure and Engagement Monthly Report for the June 8, 2022, Meeting

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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** – During the months of April and May, Commission staff conducted proactive compliance reviews of contributions to 2022 candidates and audited campaign websites for required disclaimers. PEC staff noted any reported contributions in excess of contribution limits or by possible contractors and made requests to candidates for follow-up so they could review and forfeit any questionable contributions to the City expeditiously prior to the election. PEC staff also contacted contractors to alert them of the law and possible violations. Results of the completed review will be reported in future updates.

A Special Election has been scheduled for June 7, 2022, to consider a ballot measure that would extend the Library Services Retention and Enhancement Act. The first pre-election deadline for committees with activity related to the June 7 Special Elections was April 28 and the second pre-election deadline is May 26. 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 lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions.

## Item 9 - Disclosure Report

April 30 was the deadline for quarterly lobbyist activity reports covering the period from January 1 through March 31, 2022. Lobbyists reported 357 contacts with Oakland public officials during the first quarter. Client payments to lobbyists totaled \$221,000.

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.

CLIENT NAME	BUSINESS INTEREST	PAYMENTS TO LOBBYISTS
The Michaels Organization	Real Estate, Rental and Leasing	\$45,350
PricewaterhouseCoopers LLP	Other Services (except Public Administration)	\$22,500
Verizon	Information/technology	\$22,500
Vistra Corporate Services Company	Utilities	\$20,000
Becker Boards	Real Estate, Rental and Leasing	\$15,000
Schnitzer Steel	Manufacturing/industrial	\$15,000
Gaehwiler Construction	Construction	\$15,000
Equity and General Trade Association	Non-profit/advocacy organization	\$10,500
Marshall Retail Group	Retail Trade	\$10,500
IKE Smart City	Information/technology	\$9,000
Amazon	Merchandise/retail	\$9,000
Lehigh-Hanson	Construction	\$9,000

Top ten lobbyist clients by total payments. Only voluntarily disclosed payments are included. SOURCE: <https://data.oaklandca.gov/City-Government/Lobbyist-Clients/ss9a-d595>.

### Illuminating Disclosure Data

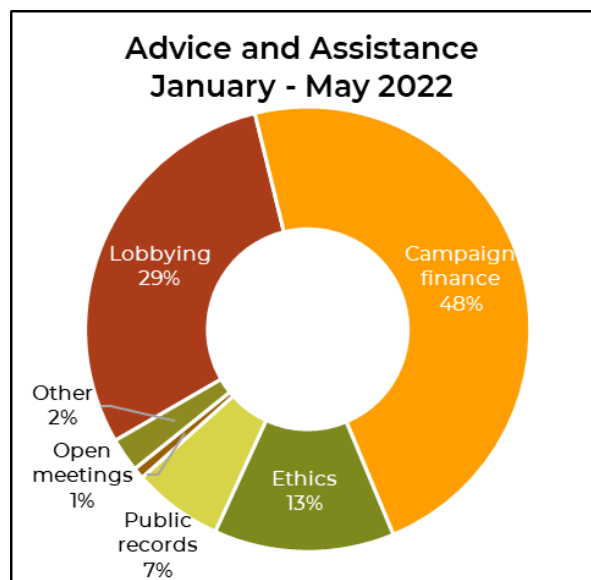
In April and May, staff began updates, maintenance tasks, and quality assurance checks to the Commission's online tools for local campaign finance information ahead of the 2022 election season. Existing PEC projects focusing on local campaign finance data include the Open Disclosure website, the Show Me the Money contribution mapping app, as well as data analysis of trends provided in reports to the Commission.

### Advice and Engagement

**Advice and Technical Assistance** – In April and May, Commission staff responded to 32 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues, for a total of 136 requests in 2022.

**Candidates and Campaigns** – In April, staff issued an advisory regarding rules specific to ballot measure committees to inform treasurers and committees about state and local disclosure requirements. The monthly advisory sent in May focused on awareness of contribution limits and restrictions.

**Candidate and Treasurer Training** – In April, staff updated the PEC's candidate and treasurer training page with links to an on-demand recording of the live training and supplemental materials. In addition, campaign treasurers who complete the training and pass a post-training quiz will be posted on the Commission website as a resource for candidates.





## Item 9 - Disclosure Report

**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). In April and May, staff trained a total of 82 new employees on GEA provisions.

**Ethics Onboarding and Exit Process** – In April, a joint notice from the PEC and Human Resources Department was sent to department SPOCs and directors advising them to notice their Form 700 filers of the upcoming filing deadline and ethics training requirement. Over 300 staff registered for training within a week of the notice and approximately 350 completed the training so far this year.

Ethics requirements during employee onboarding and offboarding have been incorporated into the NeoGov platform to ensure all employees are properly notified and department SPOC’s are aware of employee compliance. Currently, 900 City employees are designated as Form 700 filers. Each department has been directed to review staff members’ status under the Conflict of Interest Code to ensure all staff are designated correctly in the City’s personnel database. The database designation enables more effective noticing and tracking of Form 700 and ethics training compliance going forward.

In May, PEC staff pulled the survey responses from its online Government Ethics Training for Form 700 Filers. Overall, 619 employees and City officials completed the training survey. Eighty-eight percent of respondents indicated that their knowledge increased because of the training. After taking the training, 93 percent of respondents indicated that they understood their obligations under the Government Ethics Act and know who to contact if they need further assistance. Staff will continue to analyze feedback from training participants to continue improvement of education resources.

Commission staff continues to work with senior HR staff to standardize employee exit processes with the City’s employment platform so that employees leaving the City of Oakland are consistently advised of post-employment restrictions and Form 700 requirements.

### **Online Engagement**

**Website** – In preparation for the 2022 election season, Commission staff reviewed and updated over 15 pages of online content including educational resources for campaign finance, disclosure, and candidates and treasurers. In addition, service pages were updated using new features to make multi-step processes, such as filing campaign forms or submitting a complaint, easier for website users to navigate.

**Social Media** – Each month Commission staff post social media content to highlight specific PEC policy areas, activities, or client-groups. In April and May, our posts highlighted upcoming campaign finance and lobbyist disclosure deadlines, disclosure data resources, and training resources for candidates and treasurers.



# Item 10 - Enforcement Report



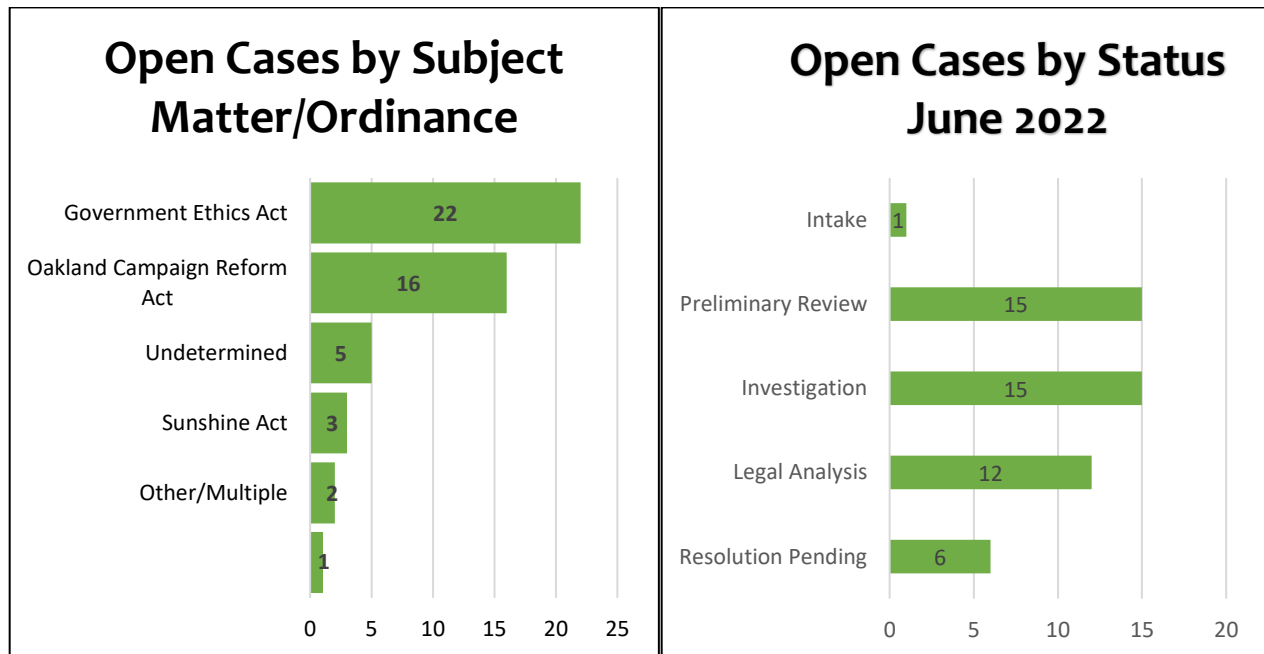
Arvon Perteet, Chair  
Michael MacDonald, Vice-Chair  
Charlotte Hill  
Ryan Micik  
Joseph Tuman  
Francis Upton IV

Whitney Barazoto, Executive Director

TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
DATE: May 16, 2022  
RE: Enforcement Program Update for the June 8, 2022 PEC Meeting

## Current Enforcement Activities:

Since the last Enforcement Program Update on April 13, 2022, Commission staff received 5 new complaint(s). This brings the total Enforcement caseload to 49 open cases: 16 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 April 2022, the following status change(s) have occurred:

1. **In the Matter of Ener Chiu (Case No. 18-16).** On May 9, 2018, the City of Oakland Public Ethics Commission received a complaint alleging that Respondent, Ener Chiu, an employee of the East Bay Asian Local Development Corporation (EBALCD) violated the Oakland Campaign Reform Act by making a contribution to Council member Abel Guillen within months of the City signing a Disposition and Development Agreement (DDA) with EBALDC. Based on the allegations in the complaint, staff opened an investigation to determine whether the Respondent violated the Oakland Campaign Reform Act's Contractor Contribution Ban by making contributions to City of Oakland elected officials, candidates, or their controlled committees. The investigation confirmed that the Respondent made a contribution to Councilmember Guillen and that during the same time the Respondent actively engaged in lobbyist activity in the City but failed to register as a lobbyist with the City, in violation of the Oakland Lobbyist Registration Act. After close consideration of all the facts and the law, Staff recommends that the Commission assign this matter to a formal hearing. (See Action Item)



## Item 11 - Executive Director's Report

Arvon Perteet, Chair  
Michael B. MacDonald, Vice-Chair  
Charlotte Hill  
Ryan Micik  
Joe Tuman  
Francis Upton IV

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Whitney Barazoto, Executive Director  
DATE: May 26, 2022  
RE: Executive Director's Report for the June 8, 2022, PEC Meeting

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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. Also included is a more extensive performance plan and priorities document for PEC review.

### PEC Priorities

Following the Commission's retreat on April 21 and 22, Commission staff updated its work plan to note new projects completed in recent years and reflect current priority projects that are in progress or on the horizon. Attached is the performance plan for Commissioner review that includes program objectives and goals, key performance indicators and results by year, and projects for PEC focus going forward. Overall, 5 main areas for current PEC focus include the following, subject to change following the appointment of a new Executive Director:

1. Executive Director interviews/hiring,
2. Commissioner outreach,
3. Democracy Dollars policy and (potential) implementation project,
4. Proactive prevention (including Ticket Policy ordinance education, ethics onboarding, and candidate education and committee compliance for the 2022 Election), and
5. Focused enforcement to prioritize cases and bring certain cases to hearings before the full commission.

The attached plan includes more detail on each of our program areas. Please note that the plan is not a full picture of all the PEC's ongoing work but instead a brief synopsis of key projects and priorities in the context of broader language around the PEC's mission, goals, and activities at this moment in time.

### Oakland Fair Elections Act

Following the PEC's review and formal support of the proposed Oakland Fair Elections Act at the PEC's April 13, 2022, meeting, Commission staff has been working with the assigned PEC subcommittee, Councilmember offices, and also members of the Bay Area Political Equality Collaborative coalition to clarify language, funding, and other implementation details as

written in the proposal. Staff will continue to work with these groups on potential amendments as the proposal makes its way through City Council.

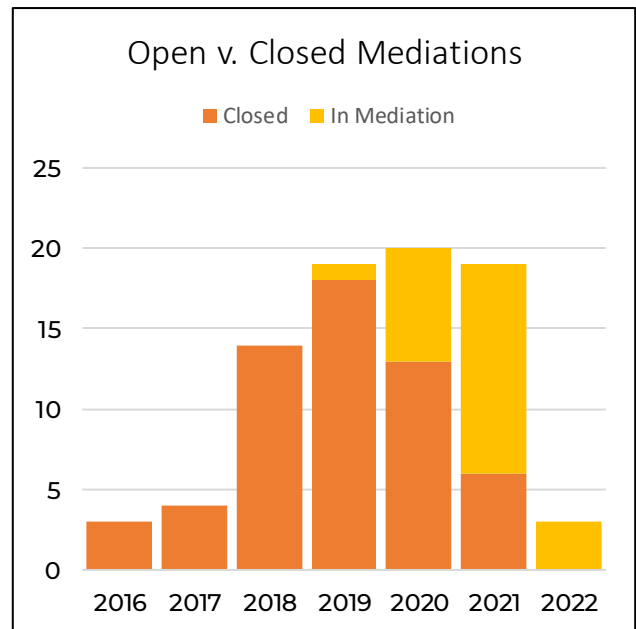
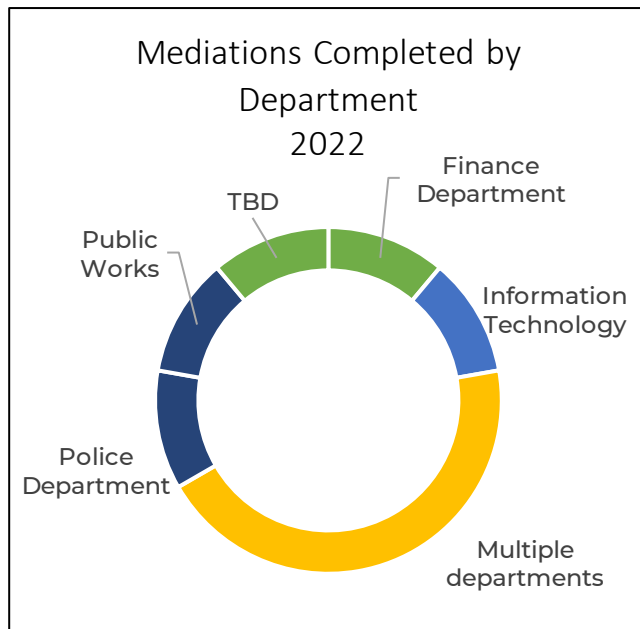
## PEC Legislation

City Council adopted the PEC's proposed Ticket Distribution Policy Ordinance and proposed amendments to the Limited Public Financing Program at its public meeting on May 3. The new ticket policy will become effective June 1, 2022, and the public financing amendments became effective immediately.

## 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 24 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 Human Resources Department and the Oakland Fire Department (Case No. M2022-02); (Mediation Summary attached)



# PUBLIC ETHICS COMMISSION

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## PERFORMANCE PLAN AND PRIORITIES

2022-25

## MISSION

The Public Ethics Commission (PEC) ensures compliance with the City of Oakland’s government ethics, campaign finance, transparency, and lobbyist registration laws that aim to promote fairness, openness, honesty, and integrity in city government.

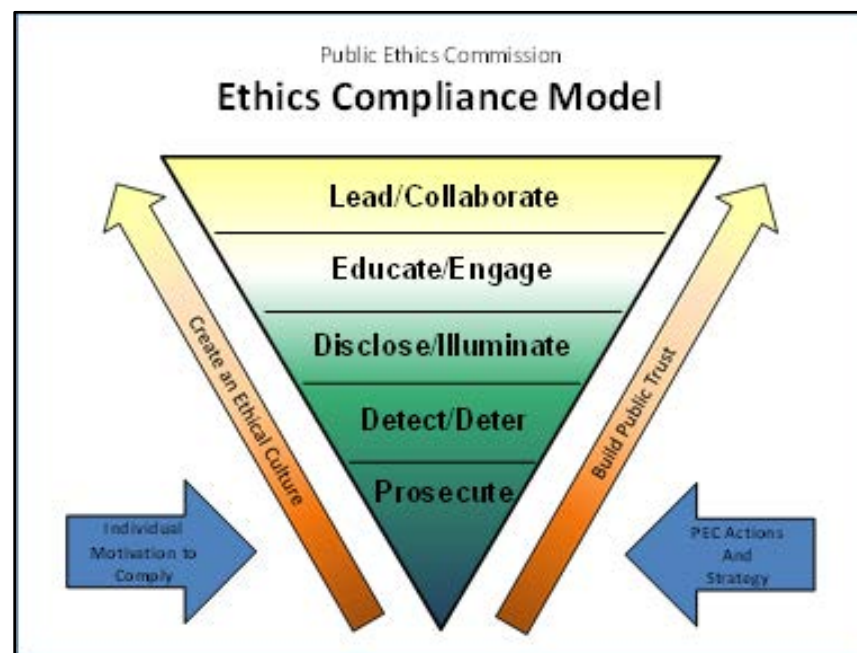
## ACTIVITIES

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

**Educate/Advise** – Provide education, advice, technical assistance, and formal legal opinions to promote awareness and understanding of the city’s campaign finance, ethics, and transparency laws.

**Outreach/Engage** – Interact with Oaklanders and PEC clients to spread the word about PEC work, resources and tools, hear input on client and community needs, and identify opportunities to innovate and partner on projects.

**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 PEC’s jurisdiction.

**Prosecute** – Obtain compliance and impose fines or penalties for violations of the laws within the PEC’s jurisdiction through administrative or civil remedies.



**LEAD/COLLABORATE**

**DESIRED OUTCOME:** Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies.

**PROGRAM GOAL:** PEC facilitates changes in City policies, laws, systems, and technology, and leads by example to ensure fairness, openness, honesty, integrity, and innovation.

**Lead/Collaborate Activities:**

- A. Identify problems or vulnerabilities within the City and take action to proactively improve or resolve.
- B. Communicate the issue and advocate for policy or operational change to incorporate best practices.
- C. Partner with other agencies or organizations to leverage opportunities to innovate and integrate improvements.

**Indicators of Success:**

- 1. PEC proactively communicates results of reviews to identify problems, improve compliance, or innovate.
- 2. PEC actions/joint partnerships with other agencies, leaders, jurisdictions, or community lead to substantive changes in legislation, policy or operations.

**Results:**

2016	2017	2018	2019	2020	2021	2022 (as of June 1)
PEC completes hiring of new staff (new staff of 6) per Measure CC, passed in 2014	PEC issues Ticket Policy Report and recommended policy changes	PEC seeks and becomes Filing officer for Lobbyist Forms	Hosted FPPC mtg, presented Ticket policy review	PEC issues Race for Power Report on CF data, inequities, suggested CF redesign	PEC issues report: Spotlight on Public Records Response by City Depts	New Ticket Policy adopted by City Council
PEC seeks Filing officer duty for Campaign Forms	City Council passes PEC Lobbyist Reg Act amends	PEC led project with IT to create Form 803 e-filing process	CA FPPC amended Ticket regs (ie. ban disproportionate use by officials), in response to PEC staff input on proposed changes	City Council adopts PEC’s Enabling Ordinance Amends	PEC staff begins development of public records performance online portal	Fair Elections Act ballot measure proposed by PEC partner coalition, BayPEC
PEC presents OD at CfA, COGEL, LWV	Hosted CA Ethics Commissions					

**Potential Priorities 2022-2025:**

- New City Ticket Policy Ordinance Implementation – facilitate online database updates per the new law, train officials
- Oakland Fair Elections Act – if passed on November 2022 ballot, PEC will implement Democracy Dollars Program
- Public Records Response Data Portal – online access to performance data, continue to review systems issues and performance across departments; Sunshine Ordinance – policy review

## EDUCATE/ADVISE

**DESIRED OUTCOME:** PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues fostering and sustaining ethical culture throughout City government.

**PROGRAM GOAL:** Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with city campaign finance, ethics, and transparency laws.

### Educate/Advise Activities:

- A. Provide trainings, assessments/surveys on campaign finance, public financing, ethics, ticket policy, lobbyist registration, and Sunshine ordinance.
- B. Conduct outreach to alert public servants to the rules and PEC education and enforcement, including announcements, newsletters, and email notifications.
- C. Provide educational materials, advice, technical assistance, and formal legal opinions.

### Indicators of Success:

- 1. Training availability and reach – new trainings developed, number of participants receiving training, number of advice and assistance requests, tracking filer compliance
- 2. Training assessment results

### Results:

2016	2017	2018	2019	2020	2021	2022
1,604 trained	1,216 trained	912 trained	621 trained	666 trained	781 trained	trained
99 advice requests	170 requests	294 requests	174 requests	460 requests	260 requests	136 requests
GEA intro video (new employees and Boards and Commissions)	GEA Trg for Form 700 filers	Candidate trg with FPPC instituted  Sup Academy ethics module	Bd/Comm liaison trg implemented		Open Mtgs Trg created  First Diversion Trgs	Ticket Policy Trg created  Form 700 filer tracking

### Potential Priorities 2022-25:

- Ethics onboarding/exit process improvements – project with HR to ensure employees are trained, file Form 700 upon hire
- 2022 Election – Candidate education, Public Financing program training and implementation
- Trainings – Ticket Policy Ordinance, Public Records, Lobbyist, GEA/LRA for Consultants doing business with City
- 2024 Election – Candidate education, Public Financing program training and implementation

## OUTREACH/ENGAGE

**DESIRED OUTCOME:** 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.

**PROGRAM GOAL:** 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.

### Outreach/Engage Activities:

- A. Interact with PEC clients and citizens to listen, share PEC mission and activities, and seek opportunities for collaboration.
- B. Conduct outreach regarding PEC policies, resources and tools for compliance and public access.
- C. Mediate public records requests by members of the public.
- D. Administer public financing for candidates running for District City Council member.

### Indicators of Success:

- 1. PEC Commissioner or staff participation in outreach and speaking events
- 2. Engagement with PEC content on website and via social media
- 3. Mediations received and completed.
- 4. Public financing participants and total funds distributed.

### Results:

2016	2017	2018	2019	2020 <sup>1</sup>	2021	2022
11 Roadshows 5,069 web users 13,827 page views 740 engagements 108 new followers	7 Roadshows 5,232 web users 16,858 page views 1,293 engagements 193 new followers	7 public events 8,159 web users <sup>2</sup> 85,003 page views 2,441 engagements 293 new followers	6 public events website analytics unknown 2,441 engagements 293 new followers	2 events website analytics unknown 1,000 engagements 118 new followers	0 events website analytics unknown 800 engagements 205 new followers	TBD
3 Mediation req's 2 Completed	4 Mediation req's 2 Completed	14 Mediation req's 5 Completed	19 Mediation req's 23 Completed	20 Mediation req's 6 Completed	19 Mediation req's 14 Completed	3 Mediation req's 9 Completed
4 LPF candidates \$113,140 total		10 LPF candidates \$176,489 total	Series Premier "Inside City Hall" starring the PEC	7 LPF candidates \$137,485 total		TBD

### Potential Priorities 2022-25:

- Commissioner Outreach, PEC overview/Commissioner Recruitment video
- PEC Website – continue to build out data portals, PEC performance dashboard

<sup>1</sup> COVID 19 pandemic impacted in-person gatherings in 2020-21.

<sup>2</sup> Figures are for legacy site [www.oaklandnet.com](http://www.oaklandnet.com) and [www.oaklandca.gov](http://www.oaklandca.gov). Note: Changes to the City website have impacted the Commission's ability to easily track PEC website performance.

**DISCLOSE/ILLUMINATE**

**DESIRED OUTCOME:** Government ethics, campaign finance, and transparency data is easily submitted and accessed in an accurate, complete, user-friendly, and understandable format.

**PROGRAM GOAL:** PEC website, filing and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to submit and view government integrity data.

**Disclose/Illuminate Program Activities:**

- A. Collect, review, and maintain government ethics, campaign finance, and transparency data, including serving as “Filing Officer” under CA FPPC rules.
- B. Facilitate development of e-filing systems, web applications, digital tools, and data visualizations and analysis to enhance filing and public access and better illuminate information.
- C. Provide compliance outreach and technical assistance to filers and users of disclosure data.

**Indicators of Success:**

- 1. Disclosure data collected, updated, and published online in machine-readable, downloadable formats.
- 2. Proactive compliance activities, filings reviewed, late fees assessed, compliance achieved without enforcement action.
- 3. Filing/disclosure tools created or improved.

**Results:**

2016	2017	2018	2019	2020	2021	2022
20 datasets	20 datasets	20 datasets	20 datasets	20 datasets	28 datasets	29 datasets
Open Disclosure 2016	Lobbyist filings published online	CF Compliance Program initiated	Campaign filing streamlined	Show Me the Money, Lobbyist apps launched	10 interactive visualizations	5 late filers assessed \$500 late fees
Filing officer for campaign statemts in Jan 2017	9 late filers assessed \$4,415 late fees	12 late filers assessed \$2,330 late fees	5 late filers assessed \$1,151 late fees	7 late filers assessed \$700 late fees	18 late filers assessed \$2,260 late fees	

**Potential Priorities 2022-25:**

- Ticket Policy Ordinance – facilitate database upgrade with IT to implement new ordinance requirements
- Fair Elections Act System Implementation (if ballot measure passes, this will be the main focus in 2022-24)
- Lobbyist E-filing – continue to fine-tune new online system, require fees for lobbyists
- Advice database – make Q&A public
- Acquire Form 700 Filing Officer duty from City Clerk
- Contractor database

**DETECT/DETER**

**DESIRED OUTCOME:** Public servants, candidates, lobbyists, and city contractors are motivated to comply with the laws within the PEC jurisdiction.

**PROGRAM GOAL:** PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC jurisdiction.

**Detect/Deter Program Activities:**

- A. Conduct complaint and PEC-initiated investigations. Gather information, conduct interviews, and prepare investigative reports.
- B. Consult/collaborate with other government and law enforcement agencies.
- C. Review reports and articles, observe meetings and activities to assess compliance and initiate cases.
- D. Proactive, routine review of government ethics, campaign finance, and transparency activities including audits/screening.

**Indicators of Success:**

- 1. Investigations completed.
- 2. Investigations initiated by PEC staff.
- 3. Complexity of investigations completed.

**Results:**

2016	2017	2018	2019	2020	2021	2022
16 proactive inv 9 inv completed	6 proactive inv 11 inv completed	20 proactive inv 9 completed Election 2018 Compliance audit – contribution limits	8 proactive inv 9 completed	4 proactive inv 3 completed	1 proactive inv 10 completed	5 proactive inv

**Potential Priorities 2022-25:**

- Election 2022 – Collaborate with PEC filing officer to detect and address low-level, inadvertent violations pre-election
- New Enforcement Assistant – training on investigation-related tasks
- New complaint database – work with IT to create new system for intake, tracking, and publishing complaint information

## ENFORCE/PROSECUTE

**DESIRED OUTCOME:** Obtain compliance with government ethics, campaign finance and transparency laws, and provide timely, fair and consistent enforcement that is proportional to the seriousness of the violation.

**PROGRAM GOAL:** Enforcement is swift, fair, consistent, and effective.

### Enforce/Prosecute Program Activities:

- A. Review facts, conduct legal analysis, prepare and develop recommendations.
- B. Contact respondents, obtain compliance and negotiate case settlements.
- C. Present case resolution recommendations, including settlement agreements, and obtain Commission approval.

### Indicators of Success:

- 1. Cases closed, categorized by resolution outcome.
- 2. Proactive cases closed.
- 3. Total fines assessed.
- 4. Compliance obtained before/without referral to enforcement (PEC staff notifies filer of error, facilitates correction).

### Results:

2016	2017	2018	2019	2020	2021	2022 (as of June 1)
29 cases resolved:	22 cases resolved:	34 cases resolved:	36 cases resolved:	39 cases resolved:	14 cases resolved:	6 cases resolved:
Dismissed 20	Dismissed 11	Dismissed 7	Dismissed 21	Dismissed 36	Dismissed 9	Dismissed 5
No action 2	No action 4	No action 3	No action 4	Fine 3	Diversion 2	Fine 1
Advisory letter 2	Warning letter 4	Advisory letter 3	Advisory letter 4		Fine 3	
Warning letter 2	Streamline fine 2	Warning letter 11	Warning letter 2			
Fine 3	Set hearing/fine 1	Forfeiture 4	Fine 5			
		Fine 1				
\$19,500 in fines	\$1,331 in fines	\$2,550 in fines	\$14,100 in fines	\$23,000 in fines	\$365,600 in fines	\$2,600 in fines
5 proactive closed	4 proactive closed	12 proactive closed	11 proactive closed	3 proactive closed	7 proactive closed	1 proactive closed

### Potential Priorities 2022-25:

- Administrative Hearings – conduct hearings by full PEC for straightforward cases
- Focus enforcement on egregious cases, assess penalties commensurate with each violation

## ADMINISTRATION/PERFORMANCE

**DESIRED OUTCOME:** PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.

**PROGRAM GOAL:** PEC staff model a culture of accountability, transparency, innovation, and performance management.

### Administration/Performance Activities:

- A. Assess and communicate PEC staffing needs to City Administration and City Council for budget requests.
- B. Track performance data, share results, and identify areas for improvement.
- C. Align employee activities with organizational priorities, develop staff, create new systems and procedures, and incorporate new practices to enhance performance.

### Indicators of Success:

1. PEC and staff growth in relation to assessed needs.
2. Performance data published and shared with target audiences.

### Results:

2016	2017	2018	2019	2020	2021	2022
Hired 5 full-time staff per City Charter amendments passed by voters in 2014  PEC Performance measurement development project with Mills College	Published select indicators on PEC web, newsletter, social media, annual report  Presentation to City Council re: PEC growth and activities	Posted select indicators via social media, annual report  PEC Perf plan and data tracking instituted	Posted select indicators via social media, annual report  Developed PEC's Core Values for inclusive engagement	Posted select indicators via social media, annual report  \$100,000 budget augmentation for part-time positions  PEC presents at Alameda Grnd Jury	Posted select indicators via social media, annual report  Published enforcement and mediation data  Interactive enforcement results webpage	Posted select indicators via social media, annual report

### Potential Priorities 2022-25:

- Executive Director – recruitment and hiring in June 2022
- New position (Enforcement Assistant) – recruitment and hiring after July 1, 2022
- Website dashboards to better communicate PEC performance data
- Ethical climate survey – coordinate with City Auditor to review ethical climate within City government





# Item 11c - M2022-02; Mediation Summary



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

Whitney Barazoto, Executive Director

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TO: Whitney Barazoto, Executive Director  
FROM: Jelani Killings, Ethics Analyst  
DATE: May 18, 2022  
RE: *In the Matter of the Human Resources and Oakland Fire Departments (Case No. M2022-02); Mediation Summary*

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## I. INTRODUCTION

On April 4, 2022, the Commission received a request for mediation alleging that the Human Resources and Fire Departments failed to disclose records in response to a public records request made by the Requester on February 21, 2022. On April 4, 2022, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding departments provided the responsive documents per the request, this mediation request was closed with no 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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

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

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

## Item 11c - M2022-02; Mediation Summary

efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.<sup>5</sup>

### III. SUMMARY OF FACTS

On February 21, 2022, the City received, via NextRequest, the following public records request (No. 22-1351):

I wish to request the data on positivity rate of Covid-19 in the City of Oakland from all City employees. I also wish to request a separate audit for Oakland Fire Department as well. Please include the percentage of employees vaccinated and unvaccinated; who has tested positive for Covid-19 in the report.

The audit timeline I wish to see are from:

August 01, 2021 to current

December 13, 2021 to current

The second part of my request is the contact tracing data. With the City actively completing contact tracing, how many notices were sent out to employees of a possible exposures. The audit timeline I wish to see are from:

August 01, 2021 to current

December 13, 2021 to current

I do not wish to have any names or private information disclosed. I wish to have just the City's raw numbers during this time of the pandemic.

On February 22, 2020, the Human Resources Department responded to the Requester via NextRequest stating:

Thank you for submitting a request for public records through the City of Oakland's NextRequest system. Your request will be delivered to the appropriate City Departments or Officials.

The City of Oakland is committed to transparency and to providing you with a full and timely response to your request. If we need to clarify your request in order to provide a complete response, we will contact you directly or post a reply in NextRequest.

If you have any questions, you may contact the department liaison assigned to your request.

In addition, the Human Resources also replied:

The City will not produce records covered by Government Code Section 6254(c), which exempts "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

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<sup>5</sup> Complaint Procedures § IV (C)(5).

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On, February 22, 2022, the Requester responded stating:

Please let me be clear. I am requesting statistical data of positivity cases on Covid-19 for Oakland employees. Please refer back to the dates and the last part of my email. I am not looking for private information of any employee as what you cited. Government code section 6254(c). Please help me process this request. Should there be any questions, I can be contacted at 707-330-7943. Thank you

On March 11, 2022, after receiving no further correspondence, the Requester followed up stating:

Good morning, I am following up with my records request on the Statistical data of positivity cases for the vaccinated vs unvaccinated of all city employees. The deadline was March 3rd and I haven't gotten a response as of yet.

On April 4, 2022, the Commission received a complaint alleging that the Human Resources and Fire Departments had failed to provide the requested documents in response to public records request No. 22-1351.

On April 4, 2022, Staff initiated its mediation program and notified the Human Resources and Fire Departments of the mediation request.

On April 6, 2022, the Fire Department responded to the Requester via NextRequest stating:

Hello,

Thank you for submitting a request for public records through the City of Oakland's NextRequest system.

Recently, there was a transition in Fire Department responsibility for Public Records Requests, and we apologize for the delay in responding to you.

The City of Oakland is committed to transparency and to providing you with a full and timely response to your request. If we need to clarify your request in order to provide a complete response, we will contact you directly or post a reply in NextRequest.

Thank you very much for your patience.

Respectfully,

OFD

On April 7, 2022, the Fire Department requested an extension stating:

Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).

We hope to have an update or have the information requested by 4/14/22.

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On April 11, 2022, the Human Resources Department released a 4-page document that included graphs and tables of positive COVID cases by year and City departments stating:

Regarding “data on positivity rates”, Risk Management does not have responsive documents. Similarly, regarding a “separate audit for Oakland Fire Department”, Risk Management does not have responsive documents. Finally, for the last request, “many notices were sent out to employees of a possible exposures”, Risk Management does not have responsive documents. Although we do not have documents responsive to the request, I have included below the positive COVID cases broken out by month.

On April 11, 2022, the Requester responded:

Can you help me clarify what is meant by responsive documents? Risk Management has access to the City Employee Vaccine Portal where all city employees submitted their vaccine status. How many vaccinated employees tested positive vs. unvaccinated employees from August 2021 to current date?

On April 12, 2022, the Fire Department released an excel spreadsheet that included positive COVID cases stating:

OFD has released your first request. The second part of your request is being worked on and we will release as soon as it is complete.

On April 13, 2022, OFD release an additional excel spreadsheet that included the number of contact tracing notifications sent out. In addition, the Fire Department stated:

OFD has released the second part of your request.  
OFD has no more records responsive to this request.

On April 14, 2022, the Human Resources closed the public records request stating:

We released all of the requested documents.

On April 29, 2022, Staff followed up with the Requester via email to confirm if they had received all the requested documents and that, if so, staff would be closing the mediation request.

On April 29, 2022, the Requester responded to staff stating:

Thank you for following up. Regarding my public records request of 22-135, the city did provide me with 3 documents. Unfortunately, it was incomplete. One of my main request was for the statistical data of vacc vs unvacc for all the city employees. OFD was the only dept that was able to provide this record info vacc and unvacc stats.

The reason that the city couldn't provide any more info on this topic was because, they didn't have any more "responsive documents."

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1 out of the 3 documents shows an excel sheet of all dept's that tested positive for Covid. Also the City has a vaccine portal which would provide the appropriate vaccine status of all employees of Oakland. But, yet the entire request has been closed. Is there anything we can do to retrieve this remaining info?

On April 29, 2022, Staff reached out to the Human Resources Department to confirm that all requested documents had been provided. Human Resources Staff responded:

Human Resources Management have provided all responsive records for PRR-22-1351. We have no additional records.

You are welcome to contact Andrew Lathrop if you have additional questions.

On May 9, 2022, Staff reached out to Andrew Lathrop, Claims & Risk Manager, to confirm that the City's Vaccination Portal did not provide the level of information that the Requester was seeking.

On May 10, 2022, Mr. Lathrop responded:

Ms. Aaron's response is accurate. The Human Resources Department does not have responsive records beyond that which has already been submitted.

In addition, Mr. Lathrop stated:

The Human Resources Department does not have this information, there are no responsive records to this request. Moreover, it is very unlikely that the City could accurately discover the requested information. But even if such discovery was possible, the City is not required to compile data, gather information, perform research, or otherwise create a record that does not exist or that is not maintained in the normal course of business.

In any case, I want to stress again, the records cannot be produced because they do not exist.

On May 12, 2022, Staff followed up with the Requester to confirm that the Human Resources Department provided all the responsive documents per the request and that Staff would be closing the mediation.

Subsequently, after receiving no response, Staff closed the mediation request.

#### **IV. RECOMMENDATION**

Because the Human Resources and Fire Departments provided the responsive documents, Staff closed the mediation request with no further action. Overall, the Human Resources and Fire Departments were responsive to the Requester once Staff began the mediation process.