



In-Person Meetings: Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check www.oaklandca.gov for the latest news and important information about the City's [return to in-person meetings](#).

Public Comment: 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 Chair allocates additional time.

Members of the public may also submit written comments in advance of the meeting to EthicsPublicComment@oaklandca.gov. Please indicate the agenda item # you are commenting on in the subject line of the email.

Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Charlotte Hill, Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager.

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION SPECIAL MEETING AGENDA

PRELIMINARY ITEMS

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**
 - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
 - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at ethicscommission@oaklandca.gov for assistance filing a complaint.

ACTION ITEM



4. **Oakland City Auditor Salary Adjustment.** On April 10, 2024, the Commission voted to adjust the salary of the City Auditor as required annually by Oakland City Charter Section 403(1). For procedural reasons, that item has been re-agendized for consideration and possible action at this meeting. The Commission will discuss and may take action to adjust the salary of the Oakland City Auditor and supersede its prior action. ([Staff Memorandum; Draft Resolution; Measure X \(2022\) Ballot Packet](#))
5. **Debate Policy.** The Commission will consider and may adopt a policy describing what events qualify as a “public debate or forum” for the purposes of candidate eligibility to participate in the Limited Public Financing Program of 2024 (LPF) or the Democracy Dollars Program and how the Commission will implement this requirement. ([Staff Memorandum; Draft Policy](#))
6. **PEC Ballot Measure Proposal.** On April 10, 2024, the Commission adopted a package of proposed Charter and Oakland Municipal Code reforms and directed the Executive Director, in coordination with the Chair, to pursue the introduction of a resolution placing one or more of those proposals on the November 2024 ballot. Staff worked with the Chair and Charter Review Subcommittee to prioritize a narrower set of proposals to bring forward to the City Council and worked with the City Attorney’s Office to draft the resolution, which the Commission has introduced. Consistent with Charter Section 603(h), the Commission will review and may provide additional comment on the resolution. ([Staff Report; Resolution](#))
7. **Mayoral Salary Ballot Measure.** On December 13, 2023, the Commission adopted a recommendation to the City Administrator that the Commission should set the Mayor’s salary using certain criteria. The City Administrator has introduced a resolution for a November 2024 ballot measure which would transfer the responsibility for setting the Mayor’s salary from the City Council to the Public Ethics Commission, pursuant to the Commission’s recommendation. Consistent with Charter Section 603(h), the Commission will review and may provide additional comment on the resolution. ([Commission Letter; CAO Staff Report; Resolution](#))
8. **Police Commission Procedural Changes.** On January 17, 2024, the Commission reviewed and provided comment on a proposal by Councilmembers Kalb and Jenkins to modify the enabling ordinance of the Police Commission, among other changes. The Commission requested several changes to that proposal. Working with the Commission and Councilmembers’ Offices, the City Attorney’s Office has drafted amendment language responsive to the Commission’s request for the Councilmembers’ consideration. Consistent with Charter Section 603(h), the



Commission will review and may provide additional comment on the draft amendment language. ([Commission Letter](#); [Draft Amendment](#))

INFORMATION ITEM

9. **Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

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

The following options for public viewing 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 (via ZOOM):** Click on the link to join the webinar: <https://uso2web.zoom.us/j/89169308829>. Please note: the Zoom link and access number are to view/listen to the meetings only. Public comment via Zoom is not supported at this time.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 669 444 9171 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 931 3860 or +1 689 278 1000 or +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 Webinar ID: 891 6930 8829
- **International numbers available:** <https://uso2web.zoom.us/j/89169308829>

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

Nicolas Heidorn

5/17/24

Approved for Distribution

Date

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Hearing Room 2
Wednesday, May 22, 2024
6:30 p.m.



This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email ethicscommission@oaklandca.gov or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a ethicscommission@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.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

郵 ethicscommission@oaklandca.gov or 或致電 (510) 238-3593 或711 (電話傳達服務)。

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 ethicscommission@oaklandca.gov or hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.



Item 4 - Oakland City Auditor Salary Adjustment

Francis Upton IV (Vice-Chair)

Alea Gage

Charlotte Hill

Vincent Steele

Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
 FROM: Nicolas Heidorn Executive Director
 DATE: March 27, 2024, for the May 22, 2024, PEC Meeting
 RE: City Auditor Salary Adjustment as Required by City Charter Section 403(1)

This memo is unchanged from the memo from the April 10, 2024 meeting.

In November 2022, Oakland voters passed Measure X, which amended Oakland City Charter Section 403(1) to add setting the City Auditor salary level to the duties of the Public Ethics Commission (PEC or Commission). This memorandum provides background information for the Commission to adjust the City Auditor salary per the criteria specified by City Charter Section 403(1).

Background

The City Auditor is the department head for the Office of the City Auditor and oversees a staff of approximately 12 full time equivalent (FTE) positions.¹ The current City Auditor was elected in a March 2024 special election to fill a vacancy in the Office.

Prior to 2023, the City Auditor’s salary was set by the City Council. In November 2022, Oakland voters passed Measure X, which amended the process for adjusting the City Auditor’s salary, including by assigning this responsibility to the Commission. This process is codified at Section 403(1) of the City Charter, which provides that:

The salary of the City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

The Commission first adjusted the salary of the City Auditor position last year. At its April 12, 2023, regular meeting, the Commission adopted a resolution setting the City Auditor’s salary at **\$213,137.51**, which is the current salary for the Office.²

Prior PEC Adjustments to the City Auditor’s Salary

Year	Adopted Annual Salary	Increase Over Prior Salary (%)
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¹ This represents the number of Full Time Equivalent (FTE) positions adopted in the most recent Budget for Fiscal Years 2023-2024.

² According to the City’s current [Salary Ordinance](#), the City Auditor’s salary is \$213,137.52, or one cent higher than what the PEC approved, likely because the amount the PEC approved is not evenly divisible by the City’s pay periods.

City Auditor Salary Adjustment **Item 4 - Oakland City Auditor Salary Adjustment**
March 27, 2024

2023	\$213,137.51	17.6%
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Analysis

Highest Paid Professional Employee

In adjusting the Auditor’s salary, the Charter requires that the Commission take into account “the top of the range for the highest paid professional employee in the Office of the City Auditor.” The Assistant City Auditor is the highest paid direct report for the City Auditor. The maximum annual salary for the Assistant City Auditor position in the Office of the City Auditor currently is **\$185,140.68** per year while the annual salary for the City Auditor is \$213,137.52.³

According to the City’s Human Resources Department, the City’s undocumented compensation practice is to have a minimum of 15 to 20 percent salary differential between a department head and their highest direct reporting employee, although among executive management this is not always achieved. For the City Auditor salary to be 15 to 20 percent above the salary of the highest direct reporting employee would be a salary between **\$212,911.78 and \$222,168.82**. The City Auditor presently makes 15.1 percent more than the highest paid professional employee, which is within that range.

In 2022, the City negotiated annual wage increases for represented employees through the collective bargaining process. The non-public safety wage increases, as opposed to Police and Fire wage increases, may be considered in establishing the new wage since it applies to both City Auditor employees and to other department heads. (Salary Ordinance 12187 C.M.S. section 2.20, as amended by Ordinance 13786 C.M.S., allows the City Administrator to provide the same negotiated wage increases to unrepresented employees, including department heads.) Upcoming scheduled wage increases under the current collective bargaining agreements with non-public safety represented employees include 2 percent in July 2024 and 2 percent in March 2025. After July 1, 2024, when the 2 percent wage increase is effective for non-sworn City employees, a 15 to 20 percent salary differential over the City Auditor’s top staff position will be **\$217,170.02 to \$226,612.19**.

Other City Department Heads

In adjusting the Auditor’s salary, the Charter requires that the Commission take into account “salaries for other City department heads.”

Table 1, below, provides the salaries for other City department heads as of February 2024.

³ Salary data provided by Anjali Saxena, Payroll Manager, Finance Department. February 21, 2024.

Table 1: City Department Head Salaries

Director Title	Annual Salary
Chief of Police	\$ 338,241.00
Chief of Fire	\$ 307,945.92
City Attorney	\$ 306,990.58
Director of Public Works	\$ 301,421.40
Director of Finance	\$ 288,007.44
Director of Transportation	\$ 259,914.60
Director of Library Services	\$ 259,914.60
Director of Planning & Building	\$ 259,914.60
Director of Information Technology	\$ 259,914.60
Director of Housing & Community Dev	\$ 259,914.60
Director of Animal Services	\$ 259,914.60
Director of Human Services	\$ 247,548.24
Director of Economic & Workforce Dev	\$ 247,548.24
Director of Workplace & Employment Stnd	\$ 241,212.84
Director of Human Resources Management	\$ 236,390.64
Inspector General	\$ 229,727.04
EEO & Civil Rights Director	\$ 229,727.04
Director of Race and Equity	\$ 229,727.04
Chief of Violence Prevention	\$ 225,499.92
Executive Director CPRA	\$ 219,220.80
City Auditor	\$ 213,137.52
City Clerk	\$ 212,257.20
Executive Director, Public Ethics Comm	\$ 191,213.76
Mean (Excluding Auditor)	\$ 255,098.49
Median (Excluding Auditor)	\$ 253,731.42

Based on the above data, the salary range for Oakland department heads is from **\$191,213.76 to \$338,241.00**. The mean annual salary for a department head (excluding the City Auditor) is **\$255,098.49** per year and the median annual salary is **\$253,731.42**. Of Oakland’s 23 department heads, the City Auditor has the **third lowest salary** (21st of 23).

In terms of staff size, the Auditor’s Office is a small City department (19th of 23). Of the seven departments (excluding the City Auditor’s Office) with fewer than 20 FTE, the mean annual salary for a department head is **\$221,869.39** per year and the median annual salary is **\$229,727.04**.

Public Sector Auditor Positions

In adjusting the Auditor’s salary, the Charter provides that the Auditor’s compensation shall be “comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission.”

In accordance with the Charter criteria, the Commission surveyed the salaries of City Auditors from other California cities within the four immediate higher and four lower populations compared to

City Auditor Salary Adjustment **Item 4 - Oakland City Auditor Salary Adjustment**
 March 27, 2024

Oakland (see Table 2 below).⁴ However, only two of the eight identified cities currently have City Auditor classifications that are either filled or were recently filled. Stockton has a City Auditor classification with a salary range of \$117,507.36 to \$ 150,794.88; however, the City currently contracts out for auditing services and has not had a recent incumbent in the position.

Table 2: California Cities Auditor Salaries

Jurisdiction	Population	Annual Salary
City and County of San Francisco	831,703	N/A
City of Fresno	543,428	N/A
City of Sacramento*	518,161	\$ 233,228.03
City of Long Beach	458,222	\$ 263,791.90
City of Oakland	419,556	\$ 213,137.52
City of Bakersfield	408,373	N/A
City of Anaheim	328,580	N/A
City of Stockton**	319,731	N/A
City of Riverside	313,676	N/A
Mean (Excluding Oakland)		\$ 248,509.97
Median (Excluding Oakland)		\$ 248,509.97

*Position is currently vacant. Salary is that of last recent incumbent.

** Vacant position with no recent incumbent.

Based on the above two data points, the salary range for the City Auditor position in comparable-size California cities is from **\$233,228.03 to \$263,791.90**. The mean annual salary is **\$248,509.97** per year and the median annual salary is **\$248,509.97**. Oakland’s City Auditor makes 85.8% of the mean and 85.7% of the median City Auditor salary in comparable-size cities. If the midpoint salary range for Stockton’s City Auditor classification (\$134,151.12) were considered, the mean annual salary would be \$210,390.35 and the median annual salary would be \$233,228.03.

In accordance with the Charter criteria, staff also surveyed City Auditor salaries for surrounding Bay Area Cities and the County of Alameda (see Table 3 below). Four of the nine identified jurisdictions have a City Auditor classification. The salary for Alameda’s City Auditor was not considered in this analysis, because it is a part-time position. Santa Clara has a City Auditor classification with a salary range of \$200,284.56 and \$259,198.92; however, the City currently contracts out for auditing services and has not had a recent incumbent in the position. Anaheim has an “Audit Manager,” rather than a City Auditor, whose compensation is \$168,918.

⁴ The salary data in the tables below was provided by the human resources departments of each jurisdiction.

Table 3: Bay Area Cities City Auditor Salaries

Jurisdiction	Annual Salary
County of Alameda*	\$ 253,323.20
City and County of San Francisco	N/A
City of Alameda**	\$ 3,600.00
City of Berkeley	\$ 189,839.26
City of Fremont	N/A
City of Hayward	N/A
City of Mountain View	N/A
City of Oakland	\$ 213,137.52
City of San Jose	\$ 264,311.28
City of Santa Clara†	N/A
Mean (Excluding Oakland and City of Alameda)	\$ 235,824.58
Median (Excluding Oakland and City of Alameda)	\$ 253,323.20

*Alameda County’s auditor position is the Auditor-Controller.

**Alameda has a part-time elected Auditor.

† Vacant position with no recent incumbent.

Based on the above data, the salary range for the City Auditor position in Bay Area jurisdictions is from **\$189,839.26 to \$264,311.28**. The mean annual salary is **\$235,824.58** per year and the median annual salary is **\$253,323.20**. Oakland’s City Auditor makes 90.4% of the mean and 84.1% of the median City Auditor salary in Bay Area cities. If the midpoint salary range for Santa Clara’s City Auditor classification (\$229,741.74) were considered, the mean annual salary would be \$234,303.87 and the median annual salary would be \$241,532.47.

Staff Recommendation

Based on the above data and the criteria set forth in City Charter Section 403(1), Commission Staff recommends adjusting the City Auditor’s annual salary to **\$226,612.19**, which is a **6.3%** increase over the Auditor’s current salary, effective in the first pay period after July 1, 2024. This adjustment would provide competitive compensation and equitable alignment of the City Auditor’s salary by providing the City Auditor with a salary that is 20 percent above the top of the range for the highest paid professional employee in the Auditor’s Office after accounting for the scheduled 2 percent negotiated wage increase for non-sworn City employees effective July 2024, that is comparable to the salaries of City Auditors in other comparable-size cities and Bay Area jurisdictions, and that also takes into account the salaries of other City department heads.⁵

⁵ Salary adjustment calculated as follows: Highest paid City Auditor office employee salary + 20% differential + 2% increase to maintain parity with scheduled wage increase for non-public safety employees effective July 1, 2024.

Table 4: Comparison Summary

Summary of Salary Comparisons				
	Lowest	Highest	Mean	Median
Other Department Heads (n=22)	\$191,213.76	\$338,241.00	\$255,098.49	\$253,731.42
Under 20 FTE Department Heads (7)	\$191,213.76	\$241,212.84	\$221,869.39	\$229,727.04
Top Paid Employee	+ 15%: \$212,911.78	+ 20%: \$222,168.82	+ 17.5%: \$217,540.30	-
Top Paid Employee (after 2% COLA)	+ 15%: \$217,170.02	+ 20%: \$226,612.19	+ 17.5%: \$221,891.10	-
Comparable-Size Cities (2)	\$233,228.03	\$263,791.90	\$248,509.96	\$248,509.96
Bay Area Jurisdictions (3)	\$189,839.26	\$264,311.28	\$235,824.58	\$253,323.20
City Auditor - Current Salary				
\$213,137.52				
City Auditor - Recommended Salary				
\$226,612.19				

Following the Commission’s determination of the adjustment amount, Commission Staff will transmit the salary adjustment resolution to the City Administrator, the Department of Human Resources (to amend the salary ordinance), and the Treasury Division - Payroll (to implement the increase).

Attachments: 1. Draft Resolution; 2. Measure X Ballot Pamphlet Packet

Item 4 - Oakland City Auditor Salary Adjustment

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 24-04
[Proposed 5-22-24]

RESOLUTION AUTHORIZING A SALARY INCREASE FOR THE OFFICE OF CITY AUDITOR PURSUANT TO OAKLAND CITY CHARTER SECTION 403(1)

By action of the Oakland Public Ethics Commission:

WHEREAS, Oakland City Charter Section 403(1) provides: “The salary of the City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion;” and

WHEREAS, Oakland City Charter section 207 charges the City Council with fixing the compensation of all City employees, officers and officials unless otherwise provided by the Charter; and

WHEREAS, Ordinance No. 12187 C.M.S., the “Salary Ordinance,” as amended, sets forth a salary schedule reflecting all classifications of employment within the City including those of city employees and city officers; and

WHEREAS, a salary adjustment to \$226,612.19 would provide competitive compensation and equitable alignment of the City Auditor’s salary by providing the City Auditor with a salary that is 20 percent above the top of the range for the highest paid professional employee in the Auditor’s Office, that accounts for the scheduled 2 percent negotiated wage increase for other City employees effective July 2024, that is comparable with the salaries of auditors in other comparable-size cities and Bay Area jurisdictions, and that also accounts for the salaries of other City department heads.

Now, therefore be it:

RESOLVED, that the Commission does hereby authorize an annual salary of \$226,612.19 for the office of City Auditor as mandated by City Charter Section 403(1), effective as of the first payroll period of Fiscal Year 2024-2025; and

FURTHER RESOLVED, that this Resolution shall supersede PEC Resolution No. 24-02.

CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission held on May 22, 2024, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of ____ to ____.

AYES: GAGE, HILL, STEELE, TILAK, UPTON IV, AND CHAIR MICIK

NOES:

ABSTAIN:

May 22, 2024 PEC Special Meeting Packet - 11

Item 4 - Oakland City Auditor Salary Adjustment

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 24-04
[Proposed 5-22-24]

ABSENT:

I hereby certify that the foregoing is true and correct.

Nicolas Heidorn, Executive Director
Oakland Public Ethics Commission

Date

Item 4 - Oakland City Auditor Salary Adjustment

FILED
OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 12 PM 1:51

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89317 C.M.S.

INTRODUCED BY COUNCILMEMBERS DAN KALB, LOREN TAYLOR,
SHENG THAO, AND NIKKI FORTUNATO BAS

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION A GOVERNMENT REFORM MEASURE THAT WOULD AMEND THE CITY CHARTER TO, AMONG OTHER THINGS:

- (1) ESTABLISH TERM LIMITS FOR COUNCILMEMBERS;
- (2) REQUIRE A MINIMUM OF TWO COUNCIL HEARINGS BEFORE CERTAIN COUNCIL PROPOSED BALLOT MEASURES ARE APPROVED FOR PLACEMENT ON THE BALLOT;
- (3) COUNT COUNCILMEMBER ABSTENTIONS AND ABSENCES AS A NO VOTE ON COUNCIL MOTIONS, RESOLUTIONS AND ORDINANCES FOR PURPOSES OF DETERMINING WHETHER MAYOR HAS AUTHORITY TO CAST A TIE-BREAKING VOTE;
- (4) CHANGE THE FORMULA FOR THE PUBLIC ETHICS COMMISSION TO SET COUNCILMEMBER SALARIES AND AUTHORIZING THE PUBLIC ETHICS COMMISSION TO SET THE SALARIES OF THE CITY AUDITOR AND CITY ATTORNEY;
- (5) ADD AND CLARIFY DUTIES OF AND PROVIDE MINIMUM STAFFING FOR THE CITY AUDITOR; AND

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION

WHEREAS, in 1968, the People adopted the Charter of the City of Oakland ("City Charter"), establishing the fundamental law of the City, including but not limited to, the City's form of government and the role of City Council, the Mayor, the City Manager, and other City officers, and

Item 4 - Oakland City Auditor Salary Adjustment

WHEREAS, since then, the City has grown in size, complexity, and diversity; and

WHEREAS, a city's charter must promote democracy, accountability, transparency, and equity; and

WHEREAS, according to the National League of Cities, 80% of American cities have term limits for mayors and/or councilmembers; and

WHEREAS, a 2021 report by San Francisco Bay Area Planning and Urban Research Association, a nonprofit public policy organization ("SPUR") titled "Making Government Work: 10 ways City Governance Can Adapt to Meet the Needs of Oaklanders" called for term limits City Councilmembers and additional staffing for the City Auditor; and

WHEREAS, Oakland elected officials such as City Councilmembers, the City Auditor, and the City Attorney have lower salaries than several nearby California cities; and

WHEREAS, engaged residents may be more likely to be able to gain election to local office when there is an open seat as opposed to when an incumbent is running for re-election; and

WHEREAS, having two Council hearings on certain Council proposed ballot measures before the Council places such measures on the ballot will expand opportunities for public and Council engagement, discussion and vetting; and

WHEREAS, the Charter currently entitles the Mayor to cast a tie-breaking vote when the Council is evenly divided on a Council vote, yet that has been thwarted by Councilmembers abstaining; now therefore be it

RESOLVED: That the City Council finds and determines the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the City Charter hereby is amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

FURTHER RESOLVED: That the proposed amended Charter amendment text shall be as follows:

Section 200. Composition of the Council. The Council shall consist of eight Councilmembers, nominated and elected as hereinafter provided. The Mayor shall not be a member of the Council, but ~~he~~ shall have a vote on the Council if the Councilmembers are evenly divided in accordance with Section 305. The Council shall elect a President of the Council from among its members for a term of two years. The President of the Council shall serve as the presiding officer of the City Council and shall perform duties authorized by the Council's Rules of Procedure, which shall be passed by resolution in accordance with Charter section 210.

Item 4 - Oakland City Auditor Salary Adjustment

Section 202. Council Salaries. The Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the Commission shall have the discretion to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year. ~~The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters.~~

Section 204. Term of Office, Term Limits, Council.

Term of Office. The Councilmembers shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1 ~~2~~ following their election. ~~The Councilmembers elected or appointed to office to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1 in 1991. The Councilmembers elected or appointed to office to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, 1993.~~ In 1990-2018 Municipal Elections ~~were~~ will be held to select City officers for four-year terms for the following offices: Councilmember, District #2; Councilmember, District #4, and, Councilmember, District #6. In 1992-2020 Municipal Elections ~~will be~~ were held to select City Councilmembers for four-year terms for the following offices: Councilmember, District #1; Councilmember, District #3; Councilmember, District #5; Councilmember, District #7; and Councilmember At-Large.

Term Limits. No person shall be elected to the office of Councilmember, whether district or at-large, or any combination thereof, for more than three consecutive terms; except that a person may serve up to three consecutive terms as a district Councilmember immediately followed by up to three consecutive terms as Councilmember at-large. For purposes of determining term limits, a Councilmember who fills a partial term of more than two years shall be deemed to have filled the entire term. Terms for the office of Councilmember that commenced prior to January 2023 shall not be considered in calculating limits on consecutive terms for Councilmembers.

Section 205. Vacancy, Filling of. All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to ~~60-90~~ days may be allowed only for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. ~~If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible.~~ Special elections for the office of Councilmember that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect Councilmembers in General Municipal Elections. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds ~~120-100~~ days the vacancy may be temporarily filled by appointment through the majority vote of the remaining Councilmembers, provided the appointee ~~is~~ may not simultaneously fill the vacancy and run as a candidate for that the office which created the vacancy and provided the appointment does not exceed ~~128-180~~ days or go beyond the date the

Item 4 - Oakland City Auditor Salary Adjustment

new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the ~~Vice Mayor~~ Council President fills a mayoral vacancy pursuant to Sections 303 and 304 of this Charter, and the ~~Vice Mayor~~ Council President shall be entitled to return to ~~his/her~~ their seat.

Section 208. Meetings of the Council. At 11:00 a.m. on the first Monday following January 24 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at its first meeting in January of each odd-numbered year, the Council shall, by resolution, elect a ~~Vice Mayor~~ Council President from among its members to serve for a ~~one~~ two-year term. The Council also shall elect, by resolution, a President Pro Tempore of the Council from among its members to serve a one or two-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice.

Section 221. Hearings Required for Certain Ballot Measures Proposed by the Council. Before taking a vote, the Council shall notice and consider at no fewer than two Council open session meetings that are at least 10 calendar days apart, any (1) general obligation bond, (2) new parcel tax or increase in a parcel tax, or (3) Charter amendment that the Council proposes to place on the ballot.

Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the ~~Vice Mayor~~ President of the Council. Except as otherwise provided in this Section, when the ~~Vice Mayor~~ President of the Council assumes the office of Mayor upon declaration of a vacancy, they shall serve for the remainder of the unexpired term if such term is less than one year; otherwise they shall serve until the vacancy is filled as provided herein. The President Pro Tempore shall perform the duties and shall have the powers of the President of the Council during any time that the President of the Council has assumed the office of the Mayor. Whenever the period of vacancy in a Mayor's term of office is less than one year and the ~~Vice Mayor~~ President of the Council notifies the Council in writing that they do not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the Council; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by special election within 120 days of such vacancy. An extension of up to ~~60~~ 90 days may be allowed only for the express purpose of consolidating the special election with the

Item 4 - Oakland City Auditor Salary Adjustment

next Municipal Election or Statewide Election. Special elections for the office of Mayor that take place after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect the Mayor in General Municipal Election. The candidate elected to fill the vacancy shall hold office for the balance of the unexpired term. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, secure electronic voting, and extended voting period.

Section 305. Functions, Powers and Duties. The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

(a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.

(b) Recommend to the Council such measures and legislation as ~~he~~ the Mayor deems necessary and to make such other recommendations to the Council concerning the affairs of the City as ~~he~~ the Mayor finds desirable are in the best interest of the residents of the City.

(c) Encourage programs for the physical, economic, social and cultural development of the City.

(d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.

(e) Appoint the City Administrator, subject to confirmation by the City Council, remove the City Administrator and give direction to the City Administrator. The Mayor shall advise the Council before removing the City Administrator.

(f) Serve as ceremonial head of the City.

(g) Represent the City in inter-governmental relations as directed by the Council.

(h) Provide community leadership.

(i) May cast a tie-breaking vote on any Ordinance, Resolution or Motion voted on by the Council, if the Council's vote is evenly divided. Solely for the purposes of determining whether the Mayor is eligible to cast a tie-breaking vote, abstentions and absences shall count as a "No" vote. A legally-required recusal shall not count as a "No" vote.

The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as he/she may deem expedient and proper. The Mayor and such staff as the Mayor ~~he/she~~ may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be

Item 4 - Oakland City Auditor Salary Adjustment

noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote ~~his~~ their full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which ~~he~~ the Mayor is not actively engaged and which are not in conflict with the performance of ~~his~~ the Mayor's duties and responsibilities.

Section 306. Duties of ~~Vice Mayor~~ Council President. In addition to any duties specified by ordinance or by the Council's Rules of Procedure Resolution passed in accordance with Charter section 210, ~~in the absence~~ during the unavailability or temporary disability of the Mayor, the ~~Vice Mayor~~ President of the Council shall perform the duties of the office of Mayor.

Section 401(1). City Attorney. The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set annually by ~~the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion~~ the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

Section 401(7). Endorsements, Campaigns, Campaign Contributions. During the City Attorney's tenure, the City Attorney shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Attorney, or of a City ballot measure, or be an officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible ~~to~~ for the office a person must be a qualified elector of the State of California, a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the office ~~shall be set by the Public Ethics Commission, which shall be not less than 70% nor~~

Item 4 - Oakland City Auditor Salary Adjustment

more than 90% of the average salaries of City Auditors of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion. City Auditor shall be set annually by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

Section 403(2). Vacancy, What Constitutes. The Office of City Auditor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after their term is to begin, dies, resigns, ceases to be a resident of the City or is absent from the City for a period of more than sixty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of the office, forfeits the office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Auditor. Filing to run for the office of Mayor, Councilmember or City Attorney shall constitute a resignation from the office of City Auditor, effective on the date of filing.

Section 403(3) Vacancy, Filling of. For all vacancies occurring in the Office of City Auditor the City Council shall cause an election to be held to fill such vacancy pursuant to the manner and method as provided for in Article II, Section 205 of the Charter.

Section 403(4) Powers of the City Auditor. The City Auditor, notwithstanding any other provision of this Charter, shall have the power and it shall be his or her the City Auditor's duty to audit the books, accounts, money and securities of all bureaus, departments, offices, agencies, including the Port Department, boards, commissions, and programs of the City, and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. The City Auditor shall report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity. The City Auditor shall conduct audits in accordance with Government Auditing Standards as issued by the U.S. Comptroller General.

The City Auditor shall conduct surveys, reviews, and performance audits and financial audits as the Auditor deems to be in the best public interest or as required-requested by the Council or Mayor. For these purposes the public interest shall include, but not be limited to:

Item 4 - Oakland City Auditor Salary Adjustment

- (1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.
- (2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.
- (3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.
- (4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.
- (5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.
- (6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.
- (7) Responding to Council and Mayor requests for audits and reviews.
- (8) Submitting, at a public meeting of the full City Council, a ~~quarterly~~ semi-annual report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's reports.
- (9) ~~The City Auditor shall conduct~~ Conducting periodic performance audits of each department as specified in the City budget in order to help improve government performance.
- (10) Reviewing City departments, offices, agencies, boards, commissions, and bureaus to analyze if they are managing, safeguarding and using public resources, including public funds, personnel, property, equipment and space, economically, efficiently, equitably, and effectively.
- (11) Analyzing City programs, activities, services, functions, or policies as to effectiveness and cost-effectiveness, including the identification of any causes of inefficiencies.
- (12) Reviewing and recommending to the City Administrator management adjustments in operating and administrative procedures and practices, systems and accounting internal control systems and internal management controls.
- (13) Analyzing allegations of fraud, waste, abuse or illegal acts that require further investigation to substantiate.
- (14) Publishing an annual report summarizing recent audits and recommendations.
- (15) Responding to requests from the City Administrator to provide recommendations on how to make City departments and services more effective and customer-service oriented.
- (16) Preparing an annual workplan including planned audits for the year. The City Auditor shall publish such workplan in August of each year.

Item 4 - Oakland City Auditor Salary Adjustment

The City Auditor shall have access to inspect all records, property, equipment, and facilities within the City's jurisdiction.

Effective July 2023, the budget for the Office of the City Auditor shall be sufficient to hire at least fourteen full-time equivalent ("FTE") employees of relevant classifications. The minimum staffing budget set-aside may be suspended, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution or ordinance.

Restrictions on Running for Public Office. Filing for an elective office over which the City Auditor has audit jurisdiction will be the same as resignation, effective on the date of filing.

Endorsements, Campaigns, Campaign Contributions. During the City Auditor's tenure, the City Auditor shall not make or solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective office, other than for the City Auditor, or of a City ballot measure, or be an, officer, director or employee of or hold a policy decision-making position in an organization that makes political endorsements regarding candidates for City elective office.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401.

Section 601. Boards and Commissions. The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction, meeting frequency, standards for conducting long-term planning, and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article.

Section 601(a). Except as otherwise provided for in this Charter, Mmembers of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's prior term of office.

Section 601(b). Notwithstanding any other language in this section 601, or elsewhere in the Charter, for vacancies on boards and commissions for which an ordinance specifies that Councilmembers may nominate a candidate for the Mayor's consideration, the designated Councilmember shall have 45 days from the date the vacancy occurs to recommend one or more

Item 4 - Oakland City Auditor Salary Adjustment

nominees to the Mayor in writing. Upon such nomination or the expiration of the 45-day nomination period, whichever occurs first, the Mayor shall have 90 days thereafter to submit any eligible candidate for the Council's confirmation.

If the Mayor does not submit for confirmation a candidate to fill a vacancy within the time frames prescribed by this section 601(b), the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill the vacancy within the time frame specified in this section 601(b) and the Council does not confirm the candidate, the time frame specified in this section 601(b) shall commence anew.

For purposes of this Section 601, a seat filled by a holdover appointment will be considered vacant as of 30 days after the expiration of the holdover's term of office.

Section 1100. Nominating Election. Except as otherwise provided for in section 1105 of this Charter, Municipal Nominating Elections for the nomination of officers and for such other purposes as the Council may prescribe shall be held in the City on the first Tuesday after the first Monday in June in each even-numbered year. In order to consolidate Municipal Nominating Elections with Statewide Primary Elections, the Council may by ordinance provide for a date for a Municipal Nominating Election which conforms to the date of a Statewide Primary Election.

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE ___

<p>Measure __. Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as "no" votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?</p>	Yes	
	No	

; and be it

Item 4 - Oakland City Auditor Salary Adjustment

FURTHER RESOLVED: That the City Council hereby authorizes and directs the Clerk of the City of Oakland ("City Clerk"), at least 88 days prior to the November 8, 2022 general municipal election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted by Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed Charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

JUL 11 2022

AYES - ~~ALLEN, BROWN, KALB, KAPLAN, REID, TAYLOR, THAO AND~~ PRESIDENT FORTUNATO BAS -5

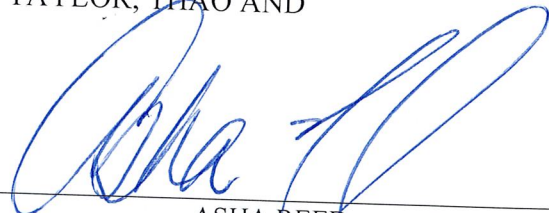
NOES - File - 1

ABSENT -

ABSTENTION -

Excused - Grillo, Kaplan - 2

ATTEST:



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

Item 4 - Oakland City Auditor Salary Adjustment

OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 28 PM 4:27

QUESTION

Shall a measure to amend the Charter to, among other things, establish Councilmember term limits, require two hearings before Council places certain measures on the ballot; count Councilmember abstentions and absences as “no” votes in determining whether Mayor may break a tie; provide Public Ethics Commission discretion in setting Councilmember salaries; authorize the Commission to set City Attorney and Auditor salaries; and add and detail duties and provide minimum staffing for the Auditor, be adopted?

TITLE AND SUMMARY

Title: A proposed amendment to the Charter to establish term limits for members of the City Council (“Council”), require two Council hearings for certain proposed ballot measures, count Councilmember abstentions and absences as “no” votes in determining whether the Mayor may cast a tie-breaking vote at the Council, provide the Public Ethics Commission (“Commission”) discretion in setting Councilmember salaries, authorize the Commission to set the salaries of the City Auditor and the City Attorney, clarify and add to the duties of the City Auditor, and set minimum staffing for the Office of the City Auditor.

Summary:

This measure makes a number of changes to the Charter including:

Councilmember Term Limits

Members of the Council are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms.

Hearings on Proposed Ballot Measures

State law requires the Council to hold one public hearing before voting to place a measure on the ballot. This measure would require the Council to hold two public hearings before voting to place a general obligation bond, parcel tax, or Charter amendment on the ballot.

Councilmember Salaries

The Public Ethics Commission (“Commission”) adjusts Councilmember salaries every two years based on any increases in the consumer price index (“CPI”). The Commission may also adjust their salaries above CPI increases, up to a total of five percent per year. This measure provides that the Commission would adjust the salaries every two years based on CPI increases, up to a total of five percent. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember’s abstention or absence shall count as a “no” vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor using a specified formula. This measure provides that the Commission would set these salaries based on salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

Item 4 - Oakland City Auditor Salary Adjustment

City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective office or of a City ballot measure.

City Auditor

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing for the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees.

/s/ DAVID CHIU
San Francisco City Attorney

Item 4 - Oakland City Auditor Salary Adjustment

FILED
OFFICE OF THE CITY CLERK
OAKLAND

IMPARTIAL ANALYSIS

22 JUL 28 PM 4: 27

Councilmember Term Limits

Members of the City Council (“Council”) are elected to four-year terms. There are no term limits. This measure would prohibit a Councilmember from serving more than three consecutive terms, except that a district Councilmember may serve up to three consecutive terms followed by up to three consecutive terms as an at-large Councilmember. Councilmember terms that began before January 2023 shall not count towards the term limits.

Hearings on Proposed Ballot Measures

State law requires the Council to hold at least one public hearing before placing a measure on the ballot. This measure would require the Council to hold at least two public hearings at least 10 calendar days apart before placing general obligation bonds, parcel taxes, or Charter amendments on the ballot.

Councilmember Salaries

The Public Ethics Commission (“Commission”) adjusts the salary for Councilmembers every two years based on the increase in the consumer price index (“CPI”). The Commission may adjust salaries beyond the increase in CPI up to five percent per year. The voters may approve increases above five percent in a year. This measure provides that the Commission adjusts the salaries every two years based on CPI increases, up to a total of five percent for the two years. But if the total CPI increase over the prior two years exceeds five percent, the Commission may adjust salaries up to five percent per year but may not adjust the salaries more than the CPI increase per year. The measure removes the ability of the voters to approve increases above five percent by ordinance.

Mayoral Tie-Breaking Vote

The Mayor does not have a vote on the Council, but the Charter authorizes the Mayor to cast a tie-breaking vote when the Council is evenly divided. This measure provides that for purposes of determining whether there is a tie, a Councilmember’s abstention or absence shall count as a “no” vote.

City Attorney and City Auditor Salaries

The Council sets the salary of the City Attorney and the City Auditor. This measure provides that the Commission would set these salaries based on the salaries of the highest paid professional employee in their respective offices, other City department heads, and comparable positions in California jurisdictions.

City Attorney and City Auditor Political Activities

This measure would prohibit the City Attorney and the City Auditor from making or soliciting contributions to, publicly endorsing, or participating in the campaign of a candidate for City elective officer, or of a City ballot measure.

Item 4 - Oakland City Auditor Salary Adjustment

City Auditor

This measure specifies when the Office of City Auditor becomes vacant and a process for filling the vacancy.

This measure establishes further qualifications and additional duties for the City Auditor.

The Charter does not set minimum staffing in the Office of the City Auditor. This measure provides that the budget for the Office of the City Auditor must be sufficient for at least fourteen full-time employees, unless the Council determines for a given fiscal year or two-year budget cycle that the City is facing an extreme fiscal necessity.

/s/ DAVID CHIU
San Francisco City Attorney

Item 4 - Oakland City Auditor Salary Adjustment

OFFICE OF THE CITY CLERK
OAKLAND

22 JUL 29 AM 11:38

BERKELEY CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF THE GOOD GOVERNANCE CHARTER REFORM BALLOT MEASURE

If passed by more than fifty percent of the voters, the Measure would amend the City Charter to establish term limits for councilmembers, require a minimum of two council hearings before certain council-proposed ballot measures for placement on the ballot, and count councilmember abstentions and absences as a no vote on council motions, resolutions, and ordinances to determine whether the Mayor is eligible to cast a tie-breaking vote. Further, the Measure would change the formula for the Public Ethics Commission (PEC) to set councilmember salaries, authorize the PEC to set the salaries of the City Auditor and City Attorney, and clarify the duties of and provide minimum staffing for the City Auditor.

Financial Impact

This Measure will cost the City an estimated additional \$858,199 annually in staffing costs, as detailed in the tables below.

The staffing level in the Auditor's office will increase from 11 Full Time Employees (FTEs) to a minimum staffing level of 14 FTEs, effective July 2023. City Council may suspend the minimum staffing level for a fiscal year or two-year budget cycle, in the event of extreme fiscal necessity.

Cost Component	Current FY 2023 Budget (11 FTEs)	Estimated Additional Annual Cost (+3 FTEs) ^A
Staffing	\$2,568,489	\$638,229

^A Estimate is based on FY 2023 staff salaries and benefit rates.

The measure will authorize the PEC to set the salary of the City Attorney and the City Auditor annually. These salaries may not be reduced during their terms of office, except as part of a general reduction of salaries for all officers and employees. The estimated additional annual costs in the table below are based on an assessment of salaries within both departments, salaries of department heads within the City of Oakland, and salaries of comparable positions in California cities.

Cost Component	Current FY 2023 Salary and Benefits	Estimated Additional Annual Costs (Salary and Benefits)
City Attorney	\$420,637	\$120,145
City Auditor	\$332,471	\$99,826

Limits to this financial analysis are noted below:

- Staff salaries and benefit rates may increase over time which would increase the cost to the City.
- The PEC is authorized to set the salaries for the City Auditor and the City Attorney. As such, the PEC's methodology may vary from our estimates.
- Should a vacancy occur in the Office of the City Auditor at a time that cannot be consolidated with a municipal or statewide election, a special election may be held. As of July 2022, the County of Alameda Registrar of Voters' costs for special elections range from \$9 to \$11 per registered voter for vote-by-mail to \$19 to \$21 per registered voter for in-person voting.

Item 4 - Oakland City Auditor Salary Adjustment

Our independent analysis represents the best information available at the time. Actual costs may vary from these estimates.

s/JENNY WONG
Berkeley City Auditor



Item 5 - Debate Policy

Kyran Wilcik, Chair
Francis Upton IV, Vice Chair

Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
Suzanne Doran, Program Manager
DATE: May 3, 2024
RE: Proposed Debate Guidelines for the Special Public Ethics Commission meeting to be held May 22, 2024

Under both the Oakland Fair Elections Act (OFEA) and Limited Public Financing Act (LPF) of 2024, candidates must participate in a number of public debates or forums to qualify to receive public funds. To provide clarity for candidates and ensure smooth operations as staff implement the new policy for 2024 LPF participants, staff developed proposed guidelines to define: 1) What events will qualify as a “public debate or forum” for the purposes of candidate eligibility for the Limited Public Financing Program of 2024 (LPF) or the Democracy Dollars Program; 2) The process candidates will use for certifying compliance with the minimum debate or forum requirements of these Programs; and 3) The actions the PEC will take if the requirement is not met.

Staff is recommending that the PEC adopt the attached “Oakland Public Ethics Commission Debate Guidelines.” This report provides a summary and explanation of the guidelines.

Background

The Oakland Fair Elections Act requires that, to be eligible to participate in the Democracy Dollars public financing program, candidates must “personally participate” in at least 5 (Mayor) or 3 (other offices) “public debates or forums.” OMC 3.15.080(A) specifies that:

To become certified in the program, a candidate for a covered office must file with the Commission a notice of intent to apply for certification in the program, signed by the candidate and the candidate's treasurer, during the qualifying period. On the notice of intent, the candidate must attest to all of the following: ...

(3) Candidates for Mayor will personally participate in at least five (5) public debates or forums; candidates for any office other than Mayor will participate in at least three (3) public debates or forums. Only public debates or forums to which all other applicants or certified candidates for the covered office sought by the candidate are invited to participate shall be counted for the purposes of this Section. Within five (5) days of the candidate's participation, in each public debate or forum required under this Section, the candidate must notify the Commission, in writing, of their participation in the debate or forum.

Because there were insufficient funds in the Adopted Budget to implement the Democracy Dollars Program in the 2024 election cycle, the PEC proposed that the City Council adopt the Limited Public Financing Act of 2024, modeled on programs implemented in prior years. The LPF includes a single debate requirement that is substantively the same as the Democracy Dollars requirement. OMC 3.13.080 provides:

A candidate shall be approved to receive public financing if the candidate meets all of the following requirements: ...

(H) The candidate attests that he or she will personally participate in at least one public debate or forum. Only public debates or forums to which all other candidates accepting public financing for the office sought by the candidate are invited to participate shall be counted for the purposes of this section. Within five days of the candidate's participation in a qualifying public debate or forum, the candidate shall notify the Public Ethics Commission, in writing, of his or her participation in the debate or forum.

Other Jurisdictions' Guidelines

Staff surveyed policies from a number of jurisdictions that have adopted debate requirements for candidates to qualify for public financing. As noted above, the OFEA specifies that candidate debates or forums must be open to the public, and all applicants for public financing, or candidates certified for public financing, for the covered office must be invited to participate for the event to be counted towards the requirement. Other jurisdictions with debate requirements also specify that debate sponsors do not endorse, support, or oppose candidates and events cannot favor one candidate over others (see [Federal Elections Commission \(FEC\) regulations](#), for example). [New York's](#) program has the most requirements for qualifying debates, including that debate sponsors apply in advance to be certified. Some jurisdictions, such as [San Francisco](#) and [Los Angeles](#), simply require that candidates attest that they will participate in debates when they apply for public financing, whereas [Seattle](#) candidates must additionally submit a form listing the events attended within 14 days of the election date. Program staff from other cities also noted that sometimes there are not enough qualifying events, which is outside candidates' control. [Los Angeles](#) includes an option for candidates to conduct a "Town Hall Meeting" to provide an alternative when there are not enough sponsored events. None of the jurisdictions surveyed investigated events or verified candidates' documentation unless they received complaints or evidence that a candidate did not attend the requisite number of debates or that a debate did not meet the qualifying criteria.

Proposed Oakland PEC Guidelines

The proposed PEC Debate guidelines define what events qualify as a "public debate or forum" for the purposes of candidate eligibility for public financing. In addition to the OFEA requirement that the event be open to the public and invite all candidates participating in public financing for a particular office, the guidelines further specify the event must be free, held within 120 days of the election, and not structured to promote any candidate(s) over others. Hosting organizations for qualifying events may not have endorsed any of the candidates or endorse one at the event. In addition, the guidelines provide an optional process for host organizations to pre-qualify events, so that candidates may have greater certainty that an event meets Program qualifications and so that the PEC may inform the public of debates they may wish to attend.

The guidelines also address the process candidates will use for certifying compliance with the minimum debate or forum requirements. In addition to the OFEA requirement that candidates report qualifying debates within five days of the event, the guidelines specify the event details that must be provided to the PEC including a certification by the candidate that to the best of their knowledge the

event met program requirements and an acknowledgment that failure to meet the debate requirement may result in forfeiture of some or all public financing received by the campaign, in addition to other penalties.

To help avoid a circumstance where substantial public funds are disbursed to a candidate who is later determined not to have met the debate requirement, the guidelines include the ability for program staff to require 30 days before the election that participating candidates demonstrate that they have met or will meet the debate requirements by documenting qualifying events attended and upcoming qualifying events they have committed to attend. In the event a candidate fails to demonstrate a good faith effort to meet the requirement, the PEC may halt distribution of additional public funds to the candidate until they do so. If PEC staff determine that an event did not qualify, the Executive Director shall notify the candidate including the reason why, and the candidate will have an opportunity to appeal the Director's decision to the Commission at its next regular meeting.

Given the number of qualifying events required for candidates to be certified to receive Democracy Dollars, the policy includes provisions to address election years when there are not enough qualifying events for candidates to attend. Under the policy, the Executive Director may permit alternate qualifying events in lieu of a candidate debate, such as a "Town Hall Meeting." The guidelines also allow the Director to grant a good cause waiver when a candidate cannot attend the number of required events for reasons beyond their control. Examples of good cause, such as if the candidate or their immediate family are medically incapacitated, hospitalized, or involved in a serious accident or are a victim of a serious crime that prevents them from attending an event, or if there were insufficient qualifying events for a covered office, are included.

The guidelines also make clear that the PEC may bring an enforcement action against a candidate who violates the requirements of the LPF or OFEA, including requiring the reimbursement of all or some of the public funds distributed to the candidate in addition to any other enforcement penalties.

Adopting Debate Guidelines

Under OMC 2.24.020, the PEC's adoption of "policies, procedures, and regulations for the conduct of its business" must be transmitted to the City Council within seven days of adoption. Within 60 days of adoption, the City Council may, by a two-thirds vote, veto those policies, procedures, and regulations. It is unclear if this requirement applies to regulations adopted by the Commission to implement Measure W; however, to avoid ambiguity as to the status of these guidelines, staff shall submit them to the City Council consistent with OMC 2.24.020.

Staff Recommendation

Staff recommends that the Commission adopt the attached "Oakland Public Ethics Commission Debate Guidelines."

Attachment: Oakland Public Ethics Commission Debate Guidelines

Oakland Public Ethics Commission Limited Public Financing/Democracy Dollars Program Debate Guidelines

- A. **Purpose.** This policy describes:
1. What events qualify as a “public debate or forum” for the purposes of candidate eligibility for the Limited Public Financing Program of 2024 (LPF) or the Democracy Dollars Program;
 2. The process candidates will use for certifying compliance with the minimum debate or forum requirements of these Programs to the Public Ethics Commission (PEC); and
 3. The actions the PEC shall take if the requirement is not met.
- B. **Eligible Debates.** For the purposes of the Oakland Fair Elections Act Democracy Dollars program and the Limited Public Financing Act program, a “public debate or forum” means an online or in-person live event where a participating candidate gives a speech, participates in a panel discussion, or responds to questions, and that meets all the following conditions:
1. The event is free and open to the public.
 2. The event is held within 120 days of the applicable election.
 3. The event is not structured to promote or advance one candidate over another.
 4. The following candidates have been invited to participate in the event:
 - a) All candidates for the covered office being sought that have filed a Form 501; or
 - b) All candidates for the covered office being sought that have qualified to participate in the LPF Program or the Democracy Dollars Program or that have pending applications to participate in either program; or
 - c) All candidates for the covered office being sought that have qualified for the ballot.
 5. The event host has not already endorsed any of the candidates for the covered office being sought for this election and is not endorsing any of the candidates for the covered office being sought at the event.
- C. **Certifying Debate Attendance.** Within 5 days of attending a qualifying debate or forum, the candidate shall notify the PEC using a form provided by the PEC. The form shall require that the candidate indicate all the following:
1. The date, time, and location of the event.
 2. The name of the person or entity organizing the event.
 3. The contact information for the person or entity organizing the event, including at least an email address or phone number.
 4. A certification that to the best of the candidate’s knowledge, the event met the requirements for being a qualifying public debate or forum and an acknowledgment that failure to meet the debate requirement may result in forfeiture of some or all public financing received by the campaign, in addition to other penalties.
 5. The candidate’s name, contact information, and signature.
 6. Any other information required by the Executive Director to verify compliance with OMC 3.15.080(A)(3), OMC 3.13.080(H), or this Policy.
- D. **Demonstrating Compliance.** Thirty (30) days before the election the PEC may require that participating candidates demonstrate that they have met the minimum public debate or forum requirements by either:

Public Ethics Commission Debate Guidelines

1. Submitting certifications for attending the minimum number of qualifying events; or
2. Submitting a form indicating that, prior to the election, they will have met this requirement, along with a list of the date, time, location, host name, and host contact information for the upcoming qualifying event(s) they have committed to attend.

If a candidate does not demonstrate that they have met or will meet the minimum debate or forum requirements with the submissions identified in (1) and/or (2), the PEC may halt distribution of additional public funds to the candidate until the candidate demonstrates they have or will meet this requirement.

- E. ***Disqualifying a Debate/Forum.*** If the Executive Director determines that an event does not qualify as a debate or forum, the Director shall notify the candidate including the reason why. Within 14 days of receiving such notice, the candidate may appeal the Executive Director's decision to the full Commission at its next regular meeting.
- F. ***Waiver for Good Cause.*** The Executive Director may grant a partial or complete waiver of the debate requirement if a candidate shows good cause for not attending the required number of qualifying events. The Director may require that the candidate provide adequate supporting documentation that good cause exists. The following are examples of reasons that **do constitute good cause** and are eligible for a waiver:
1. ***There were insufficient qualifying events for a covered office.***
 2. ***The candidate had a reasonable and good faith belief that a non-qualifying event was a qualifying event.*** Adequate documentation may include a written statement by the event host before the event indicating that the event met the requirements of a qualifying event.
 3. ***The candidate was incapacitated for medical reasons which prevented the attendance of a qualifying event.*** Adequate documentation may include the candidate providing a signed statement by a medical provider, such as a doctor or therapist, on the medical provider's letterhead identifying the candidate, the nature of the candidate's incapacitation, and the date(s) thereof.
 4. ***The candidate was hospitalized which prevented the attendance of a qualifying event.*** Adequate documentation may include the candidate providing a copy of the hospital bill or physician's statement showing the candidate's name and the date(s) of the hospitalization.
 5. ***The candidate was involved in a serious accident or was the victim of a serious crime which prevented the attendance of a qualifying event.*** Adequate documentation may include the candidate providing a copy of a police report showing the candidate's name, the date and time of the accident or incident, and, if applicable, whether the vehicle was disabled, in addition to a written statement by the candidate explaining how the accident prevented them from attending a qualifying event.
 6. ***The candidate was unable to meet the requirement because they were assisting an immediate family member who was medically incapacitated, hospitalized, or involved in a serious accident or was the victim of a crime.*** Adequate documentation may include documents described above and documents indicating that the affected person(s) are an immediate family member. Immediate family is defined as the candidate's spouse or registered domestic partner; sibling; sibling's spouse or registered domestic partner; child or stepchild; child or stepchild's spouse or registered domestic partner; grandchild; parent; spouse or registered domestic partner's parent; or grandparent.
 7. ***Other compelling reasons generally beyond the candidate's control.***

Public Ethics Commission Debate Guidelines

This Section applies to the Democracy Dollars Program only.

- G. ***Alternate Qualifying Events in lieu of a Debate/Forum.*** If, prior to the election, there will be insufficient qualifying events or if a candidate shows good cause for why they will not be able to attend the required number of qualifying events, the Executive Director may allow a candidate to satisfy the debate requirement by participating in alternate activities aimed at voter education, such as conducting a "Town Hall Meeting."

For the purposes of this policy, a "Town Hall Meeting" means an event conducted by a participating candidate, in-person or online, that meets all the following conditions:

1. The event is open to the public, the media, and other candidates.
2. The event lasts at least 60 minutes.
3. The majority of the event time is focused on the participating candidate responding to questions posed by attendees.
4. The candidate promoted the event in advance to the public, for example by posting information about the event to the candidate's website and social media accounts and alerting media outlets.

This Section applies to the Democracy Dollars Program only.

- H. ***Failure to Meet Debate Requirement.*** If, after the election, a candidate is determined not to have met the minimum debate or forum requirements, the PEC may bring an enforcement action against the candidate for violating the requirements of the LPF or Oakland Fair Elections Act, and the candidate may be required to reimburse all or some of the public funds previously distributed to that candidate in addition to any other enforcement penalties.
- I. ***Optional Event Pre-Qualification.*** An organization may register their event as a qualifying debate or forum in advance of the event using a form provided by the PEC which indicates:
1. The name of the organization hosting the event.
 2. The date, time, and location of the event.
 3. The names of the candidates who were or will be invited to participate at the event.
 4. A certification that the event meets the requirements for being a qualifying public debate or forum.
 5. An acknowledgement that the organizer understands that event information may be posted online and/or shared with PEC subscribers to notify the public of the event.

After a registered qualifying event, the organization may provide to the PEC a link to a recording of the full event.

The PEC will provide participating candidates with a list of registered qualifying debates and may post upcoming registered qualifying debates and/or links to recordings of qualifying debates on its website.



AGENDA REPORT

TO: City Council

FROM: Nicolas Heidorn
Executive Director
Public Ethics Commission

SUBJECT: Proposed Ballot Measure to
Modernize and Strengthen Ethics
Oversight in the City of Oakland

DATE: May 16, 2024

RECOMMENDATION

Public Ethics Commission (PEC) Staff Recommends That The City Council adopt the following resolution:

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);**
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;**
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;**
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;**
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;**
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO HIRE OUTSIDE LEGAL COUNSEL IN ADDITION TO USING THE CITY ATTORNEY TO RENDER LEGAL ADVICE AND SERVICES TO THE COMMISSION RELATING TO LAWS THE COMMISSION ADMINISTERS OR ENFORCES;**
- (7) EXPAND THE TYPES OF LAWS THAT THE CITY COUNCIL MUST FORWARD TO THE COMMISSION TO REVIEW;**

Rules Committee
May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 2

(8) REQUIRE THE CITY COUNCIL TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;

(9) AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY ON A BI-ANNUAL BASIS; AND

(10) AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE OF ANY AMOUNT THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY; AND

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION

EXECUTIVE SUMMARY

The Public Ethics Commission (Commission or PEC) recommends the adoption of this Resolution to place a Charter Amendment and Ordinance Amendment measure on the November 5, 2024, General Election ballot to strengthen City ethics laws by safeguarding the Commission's independence from outside influence, modernizing its governance and procedures, and enhancing its staffing and administrative capacity to meet current responsibilities.

Measure CC (2014) was a landmark measure which established the modern PEC, including its minimum staffing and general procedures. However, there have been no significant revisions to the PEC's governance structure since the adoption of that measure ten years ago. This measure is intended to update the Commission's charge and governance to incorporate best practices proven to be effective in other jurisdictions and to align the Commission's structure and staffing to better accomplish its core responsibilities.

Significant elements of this proposal include:

- **Mission:** Amending the Charter to include in the PEC's listed purposes promoting a more inclusive, representative, and accountable democracy in Oakland, consistent with Measure W (2022).
- **Commissioner Qualifications:** Adopting additional minimum qualifications for a person to be appointed to the Commission to promote Commissioner independence and avoid the appearance that a Commissioner is biased in favor of or against an elected official or political faction.
- **During Service Restrictions:** Prohibiting Commissioners from being compensated by or receiving gifts from an elected official during their tenure.

Rules Committee

May 30, 2024

May 22, 2024 PEC Special Meeting Packet - 37

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 3

- **Commissioner Removal:** Permitting the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause.
- **Commissioner Vacancy Appointment:** Providing that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy transfers to the PEC to ensure extended vacancies do not impact Commission operation.
- **Staffing:** Increasing Enforcement's minimum staffing by 1 Investigator in FY 2025-26 and 1 additional FTE in FY 2027-28 to address the Commission's critical case backlog. Providing that, in times of extreme fiscal necessity, Commission staff may be reduced up to the same proportion as any Citywide reduction in staffing.
- **Legal Capacity:** Providing that the Enforcement Chief may be an attorney and authorizing the Commission to hire or contract for legal staff to assist with the enforcement of laws under the Commission's jurisdiction.
- **Salary-Setting:** Changing the frequency in which the Commission adjusts the salaries of the City Attorney and City Auditor from annually to every two years, aligning those increases with the same schedule the Commission uses for setting the Council's salary.
- **Legislative Proposals:** Requiring that Commission legislative proposals be referred to the City Council for consideration within 180 days.
- **Lobbyist Gifts:** Prohibiting registered lobbyists from giving gifts to elected officials, candidates, and their immediate family, consistent with best practices in other jurisdictions.

These policies are described in greater detail in the memo below. Attachment A also includes a summarized breakdown of the policy changes being advanced in this proposal and the rationale for the proposal.

Collectively, the Commission believes these reforms will modernize the PEC and help re-establish Oakland as a leader in ethical and accountable government. This good government measure will enhance Oaklanders' trust in government by strengthening the City's anti-corruption rules, establish the PEC more firmly as a vigorous, independent entity free of political influence, and move Oakland toward the more inclusive democracy that voters demanded with the passage of Measure W (2022).

BACKGROUND / LEGISLATIVE HISTORY

In 2014, the City Council unanimously proposed, and the voters overwhelmingly (73.9% in favor) adopted, Measure CC, which added Section 603 to the City Charter. For the first time, Measure CC guaranteed minimum staffing for the Commission and adopted other reforms to significantly strengthen the Commission's independence. Measure CC also incorporated several ethics commission best practices to ensure the Commission would be a fair, effective, and impartial watchdog over, and enforcer of, Oakland's ethics, campaign finance, lobbying, and transparency laws. In significant part due to the success of those reforms, the PEC's workload and assigned responsibilities have expanded significantly in the decade since Measure CC's passage. However, there have been only minor amendments to Section 603 since then; after ten years, the provisions in Section 603 no longer reflect the Commission's actual staffing and budgetary needs and have not kept pace with best practices for ensuring ethics commission independence.

Rules Committee

May 30, 2024

May 22, 2024 PEC Special Meeting Packet - 38

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 4

At its August 25, 2023 retreat, the PEC set a goal of reviewing the City Charter provisions establishing the Commission as one of its 2023-2024 priorities. The Commission formed a Charter Review Subcommittee, which met multiple times to develop reform proposals. In addition to examining each provision of City Charter Section 603, the Subcommittee also looked at the organizational structure and procedures of:

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

The Subcommittee submitted a proposal to modernize the Commission in three ways: by strengthening PEC staffing and administrative capacity to meet growing Commission needs; by strengthening PEC independence, to promote the integrity of the PEC's work and public trust in the body; and to align the Charter with the PEC's new mission of building a more inclusive democracy. The Commission considered the Subcommittee's proposals on March 13, 2024, and on April 10, 2024, when it endorsed a set of proposed Charter and Municipal Code amendments and authorized the Executive Director, working with the Commission Chair, to request Council support to place a package including some of these proposals on the November 2024 ballot for voter consideration. This proposal includes a subset of those proposals adopted by the Commission at its April meeting.

ANALYSIS AND POLICY ALTERNATIVES

This proposal includes several policy recommendations intended to strengthen the Commission's staff capacity, independence, and ability to fulfill its core mission:

A. Align the Charter with the Ethics Commission's New Role of Promoting a More Inclusive Democracy

To better align the Charter with the PEC's expanded mission under Measure W (2022), this proposal would specify that one of the Ethics Commission's roles is to promote more inclusive, representative, and accountable democracy in Oakland.

The PEC has traditionally been primarily an enforcement and government watchdog agency, which is presently reflected in the City Charter. The Charter defines the PEC's primary roles as being the (1) "enforcement of laws, ... intended to assure fairness, openness, honesty and integrity in City government," (2) education on such laws, and (3) "impartial and effective administration" of its programs. The Charter further enumerates a number of specific duties of the Commission, including different laws the Commission enforces.

With the passage of Measure W, the Commission's role expanded to administering the Democracy Dollars public financing program, which is set to launch in 2026. Under this Program, modeled off a similar program in Seattle, eligible Oakland residents will receive four \$25 vouchers

Rules Committee

May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 5

which they may contribute to a participating City or Oakland Unified School District (OUSD) candidate. The City Council proposed the Program as part of a larger commitment to increasing equity in the City's political process. A [study](#) by the PEC found that "Oakland's existing campaign finance system gives donors from outside of Oakland and Oakland residents in wealthier, whiter neighborhoods disproportionate influence in choosing elected officials and potentially shaping policy outcomes over everyone else." The Commission recommended the voucher approach to public financing because it "shows the most promise for bringing equity to the campaign finance process since it equips all voters and other eligible residents with campaign 'cash' to contribute to campaigns, thereby incentivizing candidates to engage across demographics regardless of wealth and history of prior engagement." Oakland voters approved Measure W with 73.9% of the vote.

This proposal would align the Commission's mission statement in the Charter to reflect the this expanded mission.

B. Strengthen Commissioner Qualifications to Promote Commission Independence

To avoid the appointment of a Commissioner who may appear beholden to, or biased in favor of or against, a candidate, incumbent, or political faction, this proposal would tighten the eligibility requirements for who can serve on the Commission.

The impartiality, and perceived impartiality, of Ethics Commissioners strengthens public confidence in the Commission's work. Commissioners serve in a quasi-judicial role where they adjudicate whether or not incumbents, candidates, and City officials have violated City ethics or campaign finance laws, among other laws. Commissioners also have the sensitive responsibility of administering the Democracy Dollars Program beginning in 2026, which for some candidates could be their largest sources of funding for running for City office. The selection of a Commissioner who appears to be strongly biased in favor of an official, candidate, or political faction could undermine public trust in the Commission, its adjudications, and its implementation of critical programs like Democracy Dollars.

In structuring an ethics commission, the [Campaign Legal Center](#), a good government nonprofit, advises putting up minimum qualification guardrails to protect against the appearance of bias so that it is "clear to the public that the ethics commission serves the public interest and not the interests of those groups subject to the commission's oversight." [City Ethics](#), a nonprofit that advocates for local ethics reform best practices, similarly advises prohibiting the appointment of commissioners who were recently "party officials, recent government officials, individuals who have done substantial work in local political campaigns, large contributors, or political advisers." In its [Model Code](#), City Ethics recommends excluding from appointment anyone who has engaged in these activities in the prior three years. This would not exclude from appointment people who have political or lobbying expertise in their past, which can be valuable to have on an ethics commission, but does require there be some distance between when a person last engaged in Commission-regulated activities and their appointment.

Under current law, the only universal requirement to serve on the Oakland Public Ethics Commission is that a person be a registered voter and that they have attended one prior meeting of the Commission. For appointees of the Mayor, City Attorney, and City Auditor only, appointees also cannot have been paid during the past two years for work by a committee controlled by the

Rules Committee

May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 6

appointing official. Consistent with best practice, this proposal would broaden that requirement to prohibit *any* Commissioner from having been a campaign employee of any candidate running for City or OUSD office in the prior two years. The proposal would similarly prohibit the appointment of someone who, in the two years prior to their appointment, was: a City or OUSD elected official, or the staff or immediate family of an elected official; a candidate for City or OUSD office; a registered City lobbyist; the officer or employee of a political party; or someone who has contributed in the aggregate more than two times the City contribution limits (\$1,200 in 2024) to candidates for a City or OUSD office or to a campaign committee making independent expenditures in City or OUSD campaigns.

This change would update the Commission's qualifications to align with best practices recommended by good government organizations and commonly used in more modern independent commissions. While Oakland's current Ethics Commissioner qualifications are fairly similar to those of other older ethics commissions, like Los Angeles and San Francisco, the trend among more recently established ethics commissions is to include stronger requirements up front to prevent recent political actors from being appointed to the Commission. For example, Sacramento's Ethics Commission, which was established in 2017, prohibits major campaign donors, recent lobbyists (in the prior two years), and recent officeholders and candidates for office (prior four years) from being appointed to the Commission.

Oakland has already adopted a similar model with respect to its more-recently established Independent Redistricting Commission, which also excludes from appointment applicants who were recently lobbyists, candidates, or a consultant to a City political campaign. This proposal establishes similar, but less strict, restrictions as the City's Redistricting Commission, in recognition of the fact that the PEC must recruit civically active residents to serve on the Commission on a nearly annual basis, as compared with the Redistricting Commission which only recruits applicants once every ten years.

C. Adopt Common Sense Commissioner During-Service Restrictions to Avoid Conflicts of Interest

To further promote Commissioner impartiality and independence, the proposal would also tighten some of the restrictions on Commissioner activities while serving on the Commission. The PEC already imposes a number of common-sense restrictions on Commissioners while serving on the Commission, including that they cannot run for office in a jurisdiction that intersects with Oakland, participate in or contribute to municipal campaigns, lobby, or be City employees. Because the Commission regulates campaigns, lobbyists, and City officials and employees, these restrictions help to prevent Commissioners from having a conflict of interest or the appearance of one. In the campaign context in particular, these restrictions also reinforce Commissioners' impartiality by avoiding a situation where a Commissioner's campaign activity may make it appear that they are biased for or against a candidate or ballot measure.

This proposal makes modest extensions to these rules, modeled on restrictions in other jurisdictions, by: prohibiting commissioners from being officers or staff of a political party (which may suggest bias against other partisans) during their tenure; clarifying that the restriction against Commissioners contributing to "municipal" campaigns during their tenure also applies to OUSD campaigns; and prohibiting Commissioners from being employed by or receiving gifts from a City or OUSD elected official during their tenure. In addition to aligning with best practices found in

Rules Committee

May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 7

other jurisdictions, this requirement would more closely align to the types of during-service restrictions that apply to Oakland Independent Redistricting Commissioners.

Other Jurisdictions — During & Post-Service Restrictions

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

Rules Committee

May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 8

One area where the proposal would *relax* restrictions is by permitting Commissioners to advocate for or against ballot measures affecting the PEC, which mirrors the rule for San Diego's Ethics Commission. This would permit Commissioners, who are particularly knowledgeable about the Commission's structure and laws, to share this perspective with the public. Commissioners are generally prohibited from advocating for or against measures because the Commission may have to adjudicate whether a ballot measure committee has violated the City's campaign finance laws; however, for measures affecting the PEC, the Commission's practice is already to refer such complaints to other agencies, like another local ethics commission, to avoid the appearance of bias.

D. Adopt a More Reasonable Automatic Removal Policy and Permit the Council and Commission to Remove Commissioners for Cause and by Supermajority Vote

Currently, a Commissioner may only be removed for cause by their appointing authority with Council approval. This may create the risk or misperception that a Commissioner is beholden to their appointing official, rather than being an impartial adjudicator. The lack of a supermajority vote for removal also risks making removal seem political. This recommendation would instead permit the Council, which does not have an appointment to the PEC, and the Commission, to remove a member for cause by supermajority vote. This recommendation is to help ensure Ethics Commissioners are, and are perceived to be, fair and impartial.

The Charter also provides that a Commissioner is automatically removed from office if they are absent from the City of Oakland for more than 30 days, without permission of the Commission. This penalty is excessive: since the Commission typically only meets monthly, a 30-day absence would mean missing just one meeting. Moreover, it risks inadvertently removing a Commissioner who takes an extended vacation without first seeking permission. This proposal would instead provide for automatic removal of a Commissioner who misses three consecutive regular Commission meetings without permission from the Chair.

E. Reform the Vacancy-Filling Procedures to Avoid Long Vacancies that May Impede the Commission's Effectiveness

In recent years, the Commission has gone for extended periods of time with Commissioner vacancies. Under this proposal, if a Commission vacancy has not been filled within 120 days by an appointing Citywide official, the responsibility for filling the vacancy would transfer to the PEC.

The Commission has seven members – three appointed by the Mayor, City Attorney, and City Auditor, and the remaining four selected by the Commission – and needs a quorum of four members to hold a meeting. Extended vacancies impact the Commission's ability to adjudicate cases or adopt policies, some of which are time-sensitive. Presently, the PEC has one seat that has been vacant for over 16 months, which contributed to the Commission having to cancel a meeting last year for lack of a quorum. Ethics commissions in other jurisdictions have faced more serious challenges. Last year, the Los Angeles Ethics Commission was legally unable to meet for months because the number of appointed commissioners fell below quorum.

Even when the Commission is able to meet, vacancies can make taking action more difficult. Under the Charter, certain Commission actions require 4 or 5 votes, like adjudicating cases. For example, if the Commission has two vacancies, the vote threshold to adjudicate a case requires

Rules Committee

May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 9

a 4/5 vote, and therefore far greater unanimity amongst Commissioners to take action than the 4/7 vote required when there are no vacancies.

Oakland's Charter attempts to prevent long vacancies by authorizing the City Council to fill a PEC seat appointed by a Citywide official that has been vacant for more than 90 days; however, for the Council to exercise this option it would in effect be "taking" an appointment away from a Citywide elected official, which is politically sensitive, and would likely only be done if the Council and Citywide official were at odds. Under this proposal, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy would transfer to the Commission, which would hold an open application process and fill the seat. This proposal provides more time for Citywide officials to fill vacancies but also a more definite deadline for doing so.

F. Gradually Increase Minimum Enforcement Staffing to Address a Severe Case Backlog and Require that Cuts to Commission Staffing Be Proportionate to Citywide Staffing Cuts

To ensure the Commission has sufficient staffing to fulfill its enforcement and watchdog role, this proposal would amend the Charter to increase the Commission's minimum enforcement staffing from two positions to four phased-in over a period of three years to minimize costs.

One of the Commission's core responsibilities is to investigate and prosecute violations of Oakland's anti-corruption laws, including government ethics, campaign finance, and lobbying laws. This includes serious violations, like allegations of bribery or conflicts of interest, that can also impose significant costs to the City if not caught or deterred. The PEC's current enforcement staffing minimum of one Enforcement Chief and one Ethics Investigator were set a decade ago, in 2014, with the passage of Measure CC. Those staffing levels were based on the Commission's caseload at the time; however, over the past ten years the PEC's caseload has greatly increased, and these staffing minimums – which have not been increased through the discretionary budget process – are no longer sufficient to meet the Commission's caseload demands. For example, the Commission processed 40 new cases between 2014-15, compared with 75 new cases between 2022-2023 – *almost double the number of cases in ten years*. Caseload now vastly exceeds staff capacity and, as of May 15, 2024, 56% of the PEC's cases (excluding routine Form 700 missed deadline cases) had to be placed on indefinite hold.

The PEC presently projects that most of its cases will take years to resolve at current staffing levels, which will impede enforcement and harm public confidence in government. Older cases are harder to prosecute, because witnesses' memories fade and documentary evidence may be misplaced or destroyed; they place the City at-risk, because unpunished violations can create the appearance that there are no consequences for future violations; and they cause allegations to linger, depriving complainants and respondents of closure.

Guaranteed minimum enforcement staffing is essential to the proper functioning of a watchdog agency and considered a best practice. A [report](#) by Robert Weshler on ethics commission best practices, published by City Ethics, explains that a guaranteed budget or staffing is important to send "a clear message to the public that the ethics program is independent." Similar findings were in Resolution CMS 85111 (Kalb), which placed Measure CC on the ballot establishing the Commission's current minimum staffing, noting in the preamble that an "adequately funded watchdog agency is critical to increasing the public's trust in governance."

Rules Committee

May 30, 2024

May 22, 2024 PEC Special Meeting Packet - 44

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 10

This proposal would bring the Commission's staffing closer in line with its peer jurisdictions. Oakland has a current staff to caseload ratio of one dedicated enforcement staffer per 42 cases,¹ compared with San Francisco's much lower ratio of one staffer per 14 cases. The PEC's Enforcement Program estimates that a bare minimum of two additional investigators are required to keep up with the PEC's current caseload, although the PEC's actual full staffing needs are higher. This proposal would increase the Commission's minimum enforcement staffing by one investigator position effective July 1, 2025, and an additional enforcement position – which might include an investigator, auditor, or staff attorney (to assist with prosecutions), depending on Commission needs – effective July 1, 2027. Once phased-in over three years, this would bring the Commission's ratio down to 22 cases per dedicated staffer, assuming current caseload numbers hold.

Under current law, the Commission's minimum staffing ratios, which apply to both its enforcement and non-enforcement staff, may be suspended for a fiscal year or two-year budget cycle if the Council declares that the City is facing an extreme fiscal necessity. This proposal would modify that requirement to specify that any reduction in Commission staffing may not exceed the overall reduction in staffing for all City employees paid out of the General Purpose Fund. This change would still permit the Commission's staff to be cut, but at most in the same proportion as Citywide staffing cuts. This change is important to ensure both the functionality and independence of the Commission. Without protection, ethics commissions may be threatened or targeted for defunding through the budget process for investigating or making a decision contrary to the interests of an officeholder, which has occurred in other jurisdictions.²

G. Strengthen the Commission's Legal Capacity to Enforce and Administer Ethics Laws

This proposal would permit the Commission to hire legal staff, including outside counsel at its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual conflict in the City Attorney representing the Commission.

The PEC administers and enforces a sometimes complex body of law, especially when applied to nuanced fact patterns. For reasons of capacity and independence, the Commission should have the authority to employ in-house attorneys or to contract for specialized legal expertise to interpret, apply, and enforce these laws, which may include appearing in court on the Commission's behalf when necessary (e.g., for an injunction or to enforce a subpoena). The need for in-house legal expertise is especially true of the Enforcement Chief, who is the chief prosecutor for the Commission, and needs a firm understanding of the laws the Commission enforces as well as a general legal grounding in administrative law and substantive due process. Moreover, because the Commission regulates the City Attorney's Office, the Commission should not be solely reliant on that office for legal advice or services, which may create the appearance of a conflict; this is especially true in Oakland, where the City Attorney is also an elected official who must campaign for office.

Many other established ethics commissions in California either have attorneys on staff or the ability to hire outside counsel, which is generally considered to be a best or essential practice for

¹ The number excludes Form 700 missed deadline cases, which are handled in bulk and do not require significant individual investigation.

² See David Zahniser, "Ethics Commission staff were told to soften their advice on gifts, whistleblower says," *Los Angeles Times* (Feb 25, 2021) (According to a whistleblower, "a member of the [Los Angeles] City Council had 'threatened to cut the Ethics Commission's budget if they did not give more permissive advice' on certain gift rules.").

Rules Committee
May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 11

ethics commissions. For example, the FPPC and Los Angeles Ethics Commissions are expressly authorized to employ attorneys, whereas San Diego and Sacramento require that their commissions hire outside counsel to avoid the appearance that these boards are relying on the city attorney. “A commission should have its own independent experts, including investigators, auditors, general counsel, and trainers,” explains the Campaign Legal Center. “By relying on these independent experts, a commission can not only obtain independent advice and analysis of facts and law in specific cases, but also avoid the appearance that it depends on an elected official or appointee of an elected official, such as a secretary of state or city attorney.”

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

Other Jurisdictions – Legal Capacity

Jurisdiction	Role of City Attorney	Commission Legal Staff Positions?	Commission Can Hire Outside Counsel?
Oakland	- City Attorney appoints one Commissioner - City Attorney is Commission’s counsel - PEC consults with City Attorney on oral advice and written opinions	None	City Attorney may retain outside counsel for Commission if there is a conflict
FPPC	Commission may request legal advice from the Attorney General	May employ legal counsel	Yes - can contract for services that can’t be performed by staff
Los Angeles	City Attorney provides legal services to commission	May employ or contract for staff counsel to give advice to the commission and to act on matters involving the City Attorney	Yes, see previous column
San Diego	City Attorney nominates appointees	Must retain own legal counsel outside of City Attorney	Yes - must retain own legal counsel outside City Attorney (also has attorneys on staff)
San Francisco	- City Attorney is legal advisor to Commission - Commission reports findings to City Attorney when appropriate - Commission transmits some advisory opinions to Attorney	Commission can employ individuals who have graduated from a law school to assist with advice and opinions	None Provided
Sacramento	- City Attorney assists Commission with its investigatory procedures - Commission advises City Attorney on law firms to use to investigate sexual misconduct	None	Yes - required for all investigations

H. Ensure Commission Legislative Proposals are Considered by the Council

An important responsibility of local ethics commissions is to periodically review and recommend improvements to the laws the commission enforces or administers to promote more honest and

Rules Committee

May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 12

accountable government. This helps to ensure that ethics and campaign laws stay up-to-date with best practices in the field and other local jurisdictions, or to meet specific needs in that local jurisdiction. However, because ethics laws often restrict the actions of those in power, there may be pressure to not provide a hearing for such proposals. For example, in Los Angeles, City Council leadership declined for years to hold a hearing on proposals by its ethics commission to overhaul the City's lobbying laws.³

This proposal would require that Commission legislative proposals on the laws it enforces or administers be considered by the full City Council within 180 days. It is modeled after a similar charter amendment proposal recently endorsed by the Los Angeles City Council for the November 2024 ballot.

I. For Administrative Efficiency and Equity, Align the Timing of City Attorney and City Auditor Salary-Setting with that of the Council and Mayor

For administrative efficiency and equity with other offices, this proposal would change the frequency with which the Commission adjusts the City Attorney and City Auditor's salary from annually to every two years, which is the same frequency for adjusting the City Council and Mayor's salary.

Fully reassessing the City Attorney and City Auditor's salary every year requires a significant expenditure of staff time, including updating the salary schedules for over a dozen comparable jurisdictions, although in many years the adjustment is likely to be modest and similar to changes in inflation. Salary adjustments can also be politically contentious, which can also take up significant staff and Commissioner bandwidth. Presently, the Commission sets the Council's salary, and another proposed ballot measure before the City Council may move the responsibility for setting the Mayor's salary to the Commission as well. Aligning all these salary adjustments to occur at the same time would provide more efficiency of operation for Commission staff.

J. Prohibit Lobbyist Gifts to Prevent the Risk or Appearance of Pay-To-Play

Oakland currently permits lobbyists to give up to \$240/year to an elected official, candidate, or their immediate family. However, because the purpose of a lobbyist is to influence government action, lobbyist gifts to elected officials are at heightened risk of being or being seen as transactional, which can undermine public confidence in government. This proposed measure would prohibit registered lobbyists from giving gifts to elected officials, candidates, and their immediate family, subject to some existing exceptions.⁴

Many of Oakland's peer jurisdictions regulate lobbyist gifts far more strictly to avoid corruption or its appearance. Los Angeles and San Francisco prohibit lobbyist gifts entirely to elected officials, while the State and San Diego permit gifts of only \$10/month. A \$10/month limit permits lobbyists to take officials out for an occasional coffee but precludes larger one-time gifts, as Oakland's limits allow. Because even the routine treating of elected officials with small perks can undermine public confidence in government and, because \$10 is below the state gift reporting threshold making enforcement more difficult, the Commission recommends a ban instead. Bob Stern, one of the original architects of the State Political Reform Act, which created the \$10/month lobbyist gift

³ Los Angeles Times, L.A. is finally cracking down on stealth lobbying (Feb. 14, 2023).

⁴ Existing exceptions include campaign contributions, tickets to fundraising events, food and lodging provided at a lobbyist's home, informational material, and services rendered or bargained for. OMC 3.20.180(B).

Rules Committee

May 30, 2024

May 22, 2024 PEC Special Meeting Packet - 47

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 13

limit, has since argued that it would have been better and more administrable to just ban lobbyist gifts entirely.⁵

Other Jurisdictions – Lobbyist Gift Regulation

Jurisdiction	Max Lobbyist Gifts to Elected Officials
Oakland	\$240/year
FPPC	\$10/month
Los Angeles	Prohibited
San Diego	\$10/month
San Francisco	Prohibited

Oakland's current lobbying gift rules can also vary based on the context, opening the door to potential inadvertent violations by lobbyists and elected officials. Generally, Oakland public servants are prohibited from receiving gifts of more than \$250 per year, unless certain exceptions under the Political Reform Act apply. (OMC 2.25.060(C)(2).) Lobbyists, however, are instead subject to a \$240 per year limit, which is just \$10 lower than the standard limit. (OMC 3.20.180(A).) But, if the lobbyist "knowingly attempted to influence the Public Servant in any legislative or administrative action" in the prior 12 months, the limit as to that Public Servant is instead \$50. (OMC 2.25.060(C)(3).) These three different standards can create regulatory traps that a simpler complete ban would avoid.

K. Other Clarifying Changes

The proposal also includes a number of changes that clarify potentially ambiguous sections of the Charter to generally align them with the Commission's existing practice or Operations Policies, including:

- **Holdover Term:** Clarify that a Commissioner whose term has expired may continue to serve until a replacement is appointed, up to one year.
- **Vote Threshold:** Clarify that the Commission acts by a majority vote of those present, except as otherwise provided.
- **Records Confidentiality:** Clarify the point in time that Enforcement files become disclosable public records.
- **Amendments to PEC Governance:** Clarify that Council amendments to the sections of the OMC that the PEC administers, including Chapter 2.24, require notice and comment to the Commission prior to enactment, as is the case with amendments to the laws the PEC enforces.

Additional detail on these clarifications is included in the policy breakdown in Attachment A.

⁵ Bob Stern, Presentation on the Origins and History of the Political Reform Act of 1974, [Fair Political Practices Commission, June 17, 2021](#). Regarding the creation of the Political Reform Act, Stern said, "we were not perfect. We wrote some provisions I would change today. First, I would change the \$10 lobbyist gift limit. It should have said 'no gifts at all.' But, we were concerned that a cup of coffee provided by a lobbyist to a public official would be a violation. So, we put in a monetary amount. ... It would have been much easier, however, just to ban the gifts, since we soon found out that lobbyists were providing gifts up to the limit or even combining the \$10 limit with other lobbyists."

Rules Committee
May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 14

FISCAL IMPACT

If this proposal is approved by the voters, the Commission estimates the annual fiscal impact in FY 2025-2027 to be \$282,395, mostly to hire an additional Investigator. In FY 2027-2029, the annual fiscal impact would increase by an additional \$182,112 to \$327,055 to hire an additional enforcement staff position (depending on the job classification).

The proposal would also limit the City's discretion to reduce the Commission's minimum staffing requirement when an extreme fiscal necessity has been declared so that any reductions in Commission staffing could not exceed the overall reduction in staffing for all City employees paid out of the General Purpose Fund for that fiscal year or two-year budget cycle.

In greater detail:

Effective July 1, 2025, the City would provide the Commission with an additional Investigator. The current one-year salary and benefits cost of an Investigator, budgeted at the highest salary step, is \$232,395.

Effective July 1, 2025, the City would also provide the Commission with a reasonable budget to contract for legal services, contract for investigatory services, and for holding administrative hearings. The most significant legal expense the Commission would anticipate is if the Commission had to contract for an Administrative Law Judge (ALJ). The last time the Commission contracted for an ALJ was in 2018, for a maximum contract amount of \$24,000. The Commission estimates that a budget of \$100,000 over a two-year budget period (\$50,000 annualized) would be sufficient for the Commission to cover the administrative costs of using an ALJ for one or two matters and for the Commission to seek one or two legal opinions from an outside counsel.

Effective July 1, 2027, the City would provide the Commission with one additional full-time equivalent non-administrative enforcement staff position, which may include an investigator, staff attorney, auditor, or other appropriate position to be determined as necessary by the Commission. The exact cost of this position would depend on the job classification that is hired but would likely be budgeted between \$181,112 and \$327,055. This range is derived from the current one-year salary (at the highest salary step) and benefits cost of a Performance Auditor at \$182,112; a Senior Performance Auditor at \$232,395; an Investigator at \$232,395; a Deputy City Attorney I at \$244,032; and a Deputy City Attorney II at \$327,055.

Other provisions would limit the City's discretion to reduce Commission staffing but do not impose new costs. Under current law, the minimum staffing requirements for the Commission may be suspended or reduced when the City is facing an extreme fiscal necessity. This was declared in the current budget cycle and 3 PEC positions were frozen. This proposal updates the City Charter's minimum staffing requirement to add an Administrative Analyst I position, which reflects the Commission's current budgeted and filled staff positions, so that this position could only be eliminated with the declaration of an extreme fiscal necessity. In addition, the proposal would prevent the Commission's minimum staffing requirement from being reduced in the future by more than the overall reduction in staffing for all City employees paid out of the General Purpose Fund for that fiscal year or two-year budget cycle. For example, if the City's workforce paid out of the General Purpose Fund were reduced by 20%, then the Commission's minimum staffing

Rules Committee

May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 15

requirement (currently, 10 charter-mandated positions) could be reduced by no more than that same proportion (currently, 2 employees).⁶

The Commission has requested that the Budget Office also provide a fiscal impact analysis of this proposal.

PUBLIC OUTREACH / INTEREST

On August 25, 2023, March 13, 2024, and April 10, 2024, the PEC considered different Charter and/or Municipal Code amendments that it might recommend that Council place on the November 2024 ballot. These meetings were publicly noticed and afforded an opportunity for input from the community. In addition, the Commission shared its full set of adopted proposals with the Bay Area Political Equality Collaborative (BayPEC), the sponsoring organizations that supported Measure W (2022), for their input.

COORDINATION

Staff worked with the Office of the City Attorney for the drafting of the Resolution.

SUSTAINABLE OPPORTUNITIES

Economic: A strengthened PEC that ensures compliance with lobbying, government ethics, campaign finance, and transparency laws may increase trust in government, which can promote a healthier business climate, and may deter or catch fraud or misuse of government funds.

Environmental: No environmental opportunities have been identified.

Race & Equity: Social equity depends on a political system that ensures a fair and equal opportunity for all individuals and interest groups to participate meaningfully in the City's elective and governmental process. Strengthening the staffing and administrative capacity of the PEC will improve the Commission's ability to implement the Democracy Dollars Program, one of the City's most important investments to create a political system and culture where all residents feel they have a voice in the political process. A PEC with appropriate resources, independence, and authority to provide adequate education and to properly enforce the laws under its jurisdiction also helps to ensure that all participants know the rules and are fairly held accountable if they choose not to follow them.

ACTION REQUESTED OF THE CITY COUNCIL

PEC staff recommends that the City Council adopt the proposed resolution.

For questions regarding this report, please contact NICOLAS HEIDORN, EXECUTIVE DIRECTOR, PUBLIC ETHICS COMMISSION, at 510-604-1002.

Respectfully submitted,

⁶ If the minimum staffing increases of this proposal are approved, PEC minimum staffing would increase to 13 staff by FY 2027-29.

Rules Committee
May 30, 2024

Item 6 - PEC Ballot Measure Proposal

Nicolas Heidorn, Executive Director, Public Ethics Commission

Subject: Charter Amendment to Modernize the PEC

Date: May 16, 2024

Page 16

Nicolas Heidorn

NICOLAS HEIDORN

Executive Director

Public Ethics Commission

Rules Committee

May 30, 2024

ATTACHMENT A – BREAKDOWN OF PROPOSED CHANGES

Substantive Changes

Recommendation /Section Affected	Proposal	Rationale
<p>A. PEC Purpose C. Sec. 603(a), (b)</p>	<ul style="list-style-type: none"> ▪ Add to the PEC’s Charter-listed purposes promoting more inclusive, representative, and accountable democracy in Oakland. ▪ Add to the PEC’s Charter-listed responsibilities administering the Democracy Dollars Program. 	<ul style="list-style-type: none"> ▪ Currently, the City Charter lists the PEC’s role as (1) enforcement of laws to “assure fairness, openness, honesty and integrity in City government,” (2) education on such laws, and (3) “impartial and effective administration” of its programs. This reflects the PEC’s role as a watchdog agency, but not its role in promoting better democracy. ▪ In 2022, voters passed Measure W establishing the Democracy Dollars Program, administered by the PEC, with the goal of promoting broader and more inclusive participation in Oakland democracy. This recommendation aligns the Charter with the PEC’s expanded mission.
<p>B. Commissioner Qualifications C.603(d)</p>	<ul style="list-style-type: none"> ▪ Prohibit a person from being appointed to the Commission if, in the two years prior to the start of their term, the person was: <ul style="list-style-type: none"> - a City/OUSD elected official, or the immediate family of an elected official; - an employee of a City/OUSD elected official; - a candidate for City/OUSD office; - a paid staffer or consultant to a City/OUSD campaign; - an officer/employee of a political party; - someone who has contributed more than two times the City contribution limits to: candidates for a City or OUSD office, a committee controlled by a City/OUSD elected official, or to a committee making independent expenditures in City/OUSD campaigns. - A registered City lobbyist ▪ Clarify that a person registered to vote in City or OUSD elections is eligible to be appointed. * <i>These prohibitions would be applied prospectively only.</i> 	<ul style="list-style-type: none"> ▪ Currently, to be appointed to the Commission, an applicant must be registered to vote in Oakland elections and must have attended at least one PEC meeting. Mayor, City Attorney, and City Auditor appointees must have a specified professional background and cannot have been paid during the past two years for work by a committee controlled by the appointing official. The rules permit the appointment of a recent candidate for office, the spouse of an elected official, or major political donors, which might undermine public confidence in the fairness of the Commission. ▪ This recommendation adds restrictions, modelled off of best practices in other jurisdictions and other Oakland independent agencies, to prevent the appointment of a Commissioner who may appear strongly biased in favor or against of a candidate, incumbent, or political faction. ▪ Similar to: Oakland Redistricting Commission, San Diego, Sacramento

Item 6 - PEC Ballot Measure Proposal

<p>C. During Service Restrictions C.603(e)</p>	<ul style="list-style-type: none"> ▪ Prohibit Commissioners, while on the Commission, from serving as an officer or employee of a political party. ▪ Clarify that Commissioners, while on the Commission, cannot contribute to an OUSD campaign. ▪ Prohibit Commissioners, while on the Commission, from being a paid staffer or paid consultant to a City or OUSD elected official or receive gifts from the same officials. * <i>These prohibitions would be applied prospectively only.</i> ▪ Permit Commissioners to advocate in support or opposition to ballot measures affecting the PEC. 	<ul style="list-style-type: none"> ▪ Currently PEC Commissioners cannot be involved in City politics during their term and cannot, during their term and for one year after, be employed by the City or register as or employ a lobbyist. ▪ This recommendation adds a prohibition on Commissioners working for or receiving gifts from the elected officials they regulate, similar to the existing restriction on working for the City or lobbyists, and the appointment of party officials/staff. This recommendation is to make sure Commissioners are, and are perceived to be, fair and impartial when adjudicating cases. ▪ Currently, to avoid the risk or appearance of bias, PEC commissioners cannot advocate on any ballot measure, as the PEC may have to adjudicate a complaint against a campaign for/against a ballot measure campaign. However, this risk does not exist for ballot measures affecting the PEC, because the PEC's practice is already to refer complaints against such campaign committees to other agencies. This recommendation would therefore allow Commissioners, who are uniquely knowledgeable on PEC-related laws, to share that perspective with the public in this very limited circumstance. ▪ Similar to: Oakland Redistricting Commission, FPPC, Los Angeles, San Diego, Sacramento
<p>D. Commissioner Removal C.603(d)(5)&(6)</p>	<ul style="list-style-type: none"> ▪ Permit the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause. ▪ Delete the requirement that any Commissioner absent from the City for more than 30 days is automatically removed from office. ▪ Provide that any Commissioner who misses 3 consecutive regular meetings is automatically removed from office unless the absence is excused by the Chair. 	<ul style="list-style-type: none"> ▪ Currently a Commissioner may only be removed for cause by their appointing authority with Council approval. This may create the risk or misperception that a Commissioner is beholden to their appointing official, rather than being an impartial adjudicator. The lack of a supermajority vote for removal also risks making removal seem political. ▪ This recommendation permits the Council, which does not have an appointment to the PEC, and the Commission, to remove a member for cause by supermajority vote. This recommendation is to help ensure Ethics Commissioners are, and are perceived to be, fair and impartial. ▪ This recommendation provides a streamlined process for removing regularly absent Commissioners, instead of a formal removal vote, and eliminates an unduly strict removal requirement for a 30-day absence from the City.

Item 6 - PEC Ballot Measure Proposal

<p>E. Extended Vacancy C.603(d)(5)</p>	<ul style="list-style-type: none"> ▪ Provide that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy transfers to the PEC. 	<ul style="list-style-type: none"> ▪ The PEC can only function with a quorum of its members. Extended vacancies may impact the Commission’s ability to adjudicate cases or adopt policies. ▪ Currently, Citywide officials have only 90 days to fill a PEC vacancy, which could be a short time for a newly elected official, but the remedy for failing to do so – that the Council may appoint a replacement – is rarely exercised. This recommendation ensures PEC vacancies are filled in a reasonable timeframe by providing officials 120 days to fill a vacancy while transferring the power to the PEC to fill a vacancy thereafter.
<p>F. Staffing C.603(g)(2)&(3)</p>	<ul style="list-style-type: none"> ▪ Increase the PEC’s minimum Enforcement staffing by 1 investigator in FY 2025-2026 and 1 additional non-administrative enforcement position in FY 2027-28. ▪ Update the Charter to reflect the PEC’s current staffing levels. ▪ Prohibit a reduction in the PEC’s minimum staffing requirement that is proportionally higher than a general reduction in City staff in a fiscal year or two-year budget cycle. 	<ul style="list-style-type: none"> ▪ Currently, the Charter provides the PEC with a minimum of 10 staff positions, 7 of which are specific positions. PEC staffing may only be reduced if the City is facing an extreme fiscal necessity and as part of a general reduction, however, the reduction to PEC staffing may be disproportionate to the cut taken by other Departments. ▪ Currently, the Charter mandates that the PEC have 2 Enforcement staff, a staffing ratio that has not been updated in a decade. The PEC’s caseload now vastly outpaces the PEC’s staff capacity, which has forced around 60% of the PEC’s cases to be placed on hold. ▪ Minimum staffing is an important aspect of the PEC’s independence. The PEC cannot serve as a watchdog agency if it is not adequately staffed. Best practice for watchdog agencies is to insulate their staffing from the political process, to ensure staffing does not fall beyond certain minimums required for its effective operation and to avoid the risk or appearance that political pressure is being exerted on the watchdog agency through the budget process. ▪ This recommendation gradually increases the PEC’s enforcement staffing minimums by two positions over three fiscal years. The PEC estimates that two additional investigators is the minimum staffing increase it requires to keep pace with its caseload. ▪ This recommendation also provides that any cuts to the PEC’s minimum staffing levels should be in proportion to cuts taken by other departments, to avoid significant disruptions to the Commission’s ability to function and to minimize the risk or appearance that the PEC

Item 6 - PEC Ballot Measure Proposal

		is being uniquely targeted. The recommendation also provides some greater job position flexibility in selecting job classifications to meet staffing needs.
<p>G. Legal Capacity C.603(b)(3),(g)(5),(i); OMC 2.24.050, 2.24.060</p>	<ul style="list-style-type: none"> ▪ Provide that the Enforcement Chief may be an attorney. ▪ Authorize the PEC to hire legal staff, including outside counsel in its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual or perceived conflict in the City Attorney representing the Commission. ▪ Codify in the Charter that the City Attorney provides legal advice and assistance to the Commission. ▪ Require a reasonable budget for hiring outside counsel, investigators, or holding administrative hearings. 	<ul style="list-style-type: none"> ▪ Currently the City Attorney is the designated legal counsel for the Commission, except in cases of a legal conflict, in which case the City Attorney selects outside counsel for the Commission. Despite being a quasi-judicial agency, the Commission does not have any authorized legal positions and cannot on its own retain outside counsel. ▪ This recommendation enables the PEC to have more in-house expertise in the laws it enforces and eliminates the potential for real and perceived conflicts of interests resulting from the fact that the City Attorney, all candidates for City Attorney, and the entire staff in the City Attorney’s office are regulated by the Commission. The recommendation follows best practices recommended by good government nonprofits and used by other ethics commissions. While important for independence, in most matters, the PEC would continue to rely on the services of the City Attorney’s Office. ▪ Similar to: FPPC, Los Angeles, San Francisco, San Diego, Sacramento
<p>H. PEC Legislative Proposals [New sub-section]</p>	<ul style="list-style-type: none"> ▪ Require the Council to consider PEC legislative proposals within 180 days. 	<ul style="list-style-type: none"> ▪ Currently, the Commission may recommend policy changes to laws it enforces to the City Council, but there is no requirement that these proposals be considered. In other jurisdictions, Ethics Commission recommendations for good government reforms have languished for years or never been taken up. ▪ This recommendation ensures that good governance proposals are considered by the full Council.
<p>I. Salary Setting C.603(c)</p>	<ul style="list-style-type: none"> ▪ Change the frequency that the PEC must adjust the City Attorney and City Auditor’s salaries from annually to every two years 	<ul style="list-style-type: none"> ▪ Fully reassessing the City Attorney/City Auditor’s salary every year requires a significant expenditure of staff time, although in many years the adjustment may be modest. This recommendation aligns the City Attorney/City Auditor salary adjustment schedule with the same two-year cycle used for the City Council, which is more administrable.
<p>J. Lobbyist Gifts OMC 3.20.180</p>	<ul style="list-style-type: none"> ▪ Prohibit lobbyist gifts to elected officials, candidates, and their immediate family, subject to certain existing exceptions. 	<ul style="list-style-type: none"> ▪ Current rules for lobbyist gift-giving are confusing – such gifts may be subject to a \$240 or \$50 limit, depending on the context. ▪ Lobbyist gifts to the lawmakers they are lobbying may create a heightened risk or appearance of corruption.

Item 6 - PEC Ballot Measure Proposal

		<ul style="list-style-type: none"> ▪ This recommendation is intended to increase public confidence in governance and aligns Oakland with best practices in other jurisdictions, like San Francisco and Los Angeles, that prohibit such gifts. This recommendation also provides a clearer and more administrable rule for lobbyists and officials. ▪ This recommendation complements the preceding proposals and helps shape a cohesive message that these proposed reforms serve an anti-corruption interest. ▪ Similar to: San Francisco, Los Angeles
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Primarily Clarifying Changes

Recommendation /Sections	Proposal	Rationale
K1. Holdover Term C.603(d)(3)	<ul style="list-style-type: none"> ▪ Clarify that a Commissioner may continue to serve on the PEC after the expiration of their term until a replacement is appointed, but limit the holdover term to a maximum of 1 year. 	<ul style="list-style-type: none"> ▪ This clarifies existing practice: The City’s existing practice is to allow members of boards and commissions to serve in a holdover capacity until a replacement is appointed, which helps to ensure a smooth transition between commissioners. For clarity, this recommendation codifies that practice as to the PEC, but also limits the holdover term to one year.
K2. Vote Threshold C.603(d)(4)	<ul style="list-style-type: none"> ▪ Clarify that the Commission may take action by a majority of those present at a meeting, except where a different vote threshold is required by the Charter or voter-approved law. 	<ul style="list-style-type: none"> ▪ This clarifies existing practice: The Charter specifies that, for certain actions the PEC takes, a specified vote threshold is required. For example, the PEC may only impose administrative penalties with the affirmative vote of 4 Commissioners. Where no vote threshold is specified, the PEC’s Operational Procedures provides that a majority vote of those present suffices. For consistency, this recommendation codifies that requirement in the Charter.
K3. Records Confidentiality C.603(f)(3)	<ul style="list-style-type: none"> ▪ (1) Clarify that confidentiality of Enforcement records applies to matters in both the “Preliminary Review” and “Investigation” stage. ▪ (2) Clarify the point in time when Enforcement files become disclosable public records. 	<ul style="list-style-type: none"> ▪ (1) This codifies PEC confidentiality requirements under state law and harmonizes them with the terminology used in the PEC’s Complaint Procedures as to “preliminary review” and “investigation.” ▪ (2) This codifies the PEC’s current practice and harmonizes with state law (Enforcement files are not disclosed until either Enforcement findings are made public, or the Statute of Limitations passes)

Item 6 - PEC Ballot Measure Proposal

	<ul style="list-style-type: none"> ▪ (3) Clarify that disclosing evidence to other enforcement agencies, or when charging/prosecuting/resolving a case, does not constitute a waiver of confidentiality. 	<ul style="list-style-type: none"> ▪ (3) This codifies the PEC’s current practice and harmonizes with state law, which allows for disclosure of evidence in furtherance of the enforcement process.
<p>K4. Amendments to PEC Governance C. 603(h); OMC 2.24.110</p>	<ul style="list-style-type: none"> ▪ Clarify that Council amendments to the laws the PEC administers and the PEC’s procedures in Chapter 2.24 of the Municipal Code also require notice and comment to the Commission prior to being amended 	<ul style="list-style-type: none"> ▪ This clarifies when the PEC must be consulted before a law affecting the PEC is amended or adopted: Under the City Charter, before the Council may amend laws the PEC <i>enforces</i>, the proposed amendment must be submitted to the PEC for notice and comment. This recommendation clarifies that this provision includes laws the PEC <i>administers</i>.

Item 6 - PEC Ballot Measure Proposal

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);**
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;**
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;**
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;**
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;**
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO HIRE OUTSIDE LEGAL COUNSEL IN ADDITION TO USING THE CITY ATTORNEY TO RENDER LEGAL ADVICE AND SERVICES TO THE COMMISSION RELATING TO LAWS THE COMMISSION ADMINISTERS OR ENFORCES;**

Item 6 - PEC Ballot Measure Proposal

- (7) **EXPAND THE TYPES OF LAWS THAT THE CITY COUNCIL MUST FORWARD TO THE COMMISSION TO REVIEW;**
- (8) **REQUIRE THE CITY COUNCIL TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;**
- (9) **AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY ON A BI-ANNUAL BASIS; AND**
- (10) **AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE OF ANY AMOUNT THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY; AND**

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION

WHEREAS, in 2014, Oakland voters passed Measure CC, with 73.9% of voter support, adding Section 603 to the City Charter to significantly strengthen the independence, authority, and staffing of the Public Ethics Commission (Commission); and

WHEREAS, the Commission's workload and responsibilities have increased significantly since the passage of Measure CC; and

WHEREAS, after ten years, the provisions in Section 603 no longer reflect the Commission's actual staffing and budgetary needs and have not kept pace with best practices in other jurisdictions for ensuring ethics commission independence; and

WHEREAS, on April 10, 2024, the Commission adopted a set of recommendations to strengthen its independence, modernize its governance procedures to align with best practices in other jurisdictions, and enhance its staffing and administrative capacity to meet current program needs; and

WHEREAS, there have been no significant revisions to the Commission's governance structure since 2014; and

Item 6 - PEC Ballot Measure Proposal

WHEREAS, in 2022 Oakland voters passed Measure W, the Fair Elections Act, with 73.9% voter support, which commits the Commission to implementing the Democracy Dollars public campaign financing program to make Oakland elections more equitable, accessible, and fair ; and

WHEREAS, the Commission's enforcement caseload now vastly outpaces staff capacity, forcing over half its cases to be put on indefinite hold, leading to diminished enforcement and deterrence, which is contrary to the goals and purpose of the Commission; and

WHEREAS, the Commission requires an adequate staffing level to meet its commitment to voters to implement the Fair Elections Act, enforce ethics laws, and keep up with its other core functions; and

WHEREAS, an effective, independent, and adequately funded watchdog agency is critical to increasing the public's trust in the governance of the City of Oakland; and

WHEREAS, the City Council finds that amendments to the Lobbyist Registration Act further the purposes of that ordinance, by prohibiting gifts to elected officials, candidates, and their immediate family which may create a risk or the appearance of corruption; now therefore be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council hereby proposes to amend Charter section 603, 401(1), 403((3) and Oakland Municipal Code Chapter 2.24 AND 3.20 to add, delete, or modify sections as set forth below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by ~~strike-through type~~; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed).

The people of the City of Oakland do ordain as follows:

Section 1. Amendments of Section 603 of the Charter of the City of Oakland. Section 603, *Public Ethics Commission*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

SECTION 603 – PUBLIC ETHICS COMMISSION

(a) Creation, and Role Purpose and Responsibilities.

(1) There is hereby established a Public Ethics Commission as an independent department of the City whose purpose shall be to promote more inclusive,

Item 6 - PEC Ballot Measure Proposal

representative, and accountable democracy in Oakland and to promote fairness, openness, honesty and integrity in City government.

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

(1) enforcement of laws, regulations and policies intended to assure fairness, openness, honesty and integrity in City government, including compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, lobbyists, candidates, campaign committees, and other persons subject to laws within the jurisdiction of the Commission;

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

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

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

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

(4) Nothing in this Section shall preclude other City officials, agencies, boards and commissions from exercising authority heretofore or hereafter granted to them, with the exception of Charter Section 603(b)(5).

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

(1) Foster and enforce compliance with:

(i) Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") of this Charter, for violations occurring on or after January 1, 2015;

(ii) The Oakland Campaign Reform Act, Oakland Fair Elections Act, False Endorsement in Campaign Literature Act, Oakland's Conflict of Interest Code, code of ethics and governmental ethics ordinance, the Oakland Lobbyist Registration Act, the Oakland Sunshine Ordinance, any ordinance intended to protect City whistleblowers from retaliation, and other Oakland laws regarding campaign finance, lobbying, transparency, or governmental ethics, as provided by ordinance or this Charter.

(iii) Related state laws including, but not limited to, the Political Reform Act, Ralph M. Brown Act, and Public Records Act, as they pertain to Oakland.

(2) Report to the City Council concerning the effectiveness of all local laws regarding campaign finance, lobbying, transparency, and governmental ethics.

(3) Issue oral advice and formal written opinions, which may be done in consultation with the City Attorney.

Item 6 - PEC Ballot Measure Proposal

(4) Within the time period for submission of such information for the timely completion of the City's regular budget process, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.

(5) Act as the filing officer and otherwise receive and retain documents whenever the City Clerk would otherwise be authorized to do so pursuant to Chapter 4 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), ~~provided that this duty shall be transferred to the Commission during the 24 months following the effective date of this provision and the Commission shall be the sole filing officer for the campaign finance programs by January 1, 2017.~~

(6) Educate and promote understanding regarding the requirements under the Commission's oversight and study any significant non-compliance problems or trends with Oakland's campaign finance, lobbying, transparency, and governmental ethics laws and identify possible solutions for increasing compliance.

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

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

~~(98)~~ Perform such other functions and duties as may be prescribed by laws of this Charter or City ordinance.

(c) Councilmember-Elected Official Salary Increases. The Public Ethics Commission shall set the salary for City Councilmembers, the City Attorney, and the City Auditor as provided for in Charter Sections 202, 401(1), and 403(1) ~~Council compensation as provided for in Charter Section 202.~~

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

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

(1) (i) Appointments by Mayor, City Attorney and City Auditor.

The Mayor shall appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

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

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

Item 6 - PEC Ballot Measure Proposal

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

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

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

~~(2) (ii) Commission Appointments. The four members of the Commission who are not appointed by the Mayor, City Attorney or City Auditor shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities. Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.~~

(2) Commissioner Qualifications.

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

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

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

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

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

Item 6 - PEC Ballot Measure Proposal

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

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

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

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

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

(H) A registered Oakland lobbyist.

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

(3) Terms of Office. All categories of member shall be appointed to staggered terms. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three (3) years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, such member may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, such member may serve two consecutive full three-year terms. In the event a member's replacement has not been appointed by the conclusion of the member's term, that member may continue to serve as a member of the Commission during the following term in a holdover capacity for a period not to exceed one year until a new member is appointed to serve the remainder of such following term.

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

(5) Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or ~~is absent continuously from the City for a period of more than 30 days~~ is absent from three (3) consecutive

Item 6 - PEC Ballot Measure Proposal

regular Commission meetings without permission from the Chair of the Commission, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four (4) members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member. Vacancies not filled by the Mayor, City Attorney, or City Auditor within 12090 days of the occurrence of such vacancy ~~may~~ shall be filled instead by the ~~Commission~~City Council in the same manner as provided by Charter, Section 601 following a public recruitment and application process and by the affirmative vote of at least four (4) members of the Commission. The Commission's appointee shall possess the same background qualifications that would otherwise be required of an appointee of the Mayor, City Attorney, or City Auditor as set forth in (d)(1)(i). For purposes of this paragraph, a seat filled by a member acting in a holdover capacity will be considered vacant as of the expiration of the holdover's prior term of office.

(6) Removal. Members of the Commission may be removed, after a hearing, by either the City Council by the affirmative vote of at least six (6) members of the Council or by the Commission by the affirmative vote of at least five (5) members of the Commission, by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular meetings except on account of illness or when absent by permission of the Commission, or substantial violation of this Charter Ssection.; Prior to the hearing, the member at risk of removal shall be provided with-after written notice of the grounds on which removal is sought and an opportunity for a written response. The City Council or the Commission may initiate removal proceedings and shall provide such written notice to the member.

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

(1) Have an employment or contractual relationship with the City during the member's tenure and for a period of one year after the date of separation.

(2) Have an employment or contractual relationship with an elected official of the City or Oakland Unified School District, or receive a gift or other compensation from such officials, during the member's tenure.

~~(3)~~ Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for a period of one year after the date of separation.

~~(4)~~ Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland; during the member's tenure or participate in or contribute to an Oakland municipal campaign.

Item 6 - PEC Ballot Measure Proposal

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

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

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

(f) Enforcement.

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

- (i) Conduct investigations;
- (ii) Conduct audits of compliance with disclosure requirements with the Commission;
- (iii) Conduct public hearings as provided by the Commission's complaint procedures or other law;
- (iv) Issue subpoenas to compel the production of books, papers, records and documents and take testimony on any matter pending before the Commission. The Commission may seek a contempt order as provided by the general law of the state for a person's failure or refusal to appear, testify, or to produce required books, papers, records and documents;
- (v) Impose penalties, remedies and fines, as provided for by ordinance. Ordinances enforced by the Public Ethics Commission shall not be subject to the \$1,000 limit on fines provided Sections 217 and 1208 of this Charter. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to the Alameda County Superior Court by filing a petition for writ of mandamus;
- (vi) Submit referrals to other enforcement authorities, including but not limited to the Alameda County District Attorney, California Fair Political Practices Commission, and California Attorney General;
- (vii) Seek remedial relief for violations and injunctive relief;
- (viii) By an affirmative vote of at least five (5) members, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 218 and 1202 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;

Item 6 - PEC Ballot Measure Proposal

(ix) Reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 907 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;

(x) Perform other functions as authorized by law.

(2) Final enforcement action. Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four (4) members.

~~(3) Investigations. Preliminary review by Commission staff of allegations Confidentiality. Records and information obtained by the Commission during the preliminary review and investigation of a complaint shall be confidential and exempt from public disclosure, to the extent permitted by law, until any of the following occurs:~~

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

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

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

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

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

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

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

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

(ii) Waiver guidelines. The Commission shall establish waiver guidelines in accordance with state law, which the Commission, as the filing officer, shall follow in determining whether or not to grant a waiver. These guidelines shall be published on the Commission's website. The

Item 6 - PEC Ballot Measure Proposal

Commission shall prescribe criteria for appeal to the Commission of waiver decisions made by the Executive Director. At each regular Commission meeting, the Executive Director shall provide a written report, which shall be published online, regarding any waivers decisions made since the previous regular meeting;

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

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

(g) Staff Assistance & Budget.

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

(2) Sufficient staffing shall not be less than the following minimum staffing requirement. The City shall meet a minimum staffing requirement for the Commission. The minimum staffing shall consist of the following full-time positions or their equivalent should classifications change:

(i) Executive Director;

(ii) Enforcement Chief;

(iii) Two (2) Ethics Investigators;

(iv) Effective July 1, 2027, one other full-time equivalent non-administrative enforcement staff position, which may include an investigator, staff attorney, auditor, or other appropriate position to be determined as necessary by the Commission;

(v) ~~Three~~ Four (4) full-time equivalent staff positions, which may include including an Ethics Analyst I, Ethics Analyst II, Administrative Analyst I, and Administrative Assistant I, or other similar positions to be determined as necessary by the Commission.

(vi) Effective July 1, 2023, the City shall also provide additional adequate staff necessary to properly administer the Democracy Dollars Program established by the Oakland Fair Elections Act, including, but not limited to, one full-time Democracy Dollars Program Manager and three (3) full-time equivalent positions, to be determined as necessary by the Commission, all of whom shall report to the Executive Director of the Public Ethics Commission.

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

Item 6 - PEC Ballot Measure Proposal

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

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

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

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

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

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

(i) Legal Services.

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

(2) In addition to receiving legal advice and legal services from the City Attorney, the Commission may employ and/or contract for, in the discretion of the Executive Director, one or more attorneys to provide legal advice and legal services to the Commission relating to the laws that the Commission administers or enforces, including but not limited to representing the Commission in enforcement-related litigation, or when the Executive Director determines there is an actual conflict in the City Attorney providing legal assistance to the Commission. The choice of counsel shall be at the sole discretion of the Executive Director. When considering a candidate for an attorney

Item 6 - PEC Ballot Measure Proposal

position, the Executive Director shall consider the candidate's familiarity with laws relating to campaign finance, government ethics, lobbying, open meetings and public records.

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

(j) Consideration of Commission Proposals. The Commission may propose amendments to any law it enforces or administers which, upon being submitted to the Chair of the Rules Committee, shall be considered by the full City Council within 180 days.

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

SECTION 2. Amendments of Section 401(1) of the Charter of the City of Oakland.

Section 401(1), *City Attorney*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

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

SECTION 3. Amendments of Section 403(1) of the Charter of the City of Oakland.

Section 403(1), *City Auditor*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible for the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the City Auditor shall be set ~~annually~~ every two years by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the

Item 6 - PEC Ballot Measure Proposal

Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

SECTION 4. Adoption of Oakland Municipal Code, Section 2.24.110.

Oakland Municipal Code, Chapter 2.24, *Public Ethics Commission*, Section 2.24.110, *City Council Amendments* is hereby adopted as follows with new text shown as underscored:

2.24.110 - City Council amendments.

The City Council may make any amendments to this Chapter that are consistent with the purpose, responsibilities, and independence of the Commission as provided in the City Charter. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to this Chapter and proposed ballot measures that would amend this Chapter shall be submitted to the Commission for review and comment, prior to passage of the amendments or approval of the proposed measures for the ballot by the City Council.

SECTION 5. Repeal and Reenactment of Oakland Municipal Code, Section 3.20.180.

Oakland Municipal Code, Section 3.20.180, *Restrictions on payments and expenses benefitting local public officials, candidates for local office, designated employees and immediate families*, is hereby repealed and reenacted as follows with deleted text shown as ~~struckthrough~~ and new text shown as underscored.

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

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

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

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

Item 6 - PEC Ballot Measure Proposal

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

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Measure shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council, except the amendments to the Lobbyist Registration Act shall go into effect on January 1, 2025.

and be it

FURTHER RESOLVED: That each ballot used at the November 5, 2024 election shall have printed therein, in addition to any other matter required by law the following:

**CHARTER AMENDMENT TO SECTIONS 603, 401 AND 403 OF THE CITY
CHARTER AND AMENDMENT TO OAKLAND MUNICIPAL CODE,
CHAPTERS 2.24 AND 3.20**

MEASURE ____

Item 6 - PEC Ballot Measure Proposal

Measure _____. [FINAL BALLOT QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]	Yes	
	No	

;and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the Clerk of the City of Oakland (“City Clerk”), at least 88 days prior to the November 5, 2024 General Municipal Election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

FURTHER RESOLVED: That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter and Oakland Municipal Code amendments, and said date shall be posted by Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice, publication and printing of notices as to said proposed Charter and Oakland Municipal Code amendments in the manner provided for by law; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2024 General Municipal Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 5, 2024 General Municipal Election, consistent with applicable law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID,
AND PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

Item 6 - PEC Ballot Measure Proposal

ATTEST: _____
ASHA REED
Acting City Clerk and Clerk of
the Council of the City of
Oakland, California

3350812v3

Item 7 - Mayoral Salary Ballot Measure

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA ⑩ CITY HALL ⑩ Suite #104 ⑩ OAKLAND ⑩ CA 94612

Public Ethics Commission

(510) 238-3593

(510) 238-3315 Fax

(510) 238-325 TDD



December 20, 2023

Honorable Jestin Johnson
City Administrator
City Hall
Oakland, CA 94607

RE: Public Ethics Commission's Recommendations for Changing the Mayoral Salary-Setting Process

Dear Administrator Johnson:

At its July 18, 2023, meeting, the City Council passed a motion directing you to bring a proposal back to the Council for a potential November 2024 ballot measure which would transfer the duties of setting the Mayor's salary from the City Council to the Public Ethics Commission (Commission or PEC). On behalf of the Commission, we are writing to express the Commission's unanimous recommendation (A) that the Commission should take on this responsibility and (B) for the criteria and process the Commission should use to do so.

Under current law, the Commission sets the salary for ten of Oakland's 11 elected officials. The Commission adjusts the salaries of the eight-member City Council every two years for inflation and adjusts the salaries of the City Attorney and City Auditor annually "to provide for competitive compensation and equitable alignment" for these officeholders. (City Charter Sections 202, 401, and 403.) In contrast, the City Council sets the salary of the Mayor every two years, "which shall be not less than 70% nor more than 90% of the average salaries of City Managers/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland." (City Charter Section 300.) Because the requirements for adjusting the Mayor's salary are established in the City Charter, any change in this process would need to be proposed by ballot measure and would require the approval of Oakland voters.

The PEC considered whether it is the appropriate body for setting the Mayor's salary and, if so, what criteria the PEC should apply for setting that salary at three separate meetings held on August 25, October 25, and December 13, 2023. The staff memos for the October 25 and December 13 meetings are attached. A recording of these meetings may be found on the PEC's website at: <https://www.oaklandca.gov/boards-commissions/public-ethics-commission/meetings>.

Item 7 - Mayoral Salary Ballot Measure

The PEC adopted the following recommendation¹ for how the Commission should adjust the Mayor's salary at its December 13 meeting:

- Every two years, the PEC increases the Mayor's salary by the change in the Bay Area Consumer Price Index (CPI) over the last two years, but capped at no more than 5% over the two-year period.
- Every four years, taking effect at the start of a new mayoral term, the PEC has the discretion to instead adjust the Mayor's salary to promote greater pay equity and competitive compensation, but by no more than the rate of inflation over the past two years plus an additional 10 percent. In making a discretionary adjustment, the PEC shall consider:
 - The salaries of the chief executives (city manager or mayor in a strong mayor system) in comparable California jurisdictions;
 - The salary of the highest-paid mayoral employee; and
 - The salary of City Department heads.
- The PEC, in its discretion, may waive or reduce a salary increase in any fiscal year in which either (a) the City Council declares that the City is facing an "extreme fiscal necessity" or "fiscal crisis or fiscal emergency,"² or (b) the GPF revenue for the current fiscal year is projected to decline.

This recommendation includes a biannual inflation adjustment for the Mayor's salary, similar to the biannual adjustment the PEC provides for the City Council, but also provides an opportunity to re-assess the salary every four years to promote pay equity and competitive compensation, similar to the process the PEC uses to adjust the City Attorney's and City Auditor's salaries. In addition, this recommendation provides the PEC with the option to waive or reduce a salary increase in years where the City is facing significant fiscal hardship and an increase may be inappropriate or unwelcome by the Mayor. Notably, under this recommendation, four-year salary reassessments would only take effect at the start of a new mayoral term, which emphasizes that the PEC's role is to determine which salary is best for the office, and not to subjectively evaluate the performance of a current officeholder.

In its review and discussion of this topic, the Commission reached consensus on the following principles, which led to its recommendation:

- The responsibility for setting the Mayor's salary should be transferred to the PEC;
- The charter should provide politically-neutral, objective criteria for the PEC to follow in setting the Mayor's salary;
- The PEC should have the discretion to waive or reduce a salary increase if either (a) the City Council declares that the City is facing an extreme fiscal necessity or a fiscal crisis or emergency, or (b) the GPF revenue for the current fiscal year is projected to be lower than it was in the last fiscal year; and

¹ For ease of reading, the recommendation has been cleaned up to remove parentheticals relating to other options the PEC considered and to spell out acronyms and abbreviations. The exact text of the staff recommendation adopted by the PEC is attached to this letter.

² Council Resolution No. 89803 (Jun. 22, 2023) defines "extreme fiscal necessity" and "fiscal crisis or fiscal emergency."

Item 7 - Mayoral Salary Ballot Measure

- The PEC should not adjust the Mayor’s salary more frequently than once every two years.

Thank you for the opportunity to provide the Commission’s perspective on this important topic, and we look forward to working with you. Please note that, under Section 603(h) of the City Charter, as recently amended by Measure W (2022), draft ballot measures affecting the Commission “shall be submitted to the Commission for review and comment, prior to ... approval of the proposed measures for the ballot by the City Council.”

Should you have any questions about the PEC’s recommendations please feel free to contact Executive Director Heidorn at (510) 238-3593 or nheidorn@oaklandca.gov. We look forward to partnering with you and the City Council in proposing a fair, transparent, and administrable process for setting the Mayor’s salary to Oakland voters next November.

Sincerely,

/s/ Ryan Micik

Ryan Micik
Chair
Public Ethics Commission

/s/ Nicolas Heidorn

Nicolas Heidorn
Executive Director
Public Ethics Commission

Attachments:

- Adopted recommendation
- Staff report for the December 13, 2023 meeting
- Staff report for the October 25, 2023 meeting

CC:

Honorable Sheng Thao,
Mayor of Oakland

Honorable Nikki Fortunato Bas,
Honorable Rebecca Kaplan,
Honorable Dan Kalb,
Honorable Carroll Fife,
Honorable Janani Ramachandran,
Honorable Noel Gallo,
Honorable Kevin Jenkins,
Honorable Treva Reid,
Members of the Oakland City Council

PEC Recommendations to the City Administrator for how the PEC Should Set the Mayor's Salary

Adopted by the Public Ethics Commission by a vote of 6-0 on December 13, 2023.

- **Option C: Hybrid Option – Adjust for Inflation But Include a Periodic Review**
- Proposal Summary:
- Every two years, the PEC increases the Mayor's salary by the change in the Bay Area CPI over the last two years, but capped at 5% (similar to Option A2) but without PEC discretion to go beyond the cap.
- Every four years, taking effect at the start of a new mayoral term, the PEC has the discretion to instead adjust the Mayor's salary to promote greater pay equity and competitive compensation (same as Option B1), but by no more than the rate of inflation over the past two years plus an additional 10 percent. In making a discretionary adjustment, the PEC shall consider:
 - The salaries of the chief executives (city manager or mayor in a strong mayor system) in comparable California jurisdictions;
 - The salary of the highest-paid mayoral employee; and
 - The salary of City Department heads.
- The PEC, in its discretion, may waive or reduce a salary increase in any fiscal year in which either (a) the City Council declares that the City is facing an extreme fiscal necessity/crisis or (b) the GPF revenue for the current fiscal year is projected to decline.

Item 7 - Mayoral Salary Ballot Measure

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 300 AND 603 TO, AMONG OTHER THINGS:

(1) TRANSFER THE DUTIES OF SETTING THE MAYOR'S SALARY FROM THE CITY COUNCIL TO THE PUBLIC ETHICS COMMISSION TO BE ADJUSTED, SUBJECT TO CERTAIN CONDITIONS, ON A BI-ANNUAL BASIS;

(2) UPDATE THE CRITERIA FOR SETTING THE MAYOR'S SALARY TO CRITERIA SIMILAR TO THAT APPLIED BY THE COMMISSION IN SETTING THE CITY ATTORNEY'S AND CITY AUDITOR'S SALARIES; AND

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION

WHEREAS, on July 18, 2023, the City Council passed a motion directing the City Administrator to bring a proposal back to the City Council for a potential November 2024 ballot measure which would transfer the duties of setting the Mayor's salary from the City Council to the Public Ethics Commission; and

WHEREAS, on August 25, 2023, October 25, 2023, and December 13, 2023, the Public Ethics Commission considered whether it is the appropriate body for setting the Mayor's salary and, if so, what criteria the PEC should apply for setting that salary; and

WHEREAS, on December 13, 2023, the Public Ethics Commission adopted recommendations for how the Commission should adjust the Mayor's salary to promote pay equity and competitive compensation; and

Item 7 - Mayoral Salary Ballot Measure

WHEREAS, these changes will provide politically neutral, objective criteria for the Public Ethics Committee to follow in setting the Mayor's salary that is alignment with similar processes of other City of Oakland elected officials; now, therefore, be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council hereby proposes to amend Charter section 300 and 603 to add, delete, or modify sections as set forth below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by ~~strike-through type~~; portions of the provisions not cited or not shown in underscoring or ~~strike-through type~~ are not changed).

The people of the City of Oakland do ordain as follows:

Section 1. Amendments to Section 300 of the Charter of the City of Oakland. Section 300, *The Mayor*, of the Charter of the city of Oakland is hereby amended as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored:

Section 300. The Mayor. The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, ~~and without any additional compensation or fees provided for in Section 202 in this Charter.~~ The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland. The Mayor's salary shall be reviewed by the City Council in odd numbered years and may be adjusted by the Council as provided for herein. The Public Ethics Commission shall bi-annually adjust the salary for the Office of Mayor by the increase in the consumer price index over the preceding two years, up to a total of five percent, to take effect in the first pay period after the first Monday of January, beginning in 2027 and every two years thereafter. The Commission, in its discretion, may waive or reduce the bi-annual salary increase where the City Council has declared, in a budget resolution for the fiscal year in which the adjustment is adopted, that the City is facing an extreme fiscal necessity, fiscal crisis or fiscal emergency; or if the General Purpose Fund revenue for the current fiscal year is projected to be less than the revenue in the prior fiscal year.

In its discretion and to provide for competitive compensation and equitable alignment, every four years to take effect in the first pay period after the start of the next Mayoral term, the Public Ethics Commission may adjust the salary for the Office of the Mayor by no more than the rate of inflation over the prior two years plus an additional 10 percent. The Commission shall consider, for a four-year discretionary adjustment, the salary of the chief executives (city manager or mayor in a strong mayor system) in comparable California jurisdictions selected by the Commission; the top of the range for the highest paid professional employee in the Office of the Mayor; and the salaries of City department heads.

Section 2. Amendments to Section 603(c) of the Charter of the City of Oakland. Section 603(c), *Councilmember Salary Increases*, of the Charter of the City of Oakland is hereby

Item 7 - Mayoral Salary Ballot Measure

amended as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored:

- (c) ~~Councilmember-Elected Official Salaries~~ Increases. The Public Ethics Commission shall ~~set~~ adjust the salary for the Office of the Councilmember, Mayor, City Attorney and City Auditor Council compensation as provided for in Charter ~~S~~sections 202, 300, 401(1) and 403(1).

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this Measure is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This Measure shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

and be it

FURTHER RESOLVED: That each ballot used at the November 5, 2024 election shall have printed therein, in addition to any other matter required by law the following:

**CHARTER AMENDMENT TO SECTIONS 300 AND 603(C) OF THE CITY
CHARTER
MEASURE ____**

Measure _____.	Yes	
[FINAL BALLOT QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]	No	

; and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the Clerk of the City of Oakland (“City Clerk”), at least 88 days prior to the November 5, 2024 General Municipal Election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

FURTHER RESOLVED: That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

Item 7 - Mayoral Salary Ballot Measure

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted by Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Election Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice, publication and printing of notices as to said proposed Charter amendment in the manner provided for by law and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2024 General Municipal Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 5, 2024 general municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED

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

3351051v3/SW

Item 8 - Police Commission Procedural Changes

CITY OF OAKLAND Public Ethics Commission

1 Frank H. Ogawa Plaza • City Hall • Suite #104 • Oakland • CA 94612 (510)
238-3593
(510) 238-3315 Fax
Relay 711 TDD



February 1, 2024

Councilmember Dan Kalb
Councilmember Kevin Jenkins
City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

RE: Public Ethics Commission’s Review & Comment on an Ordinance Modifying the Enabling Ordinances for the Police Commission, the Community Police Review Agency and the Office of the Inspector General

Dear Councilmembers Kalb and Jenkins,

Under City Charter Section 603(h), the Commission is required to review and comment on any amendments to laws that the Commission has the power to enforce before these amendments can become law.¹ Pursuant to this responsibility, the Public Ethics Commission (Commission or PEC) met on January 17, 2024, to review and provide comment on your proposed ordinance modifying the enabling ordinances for the Police Commission, the Community Police Review Agency, and the Office of the Inspector General (OIG), which was passed by the Public Safety Committee on December 12, 2023 (Item 3).

The Commission voted to recommend the adoption of those sections in the Proposed Ordinance affecting the PEC with the addition of suggested amendments, as specified below. The PEC takes no position on the merits of the proposal overall or other sections in the proposal not relating to the PEC.

A. Proposed OMC Section 2.45.190(D) - Adopt As-Written

This Section would require the Police Commission to provide an annual report to the PEC regarding Police Commissioners’ completion of workplace retaliation training. **The PEC recommends the adoption of proposed OMC Section 2.45.190(D) as-written.**

¹ That section provides, in full:

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

Item 8 - Police Commission Procedural Changes

B. Proposed OMC Sections 2.45.210 and 2.47.060 - Adopt As-Written

These sections provide that the PEC has the authority to investigate and prosecute the alleged failure of City departments (e.g. the Police Department) to provide files or records requested by the Police Commission and OIG in order to carry out their legal functions. These sections restate existing law and do not add or detract from the PEC's existing authority in any substantive way. **The PEC recommends the adoption of proposed OMC Sections 2.45.210 and 2.47.060 as-written.**

C. Proposed OMC Sections 2.45.040(D) - Adopt with Amendments

This Section gives concurrent jurisdiction over allegations of Police Commissioner misconduct to other independent investigators besides the PEC. **The PEC recommends the adoption of proposed OMC section 2.45.040(D) with the following amendments (either directly incorporating the underlined language in red font, or substantially similar language).**

1. To avoid forum shopping or allegations of forum shopping, specify who will receive and refer complaints to the appropriate investigator and specify the criteria that will be used to select that investigator.

Complaints that a Commissioner has failed to abide any of the same will be initially processed by the City Administrator for purposes of selecting an appropriate independent investigator, and assessed and investigated as appropriate by an independent investigator who shall be selected based upon their subject matter jurisdiction and expertise over the alleged type of violation, such as the City's office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission.

2. Allow the independent investigator to request that a complaint be re-assigned to another investigator if they lack capacity to expedite a time-sensitive matter or if they lack subject matter expertise to investigate the complaint.

The independent investigator may request that the City Administrator reassign the complaint to another independent investigator if either:

the allegations made in a complaint are deemed to be serious, the investigation and resolution of that complaint is deemed to be time-sensitive, and the independent investigator is unable to expedite the matter due to reasons of caseload, staffing, or similar constraints; or

the independent investigator lacks expertise in the subject matter of the complaint.

Item 8 - Police Commission Procedural Changes

The request for reassignment shall be made in writing by the independent investigator, and shall include the reasoning for making the request. A copy of the request shall also be provided to both the complainant and the respondent at the time the request is made, unless the independent investigator determines that doing so would negatively impact the integrity of any subsequent investigation.

Should the complaint be referred to an outside contractor for assessment and investigation, the costs incurred in hiring that outside contractor shall be borne by the Police Commission.

3. Specify that the independent investigator shall follow its normal procedures for making its determination of facts. For the PEC, this would include the full Commission voting to adopt findings of fact.

The procedure for assessing and investigating a finding of a violation under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating other complaints under their jurisdiction, including the determination of final findings of fact and whether any violation of this section occurred. Any sustained findings of a violation of this section shall be referred to the City Council for determination of an appropriate resolution in lieu of the independent investigator making such a determination. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

4. Specify that any person may file a complaint against a Police Commissioner. This follows the PEC's existing practice for other complaints alleging violations of the laws the PEC enforces.

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.

D. Legal Opinion

Because of potential legal ambiguity, the PEC urges that you request that the City Attorney produce a written opinion regarding whether City Charter section 604(c)(10) precludes any agency besides the PEC from investigating allegations that could result in the City Council removing a Police Commissioner for cause.

E. Other

The PEC takes no position on the rest of the legislation because it does not affect the PEC's enforcement authority.

Item 8 - Police Commission Procedural Changes

The video for the January 17, 2024, meeting where the PEC adopted this recommendation may be accessed from the PEC's website at <https://www.oaklandca.gov/boards-commissions/public-ethics-commission/meetings>. I have also attached to this letter a copy of the staff report which was prepared for the PEC's discussion of this item and includes a more detailed explanation of the amendments requested in Section 2.45.040.

Thank you for the opportunity to provide the Commission's perspective on this proposal. If you have any questions or would like further information, please contact me at nheidorn@oaklandca.gov or 510.604.1002.

Sincerely,

Nicolas Heidorn

Nicolas Heidorn
Executive Director
Oakland Public Ethics Commission

CC:
Members of the City Council
City Administrator Jestin Johnson



Item 8 - Police Commission Proposed PEC Changes

Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: January 2, 2024
RE: Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

OVERVIEW

Legislation is currently pending before the City Council that would amend the enabling ordinances of the City's civilian bodies responsible for police oversight. These bodies are the Police Commission, the Community Police Review Agency (CPRA), and the Office of the Inspector General (OIG). Most of the proposed amendments do not affect the Public Ethics Commission (PEC) and will not be considered here. However, there are some proposed amendments that affect the PEC's enforcement authority. Therefore the proposed amendments are being submitted to the PEC for review and comment prior to any City Council vote on them.¹

This report provides the following, for purposes of soliciting the PEC's comment on the proposed amendments:

1. A review of the laws that currently exist re: PEC enforcement authority over police oversight matters;

¹ This is a requirement of Oakland City Charter section 603(h), which says that prior to enacting any amendments to laws that the PEC has the power to enforce, such amendments shall be submitted to the PEC for review and comment prior to passage of those amendments by the City Council.

PEC staff notes with concern that we were not notified of this pending legislation by the City Attorney's office or any other agency. PEC staff learned of the legislation through our own coincidental review of pending City Council agendas. We urge the City Attorney's office to institute a formal practice of notifying the PEC of any proposed legislation affecting our enforcement authority in conformity with the requirements of Charter section 603(h).

Item 8. Police Commission Proposed PECHMegas

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

2. A summary of the proposed amendments to those laws, and PEC's staff analysis of them;
3. A summary of some miscellaneous issues flagged by PEC staff; and
4. PEC staff's recommendation that the PEC vote to support the proposed legislation with some clarifying amendments.

Any comments submitted by the PEC in regard to the proposed legislation are not binding on the City Council.

PEC'S CURRENT ENFORCEMENT AUTHORITY OVER POLICE COMMISSION MATTERS

In addition to its general jurisdiction over City officials under the Government Ethics Act (which applies to the Police Commission, CPRA, and OIG officials), the PEC has enforcement authority over certain matters specific to the Police Commission. These are the following:

1. The PEC can investigate and prosecute the alleged failure of City departments (e.g. OPD) to provide files or records requested by the Police Commission or the OIG in order to carry out their legal functions (Oakland Municipal Code section 2.45.210); and
2. The PEC can investigate alleged misconduct by a Police Commissioner and refer its findings to the City Council for their decision as to an appropriate resolution, up to and including dismissal of that Commissioner (Oakland City Charter section 604(c)(10)).

Regarding allegations of Police Commissioner misconduct which the PEC is empowered to investigate (#2 above), the only definition of misconduct currently given is that Police Commissioners may be removed "for cause" (Oakland City Charter section 601(a)).²

² The same Charter section also states that a majority of members of the Police Commission may vote to remove a Police Commissioner for "conviction of a felony, conviction of a misdemeanor involving moral turpitude, a material act of dishonesty, fraud, or other act of moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular Commission meetings or five regular meetings in a calendar year except on account of illness or when absent by permission." It is unclear whether the PEC would have the ability to investigate allegations of those sorts, because the same Charter section only says that the PEC has jurisdiction to investigate "allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter" – which merely refers to the removal of a Commissioner "for cause" by the City Council (and not by the Police Commission itself).

Item 8. Police Commission Procedures BECHMegas

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

PEC staff had concerns about the current version of this law, even before it became aware of the pending amendments. For example, staff was unsure what type of conduct could be grounds for removing a Police Commissioner “for cause,” given that this is not more specifically defined in the relevant Charter section. And in terms of procedure, it was unclear whether staff could refer investigative findings directly to the City Council, or if those findings needed to be approved first by the PEC (potentially following an administrative hearing).

PROPOSED AMENDMENTS AFFECTING THE PEC’S ENFORCEMENT AUTHORITY

The proposed amendments to the Oakland Municipal Code would affect the PEC’s jurisdiction over police oversight matters in the following ways:

1. Because the proposed amendments create an entirely new chapter of the Oakland Municipal Code pertaining to the OIG (instead of the current law which incorporates the OIG’s enabling ordinances into the same chapter as the Police Commission’s enabling ordinances), the new chapter contains a provision stating that the PEC has the authority to investigate and prosecute the alleged failure of City departments (e.g. OPD) to provide files or records requested by the OIG in order to carry its legal functions. (Proposed OMC sections 2.45.210, 2.47.060) This is essentially copying the current provision regarding the PEC’s authority in these matters into the new chapter being created specifically for the OIG, and does not add or detract from the PEC’s existing authority in any substantive way.
2. It would require the Police Commission to provide an annual report to the PEC regarding Police Commissioners’ completion of workplace retaliation training. (Proposed OMC section 2.45.190(D)).
3. It gives concurrent jurisdiction over allegations of Police Commissioner misconduct to other independent investigators besides the PEC. (Proposed OMC section 2.45.040(D)).

PEC staff is supportive of the first two changes, and broadly supportive of the third, albeit with suggestions for important clarifications.

Regarding the third change (giving other agencies besides the PEC the authority to investigate alleged Police Commissioner misconduct), it is worth quoting the relevant portion of the proposed legislation:

Item 8. Police Commission Procedures

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

Commissioners shall act in accordance with all applicable laws and policies, including the Commission’s policies and all rules of procedure. Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator such as the City’s Office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council. (Proposed OMC section 2.45.040(D))

PEC staff supports this amendment to the extent that it clarifies the grounds upon which a Police Commissioner may be removed. We do note that this clarification also appears to expand the types of allegations that the PEC could be charged with investigating, which could expand our caseload.

Staff also believes it is desirable for allegations to be investigated by the agency with subject-matter expertise over the particular type of allegation being made. For example, it is entirely appropriate for EICRC to investigate alleged civil rights violations such as sexual or racial harassment (and it is already the PEC’s current practice to refer allegations of this sort to EICRC).

PEC staff has concerns with the legislation as-written, however, on the following grounds:

1. It does not provide any criteria for determining which type of allegations should be investigated by the PEC, by EICRC, or by any other “independent investigator”;
2. As under existing law, it still does not specify the procedure by which investigative findings will be referred to the City Council for resolution; and
3. It is unclear who can initiate complaints under this section.

All of these deficiencies may impact the fair and efficient investigation and resolution of allegations against Police Commissioners.

The need for criteria to select an investigative agency

The proposed legislation does not specify what types of allegations should be referred to the PEC versus the EICRC. More worryingly, PEC staff notes that the proposed legislation says allegations can be investigated by agencies “such as” the PEC or EICRC, which potentially opens the door to referring allegations to any agency, absent some criteria for making a referral.

Item 8. Police Commission Procedure BEC/Megas

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

This creates the possibility that complainants (or City officials referring a complaint) could “forum shop” for an investigative agency based upon criteria that are irrelevant or even prejudicial to the fair investigation and resolution of an allegation. For example, complainants or referring officials might be tempted to steer a complaint toward an agency or office that they believe is already sympathetic to the claim being made, sympathetic to the complainant, or hostile to the respondent. And even if complainants do not seek to “forum shop” in this way, the legislation potentially exposes investigators to accusations of this sort by respondents, because it does not contain any objective criteria by which an appropriate investigative agency will be selected.

PEC staff suggests amending the proposed language to something like the following (our added language is in red):

Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator **who shall be selected based upon their subject matter jurisdiction and expertise over the alleged type of violation**, such as the City’s office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission.

The need to clarify the procedure by which findings will be referred to Council

It would be advisable to clarify the procedure by which investigative findings shall be submitted to the City Council, as well as who can make such findings. Failure to do so could impact respondents’ due process rights and expose investigative findings to costly procedural attacks.

For example, under the PEC’s Complaint Procedures (which govern how we handle all cases or complaints), all of our investigative findings must be submitted to the PEC for a vote before they become conclusive. If we were to investigate an allegation under the proposed legislation, it is unclear if we would first need to submit our findings to the PEC for their approval (per our Complaint Procedures) before we could submit them to the City Council. Furthermore, if the respondent requests a hearing before the PEC instead of stipulating to our findings, this would essentially result in two hearings on the allegations – one before the PEC, and one before the City Council. (Similar issues might arise with other investigative agencies that are required to submit their findings to a hearing officer or board for approval.)

The current version of the legislation also does not specify the respondent’s procedural rights. For example, it is unclear if respondents need to be informed of the allegations or

Item 8. Police Commission Procedure BEC/Megas

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

given a chance to respond before they are referred to the City Council. It is also unclear whether respondents would be compelled to cooperate with an investigation, including by producing relevant documents or testimony; or if a state of limitations exists.

Clarifying the procedure to be followed would minimize the chances of a respondent raising procedural objections that can't be easily resolved by looking to the ordinance language. PEC staff recommends adding the following language (or something similar) if the intent of the legislation is for investigative findings to be referred directly to the City Council without being reviewed by the Commission (our proposed additions are in red):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, except that the City Council shall be the only body empowered to make final findings of fact and determine an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Alternatively, if the intent of the legislation is that the PEC should first adopt any findings made by PEC investigators, with the City Council merely determining an appropriate resolution based upon those factual findings, then PEC staff recommends adding the following language (or something similar) (our proposed additions are in red):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, including the procedure for making final findings of fact and determining whether any violation of this section occurred. All findings and conclusions made under this section shall be referred to the City Council for determination of an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Clarifying who can initiate a complaint

It would be helpful to clarify who can make a complaint alleging Police Commissioner misconduct for purposes of this section. For example, it is currently unclear if members of the public can submit complaints alleging Police Commissioner misconduct, or if this is limited to City staff or even just fellow Commissioners. It is also unclear if investigative agencies can initiate proactive complaints.

Item 8. Police Commission Procedures BEC/Megas

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

PEC staff recommends adding the following language (or something similar) to proposed legislation (our suggested additions are in red):

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.

SPECIAL CONSIDERATIONS

PEC staff makes the following miscellaneous observations:

1. It may be helpful to have a fast-track procedure for urgent matters, with the decision to fast-track a complaint being made by an independent agency with subject-matter expertise.
2. The City Attorney should confirm whether the current language of the City Charter (which cannot be amended without a ballot measure) precludes any other agency besides the PEC from investigating alleged Police Commissioner misconduct.

The need for a neutral fast-track procedure

In discussions between the PEC and the legislation's authors, it was noted that under current conditions, PEC investigations can sometimes take a year or longer. It was also noted that the PEC does have the ability to fast-track investigations if they are deemed to be urgent and time-sensitive, but that this depends upon the PEC's available staffing and its competing case priorities.

PEC staff shares this concern about the current length of many PEC investigations. We would note that this is primarily due to lack of adequate staff support, as well as to the complexity and sensitivity of many of the allegations we investigate (for which care must be taken not to arrive at unfounded conclusions).

Nevertheless, given the great public importance of the Police Commission's work, it is crucial that serious allegations of Police Commissioner misconduct be resolved quickly as well as thoroughly. For this reason, staff recommends including language in the proposed ordinance that would allow for an outside contractor to be hired to conduct urgent investigations, if the PEC or other appropriate city agency (e.g. EICRC) is unable to fast-track the investigation on its own.

However, we believe it is important that the determination as to what constitutes an urgent complaint, and the decision to refer it to an outside contractor for fast-tracking purposes, should be made by the agency initially handling the complaint (e.g. PEC or EICRC). This will

Item 8. Police Commission Procedure BECHMegas

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

minimize the potential for this fast-track procedure to be used or perceived as a loophole for forum-shopping or vexatious investigations.

We recommend adding the following language (or something similar) to the proposed legislation (our proposed additions are in red):

Where the allegations made in a complaint are deemed to be serious, and the investigation and resolution of that complaint is deemed to be time-sensitive, the independent investigator may refer the investigation of the complaint to an outside contractor if the independent investigator is unable to expedite the matter due to reasons of caseload, staffing, or similar constraints. The determination to make such a referral shall be made by the independent investigator, and its reasoning for making the referral shall be provided in writing to both the complainant and the respondent at the time the referral is made, unless the independent investigator determines that doing so would negatively impact the integrity of the investigation. The costs incurred in hiring an outside contractor shall be borne by the Police Commission.

Legal question as to whether the Charter precludes the legislation

PEC staff notes that the current language of the City Charter (to which any pending legislation must comport) may preclude the possibility of any agency besides the PEC investigating allegations of Police Commissioner misconduct that could result in the City Council removing that commissioner for cause. The relevant Charter section (604(c)(10)) reads as follows:

The Public Ethics Commission shall have the authority to investigate all allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter and to refer the findings to the City Council.

This section makes no reference to any agency besides the PEC being empowered to investigate allegations of Police Commissioner misconduct, and could therefore be read as giving the PEC sole authority over such matters. The City Attorney may want to assess whether the proposed amendment to OMC section 2.45.040(D) is consistent with this section of the Charter, specifically whether the investigations and remedies contemplated under proposed OMC section 2.45.040(D) are of the same type as those contemplated under City Charter 604(c)(10).

STAFF RECOMMENDATION

PEC staff recommends that the PEC vote to do all of the following:

1. Submit a written comment to the City Council that expresses the following, pursuant to City Charter section 603(h):
 - a. PEC recommends the adoption of proposed OMC sections 2.45.190(D), 2.45.210 and 2.47.060 as-written.
 - b. PEC recommends the adoption of proposed OMC section 2.45.040(D) with the following suggested amendments:

Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator who shall be selected based upon their subject matter jurisdiction and expertise over the alleged type of violation, such as the City's office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission.

The procedure for assessing and investigating a violation under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, except that the City Council shall be the only body empowered to make final findings of fact and determine an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Where the allegations made in a complaint are deemed to be serious, and the investigation and resolution of that complaint is deemed to be time-sensitive, the independent investigator may refer the investigation of the complaint to an outside contractor if the independent investigator is unable to expedite the matter due to reasons of caseload, staffing, or similar constraints. The determination to make such a referral shall be made by the independent investigator, and its reasoning for making the referral shall be provided in writing to both the complainant and the respondent at the time the referral is made, unless the independent investigator determines that doing so would negatively impact the

Item 8. Police Commission Proposed PECHMegas

Proposed amendments to Oakland Municipal Code chapters 2.45, 2.46 and 2.47 (regarding the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, respectively) as they pertain to the enforcement authority of the Public Ethics Commission

integrity of the investigation. The costs incurred in hiring an outside contractor shall be borne by the Police Commission.

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.

- c. PEC takes no position on the rest of the legislation because it does not affect the PEC's enforcement authority.
2. Attach this memo as background information to the comment recommended in #1 above.
3. Urge the City Attorney to produce a written opinion regarding whether City Charter section 604(c)(10) precludes any agency besides the PEC from investigating allegations that could result in the City Council removing a Police Commissioner for cause.

Attachments: Proposed Legislation; Public Safety Committee staff report.

Item 8 - Police Commission Procedural Changes

Proposed Revision to OMC section 2.45.040(D):

Complaints that a Commissioner has failed to abide any of the same will be investigated by an independent investigator with the City's Office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission (PEC) based upon subject matter jurisdiction over the alleged type of violation. The PEC will conduct an initial complaint assessment and determine whether EICRC or PEC should have subject matter jurisdiction to investigate the complaint. EICRC or PEC may elect to engage an outside contractor to complete the investigation after considering factors, including but not limited to, investigative timing or urgency, availability of resources, and subject matter expertise.

Should the complaint be referred to an outside contractor for assessment and investigation, the costs incurred in hiring that outside contractor shall be borne by the Police Commission.

The procedure for assessing and investigating a finding of a violation under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating other complaints under their jurisdiction, including the determination of final findings of fact and whether any violation of this section occurred. Any sustained findings of a violation of this section shall be referred to the City Council for determination of an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.