

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Special Commission Meeting  
Hearing Room 2  
Thursday, June 6, 2024, 1:00 p.m.; and  
Friday, June 7, 2024, 1:00 p.m.



**In-Person Meetings:** Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check [www.oaklandca.gov](http://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](mailto: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; Simon Russell, Enforcement Chief.

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](mailto:ethicscommission@oaklandca.gov) for assistance filing a complaint.



### **ACTION ITEM – ADMINISTRATIVE HEARING**

4. **In the matter of Manuel Altamirano Sr.; Case No. 20-04(a).** In 2020, Public Ethics Commission (Commission) staff received information alleging that a City Parking Control Technician was approached by a co-worker, Manuel Altamirano Sr. (Respondent), to retract/void two tickets that the technician issued for Use of a Counterfeit/Altered Disabled Placard and Use of Disabled Parking Space on Respondent’s wife’s car in exchange for money. The Commission will conduct an administrative hearing to determine whether Respondent violated the Government Ethics Act. At the conclusion of the hearing, the Commission may determine whether a violation has occurred and, if so, whether to impose any corrective, remedial or punitive actions. In the alternative, the Commission may direct the Executive Director or designee to prepare Findings of Fact and Conclusions for consideration at the next Commission meeting.

Attachments:

- A. [Hearing Notice](#)
- B. [Hearing Notice to Respondent](#)
- C. [Probable Cause Report](#)
- D. [Public Ethics Commission Mediation and Complaint Procedures](#)
- E. [Public Ethics Commission Enforcement Penalty Guidelines](#)

*Supplemental hearing materials will be uploaded to this agenda on June 3, 2024.*

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://us02web.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

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**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/kc69Y2Mnzf>**

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](mailto:ethicscommission@oaklandca.gov) or visit our webpage at [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec).

*Nicolas Heidorn*

5/30/24

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Approved for Distribution

Date

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

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Room 104  
Oakland, CA 94612



**NOTICE OF PUBLIC ETHICS COMMISSION**  
**ADMINISTRATIVE HEARING**

**In the matter of Manuel Altamirano Sr.; Case No. 20-04(a).** In 2020, Public Ethics Commission (Commission) staff received information alleging that a City Parking Control Technician was approached by a co-worker, Manuel Altamirano Sr., to retract/void two tickets that the technician issued for Use of a Counterfeit/Altered Disabled Placard and Use of Disabled Parking Space on Manuel Altamirano Sr.’s wife’s car in exchange for money. Commission staff completed its investigation and presented its findings to the Public Ethics Commission, which found probable cause that Manuel Altamirano Sr. violated the Government Ethics Act. The Commission directed staff to schedule the matter for an administrative hearing for a full adjudication of the facts and law. The hearing is scheduled as follows:

**First Hearing Date:** June 6, 2024  
**Time:** 1:00 p.m. – 6:00 p.m.  
**Location:** Oakland City Hall  
1 Frank H. Ogawa Plaza  
Hearing Room 2  
Oakland, CA 94612

**Second Hearing Date:** June 7, 2024  
**Time:** 1:00 p.m. – 6:00 p.m.  
**Location:** Oakland City Hall  
1 Frank H. Ogawa Plaza  
Hearing Room 2  
Oakland, CA 94612

The hearing will be public, and members of the public will have an opportunity to make public comments.

*Nicolas Heidorn*

5/29/2024

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Approved for Distribution

Date



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## Item 4A - Hearing Notice

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Room 104  
Oakland, CA 94612



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## Item 4A - Hearing Notice

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# Item 4B - Hearing Notice to Respondent

## CITY OF OAKLAND

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

### Public Ethics Commission

(510) 238-3593

(510) 238-3315 Fax

(510) 238-325 TDD



March 7, 2024

Andrew W. Shalaby

East Bay Law

[REDACTED]  
[REDACTED]

*On behalf of:*

Manuel Altamirano Sr.

[REDACTED]  
[REDACTED]

**RE: PEC Case No. 20-04(a): *In the matter of Manuel Altamirano Sr.***  
**Notice of Administrative Hearing Set for June 6, 2024, at 1:00 p.m. and June 7, 2024, at 1:00 p.m.**  
**Response required by March 20, 2024 to confirm hearing attendance.**

Dear Mr. Altamirano:

On April 5, 2021, the Public Ethics Commission (Commission) received an investigation summary provided by Commission staff regarding the following matter, as described in the April meeting agenda:

***In the Matter of Manuel Altamirano Sr. (Case No. 20-04(a)).*** On February 4, 2020, PEC staff received information alleging that a City Parking Control Technician was approached by a co-worker, Manuel Altamirano Sr., to retract/void two tickets that the technician issued for Use of a Counterfeit/Altered Disabled Placard and Use of Disabled Parking Space on Manuel Altamirano's wife's car in exchange for money. Commission staff completed its review and investigation of the matter and found sufficient evidence that Manuel Altamirano Sr. violated the Government Ethics Act. After reviewing the facts, relevant law and Enforcement Procedures, Staff recommends that the Commission find probable cause that Manuel Altamirano Sr. Violated the Government Ethics Act and schedule this matter for a hearing.

(A copy of the investigation summary was previously served on you and is attached to this letter.) At that meeting, the Commission decided to proceed with an administrative hearing on this matter before the full Commission. The hearing is now set for two dates: June 6, 2024 and June 7, 2024.



## Item 4B - Hearing Notice to Respondent

Thus, you are hereby notified that an administrative hearing will be held before the Public Ethics Commission **on June 6, 2024, at the hour of 1:00 p.m., at Oakland City Hall, 1 Frank H. Ogawa Plaza, Hearing Room 2, Oakland, CA 94612**, and **on June 7, 2024, at the hour of 1:00 p.m., at Oakland City Hall, 1 Frank H. Ogawa Plaza, Hearing Room 2, Oakland, CA 94612** upon the charges made in PEC Case No. 20-04(a).

**Your response to this letter is required by March 20, 2024**, either to request a new hearing date or confirm that you will be present for both the June 6, 2024, and June 7, 2024, hearing dates.

At the hearing, you may, but need not, be represented by counsel, and you may present any relevant evidence. Our understanding is that you are presently represented by Mr. Andrew Shalaby, with East Bay Law. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of documents by applying to the Commission on or before May 23, 2024. Notice of the administrative hearing will be posted publicly and filed with the Office of the City Clerk at least seven days before the hearing.

If you fail to respond to this notice to request rescheduling of the hearing by March 20, 2024, and you fail to appear for the June 6 and 7, 2024, hearing, this matter will proceed through a default process as outlined in the Commission's Complaint Procedures and a fine may be imposed by the Commission in your absence.

Attached is a copy of the Commission's Complaint Procedures for your convenience. These Complaint Procedures require that, if you have documents to submit to the hearing officer, you must also submit copies to the Executive Director and opposing parties, which includes the Commission's Enforcement Chief Simon Russell. For your convenience, you may submit a single copy to the Commission's main office through the address identified on this letter, and the Commission's Administrative Assistant will forward copies to the hearing officer or Commissioners, the Executive Director, and the Chief of Enforcement. Or you may email materials to [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov).

Please contact me directly if you have any questions about the hearing process or schedule. I can be reached at [REDACTED] or [nheidorn@oaklandca.gov](mailto:nheidorn@oaklandca.gov).

Sincerely,

*Nicolas Heidorn*

Nicolas Heidorn  
Executive Director

Enclosures: Investigation Summary; Public Ethics Commission Complaint Procedures

# Item 4C - Probable Cause Report



Michael MacDonald, -Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joseph Tuman

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie F. Johnson, Enforcement Chief  
DATE: February 26, 2021  
RE: Case No. 20-04 (a) and (b) ; In the matter of Manuel Altamirano Sr. and Andrew Altamirano prepared for the April 5, 2021, Public Ethics Commission Meeting

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## BACKGROUND:

On February 4, 2020, Employee Relations Manager Janelle Smith (Smith) reported to the Public Ethics Commission (PEC) Staff that Duvon Wright (Wright), a City Parking Control Technician was approached by a co-worker, Manuel Altamirano Sr. to retract/void two tickets that Wright issued for Use of a Counterfeit/Altered Disabled Placard and Use of Disabled Parking Space on Manuel Altamirano's wife's car in exchange for money.

Commission Staff completed its review and investigation of the matter and found that Manuel Altamirano Sr., among other things, made an offer to pay Wright and Yolanda Powe, both City of Oakland Public Servants, money ( or a thing of value) in exchange for the performance of an official act, in violation of the Oakland Government Ethics Act (GEA). For the reasons explained in this memorandum, Staff recommends that the Commission find probable cause that Manual Altamirano violated the Government Ethics Act and schedule a hearing before the Commission. There are insufficient facts to establish that Andrew Altamirano committed or assisted Altamirano Sr. in committing a violation of the Government Ethics Act, therefore, the allegations against him were dismissed.

## SUMMARY OF LAW:

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

**O.M.C. 2.25.060(A)(2) Misuse of City Position:** prohibits a Public Servant from using his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

**O.M.C. 2.25.060(A)(1) Misuse of City Resources:** prohibits a Public Servant from using or permitting others to use public resources for personal or non-City purposes not authorized by law.

## Item 4C - Probable Cause Report

**O.M.C. 2.25.080 Bribery:** No Public Servant can offer or make, and no Public Servant shall solicit or accept anything of value in exchange for the performance of any official act.

**O.M.C. 2.25.060(A)(2) Using Authority as a City Official to Induce or Coerce a Private Advantage:** A City employee may not use his or her position, or the power or authority of his or her position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City employee or any other person.<sup>1</sup>

### FACTUAL SUMMARY:

#### Overview

Manuel Altamirano Sr. (“Altamirano Sr.”) was hired by the City of Oakland on March 12, 2007, as a Parking Control Technician. Parking Control Technicians work for the Parking and Mobility Division of Parking Enforcement, which itself is a part of the City of Oakland Department of Transportation (“OakDOT”). Ira Christian was Altamirano Sr.’s direct supervisor. Yolonda Powe was a supervisor in the Mobility Division and she was Wright’s Supervisor. The Division Manager of Parking Enforcement was Michael Ford. At all relevant times, Altamirano Sr. worked as a Parking Control Technician in the OakDOT and had a personal and professional relationship with Wright and Yolonda Powe. Altamirano Sr. had two sons that also worked for the Parking and Mobility Division of OakDOT, Andrew Altamirano and Manuel Altamirano Jr.

Altamirano Sr. attempted to bribe another Parking Control Technician, Wright in exchange for voiding a pair of tickets that Wright had issued to Altamirano Sr.’s wife for misuse of a disabled parking placard. Wright did not accept the alleged bribe. Unsuccessful in his attempt to bribe Wright, he attempted to bribe Wright’s supervisor, Yolanda Powe, to void the tickets. Powe did not accept the alleged bribe. The informal complaint also alleged that Altamirano Sr. may have retaliated against Wright by damaging Wright’s car, and that the parking placard in question may have been City property that was stolen.

#### Summary of Facts:

Shortly after 1:30 p.m. on January 30, 2020, Wright was patrolling a City-owned parking lot located at 1719 Franklin. He spotted a black Porsche parked in a handicap spot, which had a handicap placard on the dashboard with the serial number on the bottom cut off. Wright issued two tickets to the vehicle -- one for misuse of a handicap placard, and one for a "blue zone" violation for parking in a handicapped spot. The fine amounts on the tickets were \$371, the parking spot violation and \$513, the misuse of placard violation, for a total of \$884.

Parking technicians do not have the ability to “run” license plates and see who owns a car. Therefore, Wright was unaware that the vehicle belonged to the wife of his co-worker Altamirano Sr.

That same day, shortly after Wright issued the tickets, Altamirano Sr. or his son Andrew called OakDOT dispatcher LaKeisha Montalvo and learned that it was Wright who issued the tickets. Wright then received a call around 2:00 p.m. from Montalvo. She told Wright that Altamirano Sr. was about to call

## Item 4C - Probable Cause Report

him because Wright had just issued handicap tickets to his wife's car. She also told Wright that she had already informed the Altamiranos that there was nothing she or Wright could do about the tickets.

Within minutes of Wright speaking to Montalvo, Andrew called Wright on his cell phone. Wright rejected the call because he needed a moment to collect himself. He then called Andrew right back; Altamirano Sr. was also on the line already when Andrew picked up.

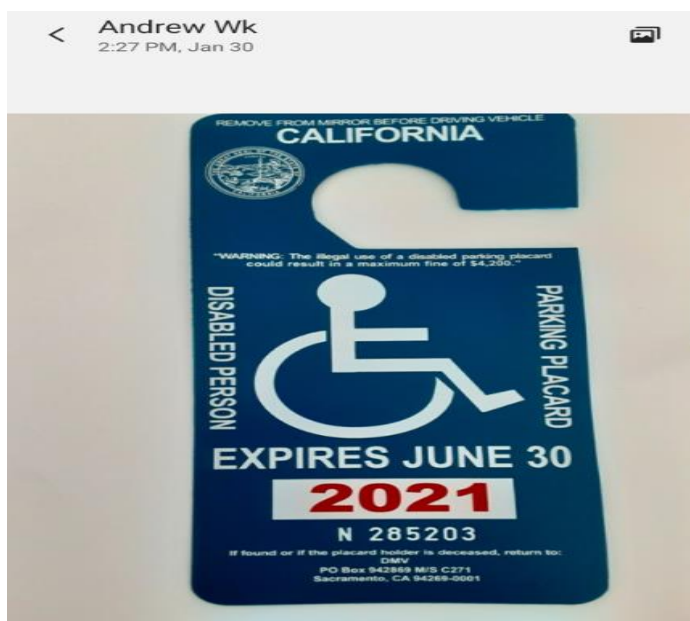
Andrew told Wright that he was aware that he had just issued his mother a handicapped ticket. Wright "played dumb" and asked where the ticket was issued. Altamirano Sr. took over the conversation and said Wright had just issued his wife a ticket in a garage. Cutting to the chase, Wright told Altamirano Sr., at this point that it was impossible to void the tickets because they were high-profile violations, and voiding them without explanation might then place Wright himself in trouble because "the numbers were clearly cut off on the placard. It was clearly a valid ticket"

Altamirano Sr. told Wright, "How about we send you a valid placard and you write the valid placard number on the ticket? And you write, driver arrived, or something to that nature." Wright knew that Altamirano Sr's plan wouldn't work, because Wright had already taken photos of the placard with the numbers cut off, and those photos were downloaded right into OakDOT's system when the tickets are issued. To avoid further pressure, Wright told Altamirano Sr. that he would look into the idea, in anticipation that the conversation would end there.

Altamirano told Wright, "let me just give you a hundred dollars to make these tickets go away." Wright understood that Altamirano Sr. was offering him money in exchange for voiding the tickets."

Wright told Altamirano Sr. that he could not accept any money, but that he would talk to his supervisor, Powe and have her look into the situation.

At 2:27 p.m., Andrew texted Wright the following photo and copies of the tickets Wright had issued:



## Item 4C - Probable Cause Report

The next day at work, Wright spoke to his supervisor, Powe, in her office at the beginning of their shift. Wright told Powe that he had issued a citation the previous day, and was then approached by someone (whom he did not name at first) about “trying to get it taken away.” Wright asked if there were anything that could be done about the tickets. Powe told Wright that the person would need to go through regular appeals process, known as PCAC. She then asked Wright who the person was, and he told her that it was Altamirano Sr., who had been asking on behalf of his wife who had received the tickets. Wright also told Powe that Altamirano Sr. and Andrew had initially called Montalvo about the matter, and that they had wanted Wright to write “void” on the tickets. Powe reiterated that Altamirano Sr. would need to go through the regular appeals process.

Later that morning, Wright was contacted by Andrew and Wright told him there was nothing he could do and relayed the process as Powe instructed. Afterward, Andrew did not text or otherwise communicate with him anything further about the matter after this point, nor did Altamirano Sr.

Later that day, Altamirano Sr. contacted Powe at her office. Altamirano Sr. came in on his day off without his parking uniform on. Powe was surprised that Altamirano Sr. came to speak with her, because she is not his direct supervisor. Altamirano Sr. has never worked for Powe and has no work-related reason to meet with her. Her office is located next to that of Ira Christian, who is Altamirano Sr’s supervisor.

Altamirano Sr. asked if Powe could “send up a request for the citations to be dismissed.” Powe told him that he would need to appeal the tickets per regular procedure. Altamirano Sr. responded that the tickets amounted to about \$800, and if Powe could arrange to have at least one of them voided then he could give her a couple hundred dollars or some cologne. Powe again told him no, and that he needed to contest the tickets per regular procedure. She asked Altamirano Sr. why he did not just go upstairs and contest them right away. Altamirano Sr. responded that he didn’t have time to do that because he needed to go move his car before he got another citation. Altamirano Sr. then explained that the placard in his wife’s car belonged to his mother, and that somehow his wife had gotten ahold of it and cut the bottom off. He told Powe that he did not know how his wife had gotten ahold of the placard or why she used it, but that \$800 was a lot of money to pay. He asked again if Powe would dismiss the tickets, and she said she would not.

Wright was informed by some of his co-workers that word had gotten out around the office about the situation. Wright also heard that Altamirano Sr. seemed to be upset about the situation. Later that day, Wright got off work, he went to retrieve his car from his usual parking location – the parking lot of the Pilgrim Res Baptist Church, located at 659 16th St (about a five-minute walk from 250 Frank Ogawa Plaza). After getting in his car, he heard glass and saw that his driver’s-side back window was broken. Nothing had been taken or tampered, leading him to believe it was not a break-in but someone just purposefully breaking his window. No other cars were damaged on the lot.

Wright believed Altamirano Sr. damaged his car in retaliation for not voiding the tickets. Altamirano Sr. knew where he parked because they had walked to Wright’s car together before. Altamirano Sr. does not park at that lot. Wright reported the incident to the police. Oakland Risk Management could not obtain the security camera footage of the lot that day because it was not functional.

Powe had walked with Wright to the parking lot and was present when Wright found the damage on his car. She encouraged him to photograph the damage with his phone, and to send the photos to her; she subsequently sent them to Division Manager Michael Ford.

## Item 4C - Probable Cause Report

Later that afternoon, Powe called Ira Christian, who is Altamirano Sr's supervisor. Christian recalled that Powe seemed "very upset" and related that Altamirano Sr. had come to her office that day to talk about some tickets that his wife had received from Wright.

The following Monday, Christian saw a series of e-mails about the matter, including one from Powe and one from Wright which included a lengthy statement recounting his encounter with Altamirano Sr. At that point, Christian did not intend to speak to Altamirano Sr. about the matter, because the e-mails had already gone to Division Manager Michael Ford, and Ford had already escalated the matter to his own superior and to Employee Relations.

However, on the following Tuesday, Altamirano Sr. reported to work and came into Christian's office shortly after 8am. Altamirano came into her office and closed the door behind him, which was unusual. Altamirano Sr. told Christian that he wanted to let her know of an incident that had happened, involving his wife receiving some disabled parking tickets from Wright for a cut-off placard. Altamirano Sr. told Christian that he had asked Wright if he could take the tickets back. Christian said she remained silent while Altamirano Sr. spoke. Altamirano Sr. told her that he had also approached Powe and asked her if she would take the tickets back, but she had told him to contest them. Altamirano Sr. then said that he had even offered to buy Powe some perfume or cologne. Altamirano Sr. told Christian that he had just wanted to get that off his chest. Christian told him thank you, and Altamirano Sr. left the office.

Altamirano Sr. was placed on leave shortly thereafter. Neither Wright nor Powe have spoken to him since. Christian and Ford informed Altamirano Sr. that he would not be returning to work until the investigation into this matter has been conducted.

Risk Management is investigating the incident involving Wright's car. The investigation is ongoing but on April 20, 2020, the director of Risk Management informed PEC Staff of the following:

Technically my department has not yet finished its investigation because we have not yet interviewed Mr. Altamirano, COVID-19 and the availability of Union Representation for Mr. Altamirano has made scheduling his interview difficult. However, generally we have found no evidence to support his having damaged the employee's window. Unless Mr. Altamirano admits to the act during his interview my department will conclude its investigation without substantiating any accusations.

No one has threatened Wright since the day his car was damaged, though he has felt uncomfortable at work. He did not drive to work for a couple of weeks after that. He worries about future retaliation. To Wright's knowledge, neither the Department nor the OPD have done anything about the matter. OakDOT has not conducted its own investigation into this matter; instead it is awaiting the results of investigations by OPD, Risk Management and Ethics.

Subsequently, Altamirano Sr. was laid off by the City during the Covid-19 shutdown. (His sons Andrew and Manuel Jr. were also laid off). According to Parking Enforcement Director Ford, this was the result of the City's general decision to lay off part-time contract workers and was not related to any disciplinary action from the Wright matter.

## Item 4C - Probable Cause Report

Regarding the torn-off placard that Wright originally found in Altamirano Sr.'s wife car: Wright suspects it may be City property. He explained that the Department has a computer system through which they can run placard numbers, and that parking techs can request a run on a placard number and confiscate placards from people if the number does not come back to that person's name. (Wright could not do this in the case of Altamirano Sr.'s wife, because the placard lacked a number). If a parking tech seizes a placard, they will bring it back to the office, cut the number off, and return the number to the DMV; the rest of the placard gets thrown away. Wright said it was possible that the Altamiranos were using one of those discarded placards (recovered from the trash); he told Staff it is "mighty strange" Altamirano Sr.'s wife would have such a cut-off placard.

### **ANALYSIS:**

The City of Oakland prohibits a Public Servant from using his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

On the facts presented, Altamirano Sr. used the advantage of his position with the City Parking Control office when he contacted his co-worker Wright and attempted to induce him, with a cash payment, to void a parking citation Wright issued. Further, Altamirano Sr. committed an additional separate act of Bribery when he offered Powe a thing of value in exchange for voiding the two parking tickets that Wright had issued.

In determining whether Altamirano violated Oakland's Ethics ordinance, Staff can establish, through witness testimony, that Altamirano knowingly misused his position and offered Bribes to two separate public servants.

An Oakland Public Servant is also prohibited from using or permitting others to use public resources for personal or non-City purposes not authorized by law. In this case, we were unable to recover the actual placard that was in the car window at the time Wright issued the citation. Thus, we are not able to confirm that the placard came from a used or confiscated placard that was in the possession of the City. Without the ability to compare and catalog the placard that was in the window, we cannot establish a Misuse of City Resources violation for this alleged act.

Although Wright did sustain damage to his vehicle, there is insufficient evidence to establish that Altamirano or his son damaged Wright's car in retaliation for failing to void the two parking citations. Regarding Andrew Altamirano, outside of making the initial telephone call to Wright where he subsequently turned over the call to his father, we do not have enough information that Andrew Altamirano actively participated in or aided and abetted Altamirano Sr. in the attempted bribery or misuse of position of Wright. Further, there is no evidence that Andrew Altamirano participated in or knew of the offer of the perfume Altamirano Sr. made to Powe.

### **VIOLATIONS:**

For the reasons stated above, staff submits that there is probable cause to find Manuel Altamirano Sr. violated the following violations of the Government Ethics Act.

#### **Count 1: Soliciting Bribes in Exchange for Performance of an Official Act**

## Item 4C - Probable Cause Report

On or about January 30, 2020, Respondent, Manuel Oscar Altamirano Sr., violated O.M.C.2.25.070(A) of the Oakland Government Ethics Act when he demanded, sought or offered, money or a thing of value as a bribe to influence a Parking Control Technician for the City of Oakland to perform an official act, for personal enjoyment and/or non-government purposes.

On January 30, 2020, Respondent violated Section 2.25.070 (A) of the Oakland Government Ethics Act by offering to pay at least \$100 to his co-worker Duvon Wright in exchange for a voiding a disabled parking violation ticket that Wright had issued on his wife's car.

### **Count 2: Soliciting Bribes in Exchange for Performance of an Official Act**

On or about January 30, 2020, Respondent, Manuel Oscar Altamirano Sr., violated O.M.C.2.25.070(A) of the Oakland Government Ethics Act when he demanded, sought or offered, money or a thing of value as a bribe to influence a Parking Control Technician for the City of Oakland to perform an official act, for personal enjoyment and/or non-government purposes.

On January 30, 2020, Respondent violated Section 2.25.070 (A) of the Oakland Government Ethics Act by offering to pay at least \$100 or purchase perfume for a City of Oakland OakDOT Supervisor Yolonda Powe in exchange for a voiding a disabled parking violation ticket that was issued to his wife.

### **Count 3: Misusing City position to induce/coerce others to provide him with economic gain**

On or between January 1, 2015, through December 31, 2016, Respondent, Manuel Altamirano Sr., contacted a fellow City of Oakland Parking Enforcement Officer, for the purpose of inducing or coercing that public servant into voiding two parking tickets that his wife received for unlawfully parking in a disability parking spot and using an expired or stolen disability placard.

By using his authority and connections as a City Parking Control Officer to induce or coerce his co-worker to provide him with an economic gain, Respondent violated Section 2.25.060 (A) (2). of the Oakland Government Ethics Act.

### **PENALTIES:**

GEA authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported or received (whichever is greater), per violation of the Oakland Government Ethics Act.

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

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;



## Item 4C - Probable Cause Report

5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

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

For serious violations, such as Bribery and violations that do not qualify for a warning letter or the streamlined stipulation program, the PEC will start a penalty amount with a “base-level” amount and then adjust the penalty amount based on mitigating and aggravating factors of the enforcement action.

### **Aggravating Factors**

Here, the circumstances of Altamirano's conduct establish several aggravating factors that should increase the severity of the penalty:

1. The Respondent is a public servant who abused his position of trust by attempting to induce or coerce his co-worker into voiding a parking ticket. His willful abuse of his position for personal gain puts his own interests above the public in a process that is designed to ensure fairness and restrict special treatment. Both the perception and reality of a City employee attempting to benefit from his employment with the City over the general public violates the public's trust in government, resulting in harm to the Oakland Community;
2. Altamirano engaged in several instances of deception in an attempt to void the issued parking tickets, including attempting to convince another public servant to misrepresent that a parking citation was issued. Most egregious was that he deliberately attempted to get another public servant to make a misrepresentation into the parking control data base representing that the owner of the car appeared in time when, in fact, she had not;
3. Altamirano's conduct was deliberate, including both instances where he attempted to bribe other public servants;
4. His conduct was part of a pattern;

### **Mitigating Factors**

Altamirano has no previous history of ethics violations in the City of Oakland. Altamirano is no longer an employee with the City of Oakland and his opportunity to violate the City ethics ordinances are diminished.

## Item 4C - Probable Cause Report

### **Bribery Violation:**

Count 1 and Count 2, Bribery, is the most serious violation of the Oakland Governmental Ethics Act. Pursuant to the Penalty Guideline, the base-level penalty amount for each Bribery count is \$5,000. The maximum penalty is \$5,000 or three times the unlawful amount for each bribery violation.

### **Misuse of City Position or Authority:**

Count 3 is a serious violation of the Oakland Governmental Ethics Act. Pursuant to the Penalty Guideline, the base-level penalty amount for Misuse of Position is \$5,000. The maximum penalty is \$5,000 or three times the unlawful amount.

### **RECOMMENDATION:**

Pursuant to the Public Ethics Commission Complaint Procedures Section IV (D), there is probable cause to believe Manuel Altamirano Sr. violated the Government Ethics Act. Staff does not have current contact information on the Respondent. As a result of the lack of contact, Staff recommends that the Commission schedule a hearing before the Public Ethics Commission. Enforcement will continue its attempts to contact the Respondent, and if successful, will refer the matter back to the Commission to resolve the matter short of a hearing, provided the Respondent seeks to resolve the matter by Stipulation.

There is insufficient evidence to establish that Andrew Altamirano independently or as an aider and abettor assisted Altamirano Sr. in the violations of the Government Ethics Act. Staff issued a dismissal letter in the Matter of Andrew Altamirano, Case No. 20-04(b).

# Item 4D - PEC Mediation and Complaint Procedures



## CITY OF OAKLAND

### PUBLIC ETHICS COMMISSION

#### MEDIATION AND COMPLAINT PROCEDURES

*Effective January 4, 2024*

## I. INTRODUCTION

The Public Ethics Commission (“Commission”) adopts the following procedures applicable to the Commission’s enforcement authority as granted by the Oakland City Charter and Oakland Municipal Code.

**A. Purpose.** These procedures are intended to ensure a fair, just, and timely process for the review, investigation, and hearing of complaints submitted to the Public Ethics Commission by doing the following:

1. Maintain objective standards for investigations and enforcement of the law,
2. Eliminate any improper influence in the investigation and resolution of complaints,
3. Provide a fair hearing for persons and entities accused of violations,
4. Ensure timely enforcement and complaint resolution, and
5. Coordinate with other governmental agencies to share enforcement responsibility in a manner most appropriate to ensure justice is served.

**B. Enforcement Authority.** These procedures are applicable to potential violations of the following laws:

1. The Oakland Campaign Reform Act;
2. The Oakland Government Ethics Act;
3. The Oakland Limited Public Financing Ordinance;
4. The Oakland Sunshine Ordinance;
5. The Oakland Lobbyist Registration Act;
6. The Oakland False Endorsement in Campaign Literature Act; and
7. Any other law or policy over which the Commission has jurisdiction or with which the Commission is charged with overseeing compliance.

## II. DEMAND FOR MEDIATION OF PUBLIC RECORD REQUEST UNDER THE OAKLAND SUNSHINE ORDINANCE

**A. Scope of Section.** This section applies only to a demand for mediation of an unfulfilled public records request under the Oakland Sunshine Ordinance. All other complaints are subject to the procedures in the subsequent sections of these Complaint Procedures, starting with Section III.

## Item 4D - PEC Mediation and Complaint Procedures

**B. Mediation.** A person whose public records request was denied, in whole or in part, by a local agency or department may demand mediation of their request.<sup>1</sup> To begin mediation, a requestor should complete the Commission's Mediation Request Form and submit it to Commission staff. Mediation is the first step in the process of submitting a matter to the Commission; mediation must be requested and completed before submission of a formal complaint to the Commission.

1. The Executive Director of the Commission, his or her designee who may be a Commissioner, or a mutually agreed upon volunteer mediator, may serve as mediator.<sup>2</sup>
2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable.<sup>3</sup>
3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendation is not binding on any party.<sup>4</sup>
4. Statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.<sup>5</sup>
5. At the conclusion of mediation, the mediator shall close the mediation and issue a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts the mediator would recommend to resolve the dispute. The report shall be filed with the Commission, provided to all parties, and made available for public inspection.

**C. Additional Remedies.** After the Commission closes a mediation:

1. The requestor may file a formal complaint requesting that the Commission investigate whether the local agency's or department's actions violated the Oakland Sunshine Ordinance. (See procedures beginning in Section III.). In that case, the mediator will offer to pre-fill a formal complaint form based on the information provided in the Mediation Request Form and provide a copy to the requestor.
2. If the requestor does not wish to submit a formal complaint, the mediator may submit an informal complaint. (See procedures beginning in Section III.)
3. No person may file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation.<sup>6</sup> Participation in mediation is satisfied when the complainant was responsive to the mediator and willing to take action to complete the mediation.

<sup>1</sup> OMC 2.20.270(C)(1).

<sup>2</sup> OMC 2.20.270(C)(1).

<sup>3</sup> OMC 2.20.270(C)(2).

<sup>4</sup> OMC 2.20.270(C)(3).

<sup>5</sup> OMC 2.20.270(C)(3).

<sup>6</sup> OMC 2.20.270(F).

## Item 4D - PEC Mediation and Complaint Procedures

4. In order to prevent statements obtained during mediation from being used in any related proceeding, the mediator will not participate in any subsequent investigation.<sup>7</sup>
5. This mediation process constitutes the administrative process for review and enforcement required by the Oakland Sunshine Ordinance.<sup>8</sup> Upon closure of mediation, the requestor may seek injunctive relief, declaratory relief, or a writ of mandate in any court of competent jurisdiction, whether or not the person also files a complaint with the Commission.<sup>9</sup> A requestor must complete the administrative process before seeking court action.<sup>10</sup>

### III. SUBMITTING A COMPLAINT

**A. Complaints.** A complaint alleging a violation of any law listed above may be submitted by any person, including a member of the public, any employee or official of the City of Oakland, or any member of the Commission.

**1. Formal Complaints.** A formal complaint must be submitted either 1) in writing on a complaint form as prescribed by Commission staff, or 2) in a manner designated as a method for submitting a formal complaint as determined by Commission staff. The forms and instructions will be available at the Commission's office, on the Commission website, and upon request to Commission staff.

**a. Contents of Formal Complaints.** A formal complaint must be signed or verified by the complainant under penalty of perjury. A formal complaint also must include the following information:

- i. name, address, and phone number of complainant,
- ii. name of the respondent, and any known addresses or phone numbers,
- iii. the facts of the alleged violation,
- iv. area of law allegedly violated, if known,
- v. names and addresses of any witnesses, if known, and
- vi. any documentation that might aid in the investigation of the alleged violation.

**b. Effect of Formal Complaints.**

- i. Upon receipt of a formal complaint, Commission staff will make a reasonable effort to acknowledge receipt of the complaint.
- ii. Commission staff shall process and review all formal complaints.

<sup>7</sup> OMC 2.20.270(C)(3).

<sup>8</sup> OMC 2.20.270(A)(3).

<sup>9</sup> OMC 2.20.270(B).

<sup>10</sup> OMC 2.270(B)(1).

## Item 4D - PEC Mediation and Complaint Procedures

2. **Informal Complaints.** An informal complaint may be submitted by telephone, in person, or in writing.
  - a. **Contents of Informal Complaints.** An informal complaint must include the name of the person or organization believed to have violated the law and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not meet the requirements of a formal complaint will be considered as an informal complaint.
  - b. **Effect of Informal Complaints.** Commission staff has no obligation, but retains discretion, to process and review informal complaints. In exercising discretion to process and review informal complaints, Commission staff should consider the nature of the alleged violation, whether the information contained in the complaint permits review and investigation of the alleged violations, and whether the complainant is justified in submitting the complaint in a form other than the proscribed form.
  - c. **Anonymous Complaints.** A complaint may be submitted without a name or without identifying the complainant, and these complaints will be considered anonymous complaints. An anonymous complaint shall be considered an informal complaint, whether submitted on a formal complaint form or in another form, and the processing of these complaints will be at the discretion of Commission staff.
3. **Commission-initiated Complaints.** Commission staff may initiate an investigation without conforming to any formal complaint requirements. A member of the Commission may submit a formal or informal complaint. A member of the Commission will be recused from all consideration, review, investigation, or hearing of any complaint submitted by the member, but may provide information or be called as a witness at any hearing on the complaint.
4. **Withdrawal of a Complaint.** If a complainant requests that his or her complaint be dismissed or withdrawn, the Commission may continue to review, investigate, and hold hearings or proceedings regarding the violations alleged in the complaint.
5. **Repetitive and Unmeritorious Complaints.** Any person who has submitted four (4) complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a “repetitive unmeritorious complainant.” Any subsequent complaint submitted by a “repetitive unmeritorious complainant” during the twelve month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. The Commission Chair’s decision shall be final and shall be reflected in the Commission’s public report on pending complaints, and Commission staff shall notify the complainant of the determination. If the Commission Chair determines that there are grounds to investigate any subsequent complaint, the complaint shall be forwarded to Commission staff to receive and process the complaint.

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**6. Ex-Parte Communications.** Once a complaint is submitted, no Commissioner shall engage in oral or written communications, outside a hearing, Commission meeting, or other meeting that provides all relevant parties with proper notice and opportunity to be heard regarding the substance of the complaint with the respondent, complainant, witnesses, or any person communicating on behalf of the respondent or complainant, unless the communication is necessary to investigate, remediate, enforce or enter into a stipulated order regarding the alleged violation.

**B. Preliminary Review of Complaints.** Upon receipt of a formal complaint, Commission staff shall conduct a preliminary review of the complaint to determine whether to open an investigation. The preliminary inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the person or entity accused of a violation, and any other reasonable inquiry to determine whether a full investigation is warranted.

### IV. PRELIMINARY REVIEW OF COMPLAINTS

**A. Intake Resolution.** After conducting a preliminary review of a complaint, Commission staff shall decide whether to open a case for investigation, resolve the complaint by way of dismissal, or recommend closure. Commission staff shall notify the complainant of the result of the preliminary review in writing.

**1. Dismissal.** Commission staff may dismiss a complaint if the allegations do not warrant further action for reasons that may include, but are not limited to the following:

- a. The allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction.
- b. The complaint does not include enough information to support further investigation.
- c. The allegations in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
- d. The complaint should be referred to another governmental or law enforcement agency better suited to address the issue.

**2. Closure.** Commission staff may recommend closure of a complaint if it falls within the Commission's jurisdiction but there is reason to support closure. The Commission shall review Commission staff's determination at a subsequent Commission meeting and must take formal action in order to close the complaint. Commission staff's recommendation to close the complaint may include one or more of the following actions:

- a. Close with no action
- b. Close with advisory letter
- c. Close with warning letter

## Item 4D - PEC Mediation and Complaint Procedures

- d. Close with additional Commission action, such as holding an informational hearing or providing follow-up diversion requirements, training or communications on a matter
  3. **Referral.** Commission staff may refer a complaint to the appropriate enforcement authority instead of or in addition to dismissal, closure, or the opening of an investigation.
  4. **Complaints Against the Public Ethics Commission.** Within 90 days of receiving a complaint against the Commission, Commission members, or Commission staff, Commission staff will reply to the complainant with the name and address of the entities that have concurrent or overlapping jurisdiction and inform the complainant that they have the right to file a civil action. In most instances, the Commission will close the complaint. However, where a single respondent Commissioner or staff can be walled off entirely from the investigation and approval process, the Commission may continue adjudicating the complaint, in addition to making a referral to an alternate entity.
- B. Report to the Commission.** Commission staff shall notify the Commission of all dismissals by reporting the information, including the action taken and the reason for dismissal, on the next enforcement program report posted in advance of the Commission's subsequent Commission meeting.
- C. Notification to Respondent.** After the preliminary review of the complaint, if Commission staff dismisses the complaint, then Commission staff may notify the respondent of the receipt and dismissal of the complaint. If Commission staff recommends closure or the opening of an investigation, then Commission staff shall notify the respondent of the complaint and the issue(s) to be investigated in writing.
- D. Notification to Complainant.** After the preliminary review of the complaint, Commission staff shall notify the complainant of its decision to dismiss, close, make a referral, or open an investigation. If Commission staff opens an investigation, Commission staff shall also provide to the complainant a copy of the notice to the respondent. The complainant shall have 10 days to respond to Commission staff concerning the scope of the investigation, and Commission staff may alter the scope of the investigation based on feedback from the complainant.
- E. Final Closure.** A dismissal, after notification to the Commission pursuant to subsection IV.B, or a closure of a complaint is a final decision and represents closure of the administrative process for that complaint.

### V. INVESTIGATION OF COMPLAINTS

- A. Investigation.** If Commission staff determines that the allegations in the complaint warrant further inquiry, Commission staff shall open an investigation regarding the violations alleged in the complaint. An investigation may include, but not be limited to, interviews of the complainant, respondent, and any witnesses, and the review of documentary and other evidence. Commission staff, and anyone conducting interviews



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on behalf of Commission staff, may administer oaths and affirmations for interviewees to tell the truth under penalty of perjury.

- B. Subpoenas During Investigation.** The Executive Director may issue a subpoena on behalf of the Commission if he or she finds, based on the information submitted to him or her in writing, that the information requested in the subpoena is material to a specific matter under investigation and is under the control of the person or entity being subpoenaed. The Executive Director shall report each subpoena he or she issues on behalf of the Commission to the Commission Chair within 7 days of issuing the subpoena.
- C. Contacting the Respondent.** If Commission staff's attempt to contact a person or entity accused of a violation is unsuccessful, Commission staff will pursue other methods of contact, including formal methods, such as certified mail, and informal methods, such as social media channels or neighborhood contacts, as appropriate.
- D. Audit Program.** Commission staff may initiate routine investigations or audits as part of its enforcement program. Such investigations may use a streamlined review process to determine compliance with City ordinances and need not include a full investigation or written summary. Commission staff may create standard forms for summarizing and communicating the audit findings.

### VI. RESOLUTION OF COMPLAINTS

- A. Probable Cause Report.** After an investigation, and, in the absence of a stipulated agreement or other recommended resolution, Commission staff shall prepare a written report that includes a summary of the evidence gathered and a recommendation of whether there is probable cause to believe that a violation occurred. The probable cause report shall be submitted to the Commission for consideration.
- B. Notification.** At the time that Commission staff submits a probable cause report to the Commission for consideration (per the advanced-notice requirements for the public meeting), Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.
- C. Commission Review.** Upon review of Commission staff's written report and recommendation of whether there is probable cause to believe that a violation occurred, the Commission may decide to close the matter, request further investigation, and/or request that Commission staff seek a stipulated settlement.. In addition, if the Commission has determined that probable cause exists to believe that a respondent violated a law listed in Section I.B, the Commission may refer the matter to an administrative hearing or, for probable violations of the Oakland Sunshine Ordinance, may decide to file a court proceeding seeking injunctive relief, declaratory relief, or writ of mandate.<sup>11</sup> The Commission may issue a warning letter, advisory letter, or diversion agreement at any phase of the Commission's review, in conjunction with another remedy or as a stand-alone resolution.

<sup>11</sup> OMC 2.20.270(B).

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**D. Stipulated Settlement.** At any time after a complaint has been submitted, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulated agreement, followed by Commission approval of the decision. The Commission's Enforcement Penalty Guidelines outline the principles that guide Commission staff in determining fine amounts to pursue via stipulations.

1. **Stipulation.** Any proposed stipulation shall explicitly state that:
  - a. The proposed stipulation is subject to approval by the Commission;
  - b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
  - c. The respondent understands and acknowledges that any stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
  - d. The respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and,
  - e. In the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.
2. **Commission Decision and Order.** The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority. Stipulated agreements must be approved by the Commission and, upon approval, be announced publicly.
3. **Concurrent Referral to Commission.** Commission staff may submit a probable cause report to the Commission for the Commission's consideration of other methods of resolution, including referring the matter to an administrative hearing, concurrently or in lieu of Commission staff's pursuit of a stipulated settlement. Commission staff may submit a probable cause report to the Commission for concurrent consideration, especially where doing so may result in more timely resolution of the matter.

**E. Diversion Agreement.** At any time after a complaint has been submitted or initiated by Commission staff, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a diversion agreement, followed by Commission approval of the agreement. If the diversion agreement is being entered into under a streamlined settlement, Commission approval is only necessary as specified in Section VI(H).

1. **Agreement.** Any proposed diversion agreement shall explicitly state that:
  - a. The proposed diversion is subject to approval by the Commission, unless the diversion agreement is being entered into by way of a

## Item 4D - PEC Mediation and Complaint Procedures

streamlined settlement under authority of the Executive Director pursuant to Section VI(H).

- b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
- c. The respondent understands and acknowledges that any diversion agreement is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- d. The respondent agrees that in the event the Commission refuses to approve the proposed diversion agreement, it shall become null and void; and,
- e. In the event the Commission rejects the proposed diversion agreement and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the diversion agreement.

2. **Commission Decision and Order.** The diversion agreement shall set forth the pertinent facts and may include an agreement as to the imposition of a fee, training requirement, and/or anything that facilitates the Commission's goals and that is agreed to by the respondent. Diversion agreements must be approved by the Commission and, upon approval, be announced publicly.

**F. Default Decision.** When a Respondent has failed to respond to or otherwise defend the complaint, or when a respondent waives his or her right to a hearing, the PEC may make a final decision against the respondent through the following default process:

1. Upon a finding of probable cause by the Commission, Commission staff shall prepare a written summary report, which shall include the charges, a summary of the evidence to support the charges, and an explanation of the default process, and shall serve the complaint on the Respondent via personal or substitute service.
2. A Respondent has 30 days from the date he or she is served with the staff summary report to file a written response. The PEC may still accept a response from the respondent after 30 days, if Commission staff has not yet filed a written request for default with the Commission.
3. After the 30 day response period has passed, Commission staff shall submit the summary report and a request for default decision to the Commission for review and decision at a subsequent Commission meeting. The request for default shall include an affidavit signed by Commission staff that attests to and includes the following:
  - a. Commission staff had attempted to notify the respondent on multiple prior occasions as specified, or the respondent has waived his or her right to a hearing;

## Item 4D - PEC Mediation and Complaint Procedures

- b. The Commission made a determination of probable cause on a date specified;
  - c. Commission staff served the Respondent with notice of the complaint and pending default process; and
  - d. the documentation explains how Commission staff has met all of the default process requirements.
4. The request for default submitted to the Commission shall include the range of enforcement options available to the Commission, and it may include a recommendation by Commission staff for corrective, remedial or punitive actions, such as penalties and fines.
  5. The Commission shall determine whether to adopt, amend, or reject the findings and conclusions in Commission staff's summary report and recommendation, if any, including making a decision regarding corrective, remedial or punitive actions (penalties and fines) to impose on the Respondent in accordance with the adopted findings and consistent with the Commission's authority. The Commission's decision following approval of a default shall be final and shall constitute closure of the administrative process with respect to the complaint.
  6. The Commission can set aside a default decision upon written request of a Respondent, if the Respondent can show cause as to why the default decision should not have been approved.

**G. Court Proceeding.** After the Commission has reviewed a probable cause report from Commission staff concerning an alleged violation of the Oakland Sunshine Ordinance, the Commission may decide to initiate court proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to obtain a Respondent's compliance with the Oakland Sunshine Ordinance.<sup>12</sup>

**H. Streamlined Settlement.** As an alternative to the procedures described in the rest of this Section VI, Commission staff may enter into a streamlined settlement agreement for low-level types of violations specifically identified in the PEC's Penalty Guidelines as being eligible for streamlined resolution.

1. The Executive Director may approve and enter into a streamlined settlement agreement on their own authority, without the necessity of a vote by the Commission, except for streamlined settlement agreements with the following types of respondents:
  - i. an elected City official or Oakland Unified School District Board of Education member;
  - ii. the Chief of Staff of an elected City official;
  - iii. a City Department Director; or

<sup>12</sup> OMC 2.20.270(B), OMC 2.24.020(E).

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- iv. for violations of OCRA, a controlling candidate and/or their controlled committee, its treasurers, and its officers, where that committee has either received contributions or made expenditures of more than \$50,000 in the twelve (12) months prior to the violation.
2. For any streamlined settlement agreement entered into under authority of the Executive Director, Commission staff shall inform the Commission on the next enforcement program report posted in advance of the Commission's subsequent Commission meeting.
3. Streamlined settlement agreements may take the form of a diversion agreement in lieu of, or in addition to, any penalties or late fees imposed.
4. Any streamlined settlement agreement can only be subsequently amended or rescinded by the Executive Director and for substantial non-compliance with the terms of the agreement, or other extraordinary circumstances frustrating the purpose of the agreement.

### VII. ADMINISTRATIVE HEARING PROCESS

**A. Selection of Hearing Panel or Officer.** If the Commission decides to schedule a hearing pursuant to Section VI(B)(3), the Commission shall decide whether to sit as a hearing panel or to delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing officer.

1. If the Commission decides that the full Commission will not sit as a hearing panel, the Commission shall appoint the hearing officer(s).
2. If the Commission elects to use a hearing officer(s) provided by an outside entity, that entity shall appoint the hearing officer(s).
3. The selected hearing officer shall disclose any actual or potential conflicts of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, he or she might have with the City of Oakland, the parties, or a Commissioner, in which case, the appointing authority shall consider whether to appoint an alternative hearing officer(s).

**B. Notice of Administrative Hearing.** The Executive Director shall provide notice of the date, time and location of the hearing to the respondent at least 30 days prior to the date of the hearing. A copy of the notice shall be posted publicly, sent to the complainant, and filed with the Office of the City Clerk at least seven days before the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a hearing will be held before the Ethics Commission [or name of the hearing officer, entity, or assigned Commissioner(s)] on \_\_\_\_ (date) at the hour of \_\_\_\_, at \_\_\_\_ (location), upon the charges made in Complaint No. \_\_\_\_\_. At the hearing, you may, but need not, be represented by counsel, and you may present any relevant evidence. You may request the issuance of

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subpoenas to compel the attendance of witnesses and the production of documents by applying to the Commission on or before \_\_\_\_\_.”

**C. Subpoenas of Persons or Documents.** Any party requesting subpoenas to bring people or documents to the hearing shall notify the Executive Director no later than 14 days before the hearing date. The request shall include a written statement specifying the name and address of the witnesses, and the reason for their testimony.

1. If the request is for a document subpoena, it shall be accompanied by a statement which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents.
2. Subpoenas may be issued by the Executive Director, or the hearing officer upon the above showing of good cause.
3. The party requesting the subpoena shall be responsible for its service on the appropriate persons and shall provide a copy to all opposing parties.

**D. Resolution of Preliminary Matters.** No later than seven days before the hearing date, any party may submit in writing preliminary matters for determination by the hearing officer or entity. If the complaint is to be heard by the full Commission, or by one or more Commissioners, preliminary matters shall be determined by the Commission Chair or his or her designee. The party submitting any preliminary matter for determination shall demonstrate that an attempt to resolve the preliminary matter was made with any opposing party and that copies of the request were delivered to any opposing party. The opposing party shall be allowed to address a request to hear a preliminary matter. The hearing officer or the Commission Chair may determine preliminary matters upon submission of the written requests and without an oral hearing. Preliminary matters may include, but are not limited to, the following:

1. Whether multiple claims within a single complaint may be scheduled separately;
2. Whether similar complaints filed by separate individuals or entities may be joined;
3. Scheduling of witnesses;
4. Production of documents and issuance of subpoenas;
5. Scheduling of pre-hearing conferences;
6. Disqualification of any member of the Commission from participation in the hearing on the merits; and
7. Any other matters not related to the truth or falsity of the factual allegations in the accusation.

**E. Conduct of Hearings; Submission of Written Materials.** All materials to be considered at a hearing and not otherwise subpoenaed shall be submitted to the person(s) conducting the hearing, the Executive Director, and to all opposing parties

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no later than five days prior to the hearing. A written argument need not be submitted. Any written argument submitted shall not exceed 15 pages except upon prior approval of the person(s) conducting the hearing. When prior approval has not been granted, the person(s) conducting the hearing shall disregard all pages of a written argument beyond the 15<sup>th</sup> page.

**F. Conduct of Hearings; Presentation of Testimony; Rules of Evidence.** The hearing on the complaint shall be open to the public, provided that witnesses may be excluded at the discretion of the person(s) conducting the hearing. The person(s) conducting the hearing (Hearing Officer) shall brief the parties at the beginning of the hearing on applicable procedures. The Hearing Officer will conduct a fair and impartial hearing on the record, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order.

1. The hearing shall not be subject to the formal rules of evidence. Documentation and written testimony not in compliance with subsection (E) above may be excluded at the discretion of the person(s) conducting the hearing.
2. The Commission, and any individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
3. Oral and written testimony shall be received under penalty of perjury. Although the proceedings are informal, testimony shall be brief and confined to the issues. Oral testimony may be excluded if duplicative, irrelevant, or disruptive to the conduct of the meeting. The person(s) conducting the hearing may ask questions of both sides to further clarify facts and viewpoints. Any party may bring a representative and/or interpreter to speak on his or her behalf, but the person(s) conducting the hearing retains the authority to put questions to any party.
4. If the hearing is conducted by a Commissioner, the following procedure applies: the Commission staff will be the first to call witnesses and present evidence of the violation. After the Commission staff presents its case, the Respondent will have the opportunity to call witnesses, present evidence and present argument. After both sides have presented their case, the hearing officer will open the hearing to take public testimony/ statements/comment. After public statements, the Respondent and Commission staff or it's legal counsel will have an opportunity to present rebuttal information and present an oral summation of the case.
5. Special accommodations for disabled persons may be made by providing the Executive Director 72 hours advanced notice.
6. While there is no right to cross-examination, the parties shall be allowed the opportunity for rebuttal, and the parties, through the person(s) conducting the hearing, may ask questions of any witness. Except for raising preliminary matters as provided by these procedures, no party may communicate with any Commissioner or hearing officer regarding a complaint outside of the formal public hearing.

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7. If the Commission refers a matter to the California Office of Administrative Law, or another administrative law judge or entity, that entity's administrative process rules shall apply, with these complaint procedures providing guidance where there are gaps or questions in that administrative process.
  8. If the respondent fails to appear at a properly noticed hearing, Commission staff may proceed with presenting the Commission's case or may request to submit a written summary in lieu of a verbal presentation. The hearing officer may proceed with issuing findings and recommendations based solely on the information received from Commission staff.
- G. Record of Proceedings.** Proceedings shall be recorded on audio and/or videotape and made available upon request. A party electing to have a stenographer present to record the proceedings may do so upon providing at least three full business days' notice to Commission staff, and at that party's own expense.
- H. Continuation and Postponement of Hearings.** A postponement may be granted prior to the hearing only upon written request to the Commission Chair or hearing officer. At the hearing a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.
- I. Action upon Conclusion of Hearing.** Upon hearing all evidence submitted at the hearing and any arguments by the parties or comments by the public, the hearing shall be closed.
1. If the complaint was heard by a hearing officer, single member of the Commission or Commission panel, he, she or they may take the matter under submission for a period of no more than 14 days before delivering to the Executive Director proposed Findings of Fact and Conclusions. Any deliberations by two or more Commissioners shall be done publicly. Upon receipt, the Executive Director shall deliver a copy of the proposed Findings of Fact and Conclusions to all parties.
    - a. No later than seven days after delivery, any party may submit a written request to the Commission Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint. The Commission Chair may accept the proposed Findings of Fact and Conclusions as correct unless the party making the request for re-hearing demonstrates that: 1) the proposed Findings of Fact contain one or more material error(s) of fact that necessarily affects one or more Conclusions, or 2) the Conclusions are not supported by substantial evidence.
    - b. The party making the request shall provide a complete copy of the written request to all other parties by the time the written request is submitted to the Commission Chair. Any other party shall have seven days from receipt of the written request to submit written opposition or support to the Commission Chair.
    - c. If the Commission Chair determines there are no grounds to rehear all or portions of the complaint, he or she shall notify the Executive



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Director, who shall place the proposed Findings of Fact and Conclusions on the agenda for approval at the next regular Commission meeting or any special meeting called by the Commission Chair.

- d. If the Commission Chair determines that grounds exist to rehear all or portions of the complaint, the Commission Chair may specify what facts need to be established or reviewed, the form and under what circumstances any new evidence shall be received, and a timetable for re-submitting any revised Findings of Fact and Conclusions to the Executive Director.
  - e. The decision of the Commission Chair on any request for re-hearing shall be final.
2. After notifying all parties and the complainant of the date, time, and location of its meeting, the Commission shall either adopt the proposed Findings of Fact and Conclusions in their entirety or adopt the Findings of Fact and reach additional or different conclusions consistent with the Findings of Fact. The Commission has discretion to reach additional or different conclusions consistent with the Findings of Fact, including the full range of options from dismissal, with or without a warning letter, through assessment of maximum penalties, including other remedial measures.
  3. If the complaint was heard by the full Commission, the Commission shall decide, upon conclusion of the hearing and by an affirmative vote of a majority of Commissioners, whether a violation has occurred. The Commission may, in the alternative, direct the Executive Director or designee to prepare a Findings of Fact and Conclusions for consideration at the next Commission meeting.
  4. The Commission shall determine that a violation of City law over which the Commission has jurisdiction has occurred only if the weight of the evidence shows that it was more likely than not that a violation has occurred.
  5. Any Findings of Facts and Conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions (penalties and fines) in accordance with the adopted findings and consistent with Commission authority. The Commission will make its findings and recommendations public.

**J. Decision and Order:** The Commission's decision and order on a complaint following a hearing or default proceeding shall be final and shall constitute closure of the administrative process for that complaint.

### VIII. COURT REVIEW

Upon conclusion of the administrative process – whether via default or an administrative hearing, any party contesting a decision of the Commission may file suit for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction, within ninety days as provided by law.

### IX. COMMISSIONER RECUSAL

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A Commissioner or a member of the Commission Staff shall recuse himself or herself from participating in the resolution of any complaint in which he or she has a conflict of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, or in which he or she, by reason of interest or prejudice, cannot perform his or her duties in an impartial and unbiased manner.

### **X. REPEAL, SEVERABILITY, CONFLICT, AND COMMISSION AUTHORITY**

- A. Repeal.** Upon adoption of these procedures, all prior procedures regulating the administration of complaints filed with the Commission including are hereby repealed.
- B. Severability.** If the legislature, court or other entity determines that any portion of these rules is invalid, the other remaining rules shall not be affected and will continue in effect.
- C. Conflict with Law.** To the extent a law or regulation set forth above contains specific procedures or rules that conflict with these General Complaint Procedures, the more specific provisions provided in the laws or regulations set forth above shall control.
- D. Commission Authority.** Nothing in these complaint procedures limits the Commission's ability to review, refer, make recommendations, or take other actions regarding an issue that does not fall within its enforcement authority, but which may fall within its general authority to ensure fairness, openness, honesty, and integrity in City government.

## Public Ethics Commission

### ENFORCEMENT PENALTY GUIDELINES

The Public Ethics Commission (PEC) is authorized by the Charter of the City of Oakland (City Charter) to impose penalties, remedies, and fines as provided for by local ordinances that are within the PEC's jurisdiction, including the Government Ethics Act, Oakland Campaign Reform Act and Lobbyist Registration Act. This Guideline includes general principles and factors to consider in determining a penalty, and a tiered approach to penalties based on the seriousness of the violation. This Guideline is advisory only, and does not limit the PEC from using discretion to deviate from the guidance when atypical or egregious circumstances exist.

The penalties set forth in this Guideline are separate and apart from any late filing fees that may be owed by a respondent.

#### Guiding Principles for Enforcement

The overarching goal of the PEC's enforcement activity is to obtain compliance with rules under its responsibility, and provide timely, fair and consistent enforcement that is proportional to the seriousness of the violation. The following principles guide the PEC's compliance activities as part of an effective enforcement program:

- 1. Timeliness** – For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed. Compliance should be timely to provide the public with required disclosures, and to mitigate harm caused by a violation(s). Enforcement resolutions should be viewed through this lens to craft a range of penalties and enforcement actions that drive timely compliance and mitigate harm. For campaign violations, this should mean swift resolution and correction of violations, especially before an election. Timely public disclosure is crucial in these cases, as the value of required pre-election disclosure declines significantly after the election. Similarly, PEC enforcement of violations should also be pursued in a diligent and timely manner as allowed by PEC staffing/priorities.
- 2. Fairness** – The core of the PEC's work is fairness to ensure that enforcement actions are even-handed and consistent, as well as to ensure due process for those accused of violating the law. The PEC frequently investigates and administratively prosecutes public officials, and it is essential that politics and rivalries not become part of such investigations. The PEC shall track penalty amounts over time and articulate in each enforcement action its consistency with previous actions. This allows the public, respondents, and future PEC Commissioners to see the articulated rationale for the decision and the reasons for any variation. Additionally, effective enforcement of violations leads to fairness in government, as timely enforcement of government ethics rules also shows respect and fairness to those who follow the rules.
- 3. Focus on Serious Violations and Repeat Offenders** – The focus of the PEC's work – both in terms of resources spent as well as the level of penalty imposed – should reflect the seriousness of each violation so that penalties urge compliance, while preserving PEC resources for major

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violations that may occur. Minor violations will not be ignored, but proportionality in penalties and an ability to take on more significant cases is important to creating a culture of compliance. Violations will not be considered minor where a pattern of violations exists.

- 4. Education and Support** – To fully embrace the goals of its enforcement responsibilities, the PEC has implemented a full range of services for the purpose of educating and supporting the regulated community, including: voluntary and mandatory training sessions; published materials and guidebooks explaining rules and requirements; on-line access to rules, forms, guidebooks and advice; access to staff members in person, via email and by phone for guidance and assistance; proactive monitoring, communication and reminders regarding filing deadlines; and electronic filing platform for most filing requirements. These services are intended to ensure that the regulated community is advised of, and aware of, filing and reporting requirements, and to ensure full and timely compliance with various regulatory requirements. Given the array of services, including the availability of PEC staff for questions, claims of ignorance regarding the obligations of the regulated community will not be given much weight, if any, in an enforcement action.

### Specific Factors to Consider in Determining a Penalty

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

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

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

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## Penalty Options Based on Levels

To obtain compliance with the law and provide timely and fair enforcement that is proportional to the seriousness of the violation, the PEC institutes a three-tiered approach that utilizes warning letters, streamlined stipulations, and more severe penalties based on the level of public harm and the articulated aggravating and mitigating circumstances. This approach aims to provide consistency across similar violations and an expedited way to handle cases according to the level of seriousness so that staff resources are allocated according to the level and significance of the violation.

- 1. Warning Letter:** A warning letter is an enforcement option for any minor violations without any aggravating circumstances. It is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of a potential or proven low-level violation. This allows for respondents to be educated about the rules and provides the PEC with a historical list of prior violations for future consideration in enforcement cases. A warning letter may be used to address a violation where the evidence demonstrates that a monetary penalty is not justified, or in the interest of justice. A warning letter will not be available where the respondent has had a prior violation of the same or similar type.
  
- 2. Streamline Stipulation:** The streamlined stipulation program takes common low-level violations, such as the non-filing of a campaign statement, and provides a scaled-down stipulation document and set penalties. These more common cases can be quickly handled with a penalty commensurate to the violation, which helps preserve staff time to focus on more serious cases. The streamlined stipulation program is an option (but is not required) to resolve the following types of low-level violations without any serious aggravating circumstances:
  - a. Form 700 Non-Filer (GEA § 2.25.040), where the form in question is no more than six months late;
  - b. Form 700 Non-Reporter (GEA § 2.25.040), where the unreported interest does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the Respondent's exercise of their official duties;
  - c. Misuse of City Resources (GEA § 2.25.060(A)(1)), where the total value of misused City resources is \$100 or less and does not involve campaign activity;
  - d. Gift Restrictions (GEA § 2.25.060(C)), where the aggregate amount of the gift(s) from a single source is no more than \$250 over the legal limit, the source of the gift(s) was not a restricted source or a lobbyist, and the gift does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the Respondent's exercise of their official duties;
  - e. Contribution Limits (OCRA §§ 3.12.050 - 3.12.080), where the total amount of the aggregate contributions from a single source in excess of the contribution limit is \$250 or less;
  - f. Contractor Contribution Prohibition (OCRA § 3.12.140), where the total amount of the aggregate contributions from a single prohibited source or its principals is \$250 or less;

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- g. Form 301 Non-Filer (OCRA § 3.12.190), where the form in question is no more than ninety (90) calendar days late;
- h. Campaign Statement/Report Non-Filer and Non-Reporter (OCRA § 3.12.240), where:
  - i. for a pre-election report, the report is no more than thirty (30) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made;
  - ii. for a semiannual report, the report is no more than one-hundred and eighty (180) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made;
  - iii. for a late contribution or late independent expenditure report, the report is no more than seven (7) calendar days late, the unreported activity does not exceed \$10,000 in either contributions raised or expenditures made, and the report is filed before the date of the election;
- i. Lobbyist Registration Non-Filer (LRA § 3.20.040.), where the registration form is no more than one-hundred and eighty (180) days late, and the total compensation received for previously-unreported lobbying does not exceed \$2,000 in a single quarter or, in the case of a salaried lobbyist, the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000;
- j. Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110.), where the report in question is no more than ninety (90) days late. and the total compensation received for unreported lobbying activity is \$2,000 or less or, in the case of a salaried lobbyist, where the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000.

For purposes of streamlined settlements, the term “non-filer” includes late filers.

The streamlined stipulation program takes into account that the articulated evidence demonstrates a greater degree of public harm than a case that qualifies for a warning letter and is therefore worthy of a penalty. Streamlined stipulations will not be available where the respondent has had a prior violation of the same or similar type resolved by way of Commission action in the previous six years, except as to treasurers in OCRA cases where the violation was primarily due to the actions of others. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations have been standardized and shortened to promote efficiency.

The penalty tiers applying to streamlined stipulations set forth below shall be applied on a per-violation basis and are contingent upon the following conditions:

- the respondent has taken corrective action as requested by Commission staff, such as filing the form or amendment that forms the basis of the violation, or returning or disgorging a prohibited contribution or gift;
- the respondent has agreed to the terms of the streamlined stipulation; and
- the respondent has paid all late filing fees.

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<b>Violation</b>	<b>Compliance prior to or in response to first PEC enforcement contact</b>	<b>Compliance in response to second PEC enforcement contact</b>	<b>Compliance prior to publication of PEC investigation report</b>
<u>Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>
<u>Gift Restrictions (GEA § 2.25.060C)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>
<u>Form 301 Non-Filer (CRA § 3.12.190)</u>	<u>Diversion, plus 2% of contributions received over limit prior to filing form</u>	<u>\$400, plus 2% of contributions received over limit prior to filing form</u>	<u>\$800 plus 2% of contributions received over limit prior to filing form</u>
<u>Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340)</u>	<u>Diversion, plus 1% of all financial activity not timely reported</u>	<u>\$400, plus 1% of all financial activity not timely reported</u>	<u>\$800, plus 1% of all financial activity not timely reported</u>
<u>Misuse of City Resources. (GEA § 2.25.060A1.)</u>	<u>Diversion, plus the unlawful amount</u>	<u>\$400, plus the unlawful amount</u>	<u>\$800, plus the unlawful amount</u>
<u>Contribution Limits (CRA §§ 3.12.050 - 3.12.080.)</u>	<u>Diversion, plus 1% of the total amount received over the limit</u>	<u>\$400, plus 1% of the total amount received over the limit</u>	<u>\$800, plus 1% of the total amount received over the limit</u>
<u>Contractor Contribution Prohibition. (CRA § 3.12.140.)</u>	<u>Diversion, plus 1% of the total amount of the prohibited contribution</u>	<u>\$400, plus 1% of the total amount of the prohibited contribution</u>	<u>\$800, plus 1% of the total amount of the prohibited contribution</u>
<u>Lobbyist Registration Non-Filer. (LRA § 3.20.040.)</u>	<u>Diversion, plus \$200</u>	<u>\$400</u>	<u>\$800</u>
<u>Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>

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

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

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



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Public Ethics Commission

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Contribution Limits. (CRA §§ 3.12.050 -3.12.080.) and Contractor Contribution Prohibition. (CRA § 3.12.140.)	\$1,000, plus the unlawful amount.	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.
One Bank Account Rule. (CRA § 3.12.110.)	\$1,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Fundraising Notice Requirement. (CRA § 3.12.140P.)	\$1,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Officeholder Fund Requirements. (CRA § 3.12.150.)	\$2,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Form 301 Requirement. (CRA § 3.12.190.)	\$1,000, plus 2% of contributions received over contribution limit prior to filing Form 301.	\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.
Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.)	\$1,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Contribution and Expenditure Restrictions. (CRA §§ 3.12.065 and 3.12.130.)	\$1,000	\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.
Campaign Statement/Report Non-Filer and Non-Reporter. (CRA § 3.12.340.)	\$1,000, plus 1% of the all financial activity not timely reported.	\$5,000 or three times the amount not properly reported, whichever is greater.
Public Finance Program Requirements. (LPFA § 3.13.010.)	\$1,000.	\$1,000 and repayment of public financing unlawfully received or expended.
Lobbyist Registration Non-Filer. (LRA § 3.20.040.)	\$750.	\$1,000.
Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)	\$750.	\$1,000.

### Application of this Guideline

While most enforcement matters will likely fall within the penalty structure outlined in this guideline, this document was created merely to assist the PEC in determining an appropriate penalty in certain types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty that deviates from this guideline or from the PEC’s past practice. Additionally, this guideline is not a comprehensive list of violations for which the PEC has jurisdiction to investigate and impose a penalty, and exclusion of a type of violation from this guideline does not in any way limit the PEC or its staff from investigating and imposing a fine or penalty on any person who commits such a violation.