

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Monday, October 5, 2020
6:30 p.m.



Commissioners: James E.T. Jackson (Chair), Jill M. Butler (Vice-Chair), Michael MacDonald, Janani Ramachandran, Joseph Tuman and Jerett Yan

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

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

NOTE: Pursuant to the Governor's Executive Order N-29-20 and City of Oakland Emergency Order dated March 23, 2020, suspending the Sunshine Ordinance, all members of the Commission and participating PEC staff will join the meeting via phone/internet audio conference, and the following options for public viewing and participation are available:

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

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by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>
- Joining-a-meeting-by-phone.

Members of the public may submit written comments to ethicscommission@oaklandca.gov.

If you have any questions about how to participate in the meeting, please email ethicscommission@oaklandca.gov before or during the meeting.

PEC MEETING AGENDA

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

ACTION ITEMS

4. **Approval of Commission Meeting Draft Minutes.**
 - a. August 3, 2020 Regular Meeting Minutes ([Meeting Minutes](#))
 - b. August 21, 2020 Special Meeting Minutes ([Meeting Minutes](#))
5. **OpenDisclosure 2020 Online Web-Application Demonstration.** Lead Analyst Suzanne Doran and OpenDisclosure project team members will provide a demonstration of the online application visualizing campaign data for the 2020 election. OpenDisclosure is a partnership between the Public Ethics Commission and Open Oakland, the local organization of civic volunteers originally created as a Code for America brigade. The online app, www.opendisclosure.io, is now live for the 2020 election.
6. ***In the Matter of Supervisor Rich Fielding City of Oakland Building and Planning (Complaint No. 16-11).*** In July 2016, the Public Ethics Commission received a complaint alleging that Rich Fielding, a Principal Inspection Supervisor at the City of Oakland's Planning and Building Department, sent a letter to PG&E in November 2015 that incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service at that address. The complainant alleged that this conduct was either a misuse of City resources or a misuse of Fielding's authority in violation of the Oakland Government Ethics Act (GEA). Commission staff investigated the facts alleged in the complaint and on October 26, 2018, prepared an Investigation Summary and Recommendation to the PEC for dismissal because the investigation did



not find that Mr. Fielding violated GEA. The matter was presented to the PEC on November 5, 2018. Staff recommended closure. The complainant attended the PEC meeting and made a request to submit additional information to the PEC to substantiate her claims. The PEC continued the matter for further review and requested that staff determine whether the City or Fielding ordered a power shutoff at the 1919 Market Street property. Staff conducted extensive further review including interviewing additional witnesses, subpoenaing department records, recovering a copy of an evidentiary video and contacting employees of PG&E. After further close review of the facts, witnesses and evidence provided, staff recommends closure of this matter without further action. ([Investigation Summary 2020](#); [Investigation Summary 2018](#))

7. ***In the Matter of Haydel and Lane Partners (Complaint No. 19-24)***. In June 2019, Commission Staff initiated a pro-active investigation after Andrew Haydel’s lawyer called to report that Haydel, a commercial real-estate investor and principal at Lane Partners LLC, “may have made a contribution” to an Oakland political campaign during a time when he and Lane Partners was subject to the contractor contribution ban. Staff’s preliminary investigation determined that Lane Partners, on October 21, 2018, made a \$1,000 contribution to the Lynette Gibson-McElhaney Defense Fund at a time when they were subject to the City’s ban on contributions from City contractors to candidates, in violation of Oakland Municipal Code section 3.12.140. In March, 2020, staff presented its investigation to the Commission and recommended that the Commission impose a \$2,000 penalty. The Commission rejected the proposed settlement and voted to increase the settlement amount to \$5,000. Mr. Haydel’s lawyer requests reconsideration of the penalty amount proposed by the Commission. ([Proposed Stipulation and Case Summary](#))

DISCUSSION ITEMS

8. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission’s last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission’s work. Current or recent subcommittees include the following:
 - a. **Sunshine Review Subcommittee** (*ad hoc*/temporary, created on May 8, 2020) – Michael MacDonald (Chair), Jill Butler and Joe Tuman
 - b. **Commissioner Recruitment Subcommittee** (*ad hoc*/temporary, created on August 3, 2020) – James Jackson (Chair), Michael MacDonald, and Jerett Yan

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INFORMATION ITEMS

9. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Disclosure Report](#))
10. **Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Enforcement Report](#))
11. **Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Executive Director's Report](#))

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

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

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



9/25/2020

Approved for Distribution

Date



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CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
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Teleconference
Monday, August 3, 2020
6:30 p.m.



DRAFT

Commissioners: James E.T. Jackson (Chair), Jill M. Butler, Michael MacDonald, Janani Ramachandran, Joseph Tuman and Jerett Yan

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

City Attorney Staff: Trish Shafie, Deputy City Attorney

PEC MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

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

Members present: Jackson, Butler, MacDonald, Ramachandran, Tuman and Yan.

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

City Attorney Staff: Trish Shafie

2. Staff and Commission Announcements.

There were no announcements.

3. Open Forum.

There was one public speaker.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

- a. July 6, 2020 Regular Meeting Minutes
- b. July 16, 2020 Special Meeting Minutes

MacDonald moved, and Butler seconded to adopt both sets of minutes.

Vote: Passed 5-0

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DRAFT

Ayes: Jackson, Butler, MacDonald, Ramachandran, Yan
Noes: None
Abstain: Tuman

There were no public speakers.

5. Election of Vice-Chair of the Commission.

Jackson nominated Butler for Vice-Chair. Butler accepted the nomination. Jackson moved, and Tuman seconded to nominate Butler for Vice-Chair.

Vote: Passed 6-0
Ayes: Jackson, Butler, MacDonald, Ramachandran, Tuman, Yan
Noes: None

There were no public speakers.

6. Sunshine Ordinance Laws and Policies During COVID-19.

Trish Shafie, Deputy City Attorney, provided an overview of the open meetings provisions that are suspended and those that are still in place during the COVID-19 shelter-in-place order. Commissioners asked questions and discussed the matter.

There was one public speaker.

MacDonald moved, and Tuman seconded to accept the report as submitted and for staff to draft a letter addressed to the City Council.

Vote: Passed 6-0
Ayes: Jackson, Butler, MacDonald, Ramachandran, Tuman, Yan
Noes: None

7. In the Matter of Oakland City Councilmember Loren Taylor (Case No. M2020-06).

Kellie Johnson, Enforcement Chief, presented a mediation summary and her recommendation to close this mediation.

Butler moved, and Tuman seconded to close the matter.

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DRAFT

There was one public speaker.

Vote: Passed 6-0

Ayes: Jackson, Butler, MacDonald, Ramachandran, Tuman, Yan

Noes: None

DISCUSSION ITEMS

8. Reports on Subcommittees and Commissioner Assignments.

- a. Sunshine Review Subcommittee (*ad hoc*/temporary, created on May 8, 2020) – Michael MacDonald (Chair), Jill Butler and Joe Tuman

MacDonald shared that the subcommittee is working on creating a report on the number of Public Records requested and completed by department.

Jackson created a Recruitment Subcommittee (*ad hoc*/temporary). Members are Jackson, MacDonald and Yan. (created Aug 3, 2020)

There was one public speaker.

INFORMATION ITEMS

9. Limited Public Financing Program 2020.

Whitney Barazoto, Executive Director, provided an overview of upcoming activities planned to implement the Limited Public Financing Program for the 2020 election. Mandatory trainings are schedule for August 20, and 21, 2020.

There were no public speakers.

10. Commissioner Recruitment.

Ms. Barazoto shared that the Commission is recruiting to fill two Commission-appointed vacancies that will occur in September 2020, and January 2021, respectively. A second vacancy to occur in January 2021 will be subject to appointment by the City Attorney. The deadline is August 31, 2020.

There was one public speaker.

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DRAFT

11. Disclosure and Engagement.

Suzanne Doran, Lead analyst, provided a report of recent education, outreach, disclosure and data illumination activities.

There was one public speaker.

12. Enforcement Program.

Chief Johnson reported on the Commission's enforcement work since the last regular Commission meeting.

There were no public speakers.

13. Executive Director's Report.

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

There was one public speaker.

The meeting adjourned at 8:25 p.m.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Teleconference
Friday, August 21, 2020
6:00 p.m.

DRAFT



Commissioners: James E.T. Jackson (Chair), Jill Butler (Vice-Chair), Michael MacDonald, Janani Ramachandran, Joseph Tuman and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Jelani Killings, Education Analyst; Ana Lara, Commission Assistant

City Attorney Staff: Trish Shafie, Deputy City Attorney

PEC SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:00 p.m.

Members present: Jackson, Butler, MacDonald, Ramachandran, Tuman and Yan.

MacDonald arrived during Open Forum.

Staff present: Whitney Barazoto

City Attorney Staff: Trish Shafie

2. Open Forum.

There was one public speaker.

ACTION ITEMS

3. Limited Public Financing Act Program 2020.

Whitney Barazoto, Executive Director, presented to the Commission the staff recommendation.

The Commission reviewed the available funds for the Limited Public Financing Program and accepted the staff recommendation about how to distribute funds to candidates running for City Council district office in the November 2020 election.

Meeting Minutes

CITY OF OAKLAND
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6:00 p.m.

DRAFT



There was one public speaker.

Ramachandran moved, and Butler seconded to accept the staff recommendation that the amount of money is not adequate and to divide the balance of \$153,000 available equally between all qualifying candidates.

Vote: Passed 6-0

Ayes: Jackson, Butler, MacDonald, Ramachandran, Tuman, Yan

Noes: None

The meeting adjourned at 6:58 p.m.

Investigation Summary 2020; Investigation Summary 2018



James E.T. Jackson, -Chair
Jill Butler, Vice-Chair
Michael B. MacDonald
Janani Ramachandran
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: September 23, 2020
RE: Case No. 16-11; *In the Matter of Rich Fielding*

BACKGROUND:

In July 2016, the Public Ethics Commission (PEC) received a complaint that alleged that Rich Fielding, a Principal Inspection Supervisor at the City of Oakland's Planning and Building Department, in November 2015, sent a letter to PG&E and incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service at that address. The complainant alleged that this conduct was either a misuse of City resources or a misuse of Fielding's authority, both of which violated the Oakland Government Ethics Act (GEA).

Between July 2016 and October 2018, the PEC Staff investigated the facts alleged in the complaint, conducted several interviews and on October 26, 2018, prepared an Investigation Summary and Recommendation to the PEC for dismissal because the investigation did not find that Mr. Fielding violated GEA. Staff requested closure of the case. The matter was presented to the PEC on November 5, 2018. The complainant attended the meeting and made a request to submit additional information to the PEC to substantiate her claims. The PEC continued the matter for further review and requested that the Staff determine the following:

1. Was the City involved in a brief power cut that allegedly took place in the building in November 2015?

Staff contacted additional witnesses, including contacting employees of PG&E. After further close review of the facts, witnesses and evidence provided, Staff continues its recommendation that this matter be closed without any further action.

SUMMARY OF LAW:

For a detailed analysis of the law please see the attached Investigation Summary and Recommendation from October 26, 2018.

FINDINGS:

The underlying facts remain as provided in the October 26, 2018 Investigation Summary and Recommendation. This synopsis provides a summary of the facts discovered after the PEC continued the matter for further review.

Investigation Summary 2020; Investigation Summary 2018

Staff was able to confirm that Mr. Fielding, in fact, drafted a letter to request a power disconnect at the 1919 Market Street address but that there was no evidence that the letter was sent or received by PG&E. At the time of the original complaint, the Market Street address was an artist living space that provided affordable housing for resident artists. The building's owner had been notified by the City Building and Planning Department that the Market Street property was in violation of multiple Oakland Building and Maintenance Codes and the Oakland Building Construction Code. The owner was notified that the conditions of the property remained deteriorated and proved to be a health and safety hazard. The owner attempted to renovate the property and fix the violations, but violations remained unabated. The owner of the complex was informed that the building was a public nuisance and manifestly unsafe to occupy pursuant to the Oakland Codes and that its Certificate of Occupancy was revoked. Mr. Fielding provided the notices to the owners of the Market Street property in writing and included a copy of the draft letter to PG&E.

After the PEC referred the matter for further investigation, Staff was able to confirm that Mr. Fielding did not send the termination/Shut off notice letter to PG&E. PG&E had no record of ever receiving a power shutoff letter from Mr. Fielding or anyone with the City of Oakland regarding the 1919 Market Street property. Staff independently verified PG&E's claim by inquiry and by subpoenaing all the documents related to its files on the property. Two PG&E officials, including the Planned Outage Director for the East Bay Region provided an overview of the shutoff procedures they follow which would include sending notices to all of the residents at the property (either by letter, door hanger, house visit and/or phone call), and the owner informing each person of the power shutoff, as well as, the date and time the shutoff is scheduled to take effect. PG&E had no record that any such notice was generated by their office for the 1919 Market Street address. Moreover, PG&E had no record that an employee of PG&E being dispatched to the property to turn off the power.

Staff also subpoenaed PG&E for all “[r]ecords documenting any disruption, termination, or resumption of PG&E services at 1919 Market Street in Oakland, California, 94607, in November 2015.” Records provided by PG&E did not show a significant change in power usage or billing at 1919 Market Street in November 2015 compared to other months around that time (not including January 2016 and thereafter, when the building was evacuated and power usage dropped significantly). PG&E had no record of any “Customer contact” or “field activity” relating to the property in November 2015.

The complainant contends that the owner/property manager sent someone to turn off the power, at the City's behest and that she and other residents of the complex had proof, on camera of the shutoff. To support her allegation of City involvement in an illegal power shutoff, the complainant provided Staff a transcript of a video which she alleged was taken in November 2015. She asserted that the video would show “building resident Alex Mattingly speaking to an “Unknown worker sent by property management's general contractor Marv Winegar.”

To verify the complainant's allegations Staff requested that the Building Department turn over “all communications, including verbal, sent or received by or between any manager or employee of the Department regarding services cut to 1919 Market Street in November 2015.” The Department provided e-mail records from 10 different inspectors and employees within the Department. None of the e-mails made reference to a November 2015 serves shutoff at 1919 Market Street, either ordering one, or acknowledging that one had taken place.

Investigation Summary 2020; Investigation Summary 2018

Staff independently obtained Building and Planning Supervisor's Rich Fielding's and Tim Low's City e-mails between October 2015 and February 2016. There were no references in any of those e-mails to a power shutoff in November 2015.

Staff also conducted interviews of two former tenants (Alex and Mora Mattingly) who, at first glance, confirmed that a power cut did take place at the building. They both recalled that it occurred in or around November 15, 2015, lasting for a few hours over the course of several days. Both reported that the power outage occurred in conjunction with work being done at the building by a contractor or property manager who refused to identify himself. Alex Mattingly admitted he took the video of the incident. Mora Mattingly provided that video to Staff to view. Neither Alex nor Mora recalled the man they confronted in the video mentioning the Building Department.

Staff reviewed the Mattingly video and discovered that the time stamp of the video file was January 19, 2016 not November 25, 2015 and that the video depicted an exchange between Alex Mattingly and an unidentified male who was not in a City uniform, did not have on or display a City badge or other City of Oakland identification. The unidentified male told Alex that he had a permit from the City (to do the work on the property).

Accela records maintained by the City Planning and Building Department indicated that on January 6, 2016 an electrical permit was approved for the 1919 Market Street property to "correct unsafe electrical conditions; secure loose wiring, splices, etc: install light & switch for equipment room for warehouse." The timing of the electrical work is consistent with the overall context of what was going on between the owners of the building and the Building Department at the time.

CONCLUSION:

After considerable review of the facts, witness statements, and the law, staff concludes that there is no evidence to establish that PG&E or the Department were involved in a power shutoff in November 2015. Aside from the complainant's assertions, the only source of this allegation are the complainant's statements that a video allegedly taken in November 2015 shows a contractor stating that a "department of the city" authorized electrical work. To the contrary, the only video of an incident involving a power shut off was taken in January 2016 not November 2015 and the correct transcription indicates that the contractor said he had a "permit from the City" for the electrical work, which is borne out by the Accela record indicating that electrical work at the site was authorized that month in response to hazardous conditions found during an earlier code inspection.

RECOMMENDATION:

Staff recommends that the commission dismiss this complaint without further action.

CITY OF OAKLAND
Public Ethics Commission

Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Simon Russell, Investigator
DATE: October 26, 2018
RE: *In the Matter of Rich Fielding (Case No. 16-11)*; Investigation Summary and Recommendation

I. INTRODUCTION

On July 11, 2016, the Commission received a sworn complaint alleging that Rich Fielding, in the course of his duties as a Principal Inspection Supervisor at the City’s Planning and Building Department (the Department), sent a letter to PG&E which incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service there (the PG&E Letter). According to the complainant, this action violated the Oakland Government Ethics Act (GEA) provisions governing the misuse of City resources or official position.¹

Commission Staff investigated the allegation and found that Mr. Fielding drafted and sent the PG&E Letter to the building’s owners pursuant to the Department’s policy, and never sent the letter to PG&E. Furthermore, even if the existence of the PG&E Letter caused some of the residents to vacate the property, Commission Staff did not find evidence of a corrupt action or intent outside the scope of Mr. Fielding’s duties to give rise to a violation of GEA. Commission Staff therefore recommends that this matter be closed without any further action.

II. SUMMARY OF LAW

Section 2.25.060(A)(1) of GEA prohibits a City employee from using or permitting others to use public resources for personal or non-City purposes not authorized by law.

¹ Under the section headed “Type of Alleged Violation,” the complaint states “Use of City Positions & Resources OMC 2.25.060(C)”. Section 2.25.060(C) of GEA governs restrictions on gifts, and does not appear to be implicated by the facts in this matter. Commission Staff used its discretion to investigate this matter as a potential violation of Section 2.25.060(A) of GEA, which governs the misuse of City resources and official position.

In an e-mail to Commission Staff on January 8, 2018, the complainant also alleged that the Department violated Section 8.22.360.10 of the Oakland Municipal Code, which the PEC does not have jurisdiction to enforce.

Investigation Summary 2020; Investigation Summary 2018

Section 2.25.060(A)(2) of GEA prohibits a City employee from using their position or the power or authority of their 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.

III. FINDINGS

On or about January 8, 2015, the City's Planning and Building Department (the Department) received an official Tenant Complaint and Request for Service from Joy Newhart, a resident of 1919 Market Street, requesting that the Department investigate "a lack of heat, gaps in the flooring, exposed electrical wiring, and common area garbage overflow" at 1919 Market Street.

On April 8, 2015, Tim Low, Deputy Director at the Department, received an email from a reporter at the *East Bay Express* stating that the building at 1919 Market Street was being used as a "live-work building" and asking whether 1919 Market had the appropriate code and zoning to be a residential property. Mr. Low responded that it did not have the proper permits to be used as a live-work building and that the Department would investigate the matter. On the same day, Mr. Low assigned the matter to a Building Inspector and informed the Department Director of the investigation into the matter.

On May 13, 2015, the Department sent a Notice of Violation to Market Holdings LLC, the owners of 1919 Market Street, informing them that 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Code. (Code Enforcement Case No. 1501220.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations before the re-inspection date of June 16, 2015.

On July 15, 2015, the Department sent another Notice of Violation to Market Holdings LLC informing them that Unit #18 of 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Codes. (Code Enforcement Case No. 1501925.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations, including the violations from Code Enforcement Case No. 1501220, before the re-inspection date of August 17, 2015.

On September 8, 2015, the Department sent another Notice of Violation to Market Holdings LLC in which it reconfirmed the violations in Code Enforcement Case No. 1501220, and instructed Market Holdings LLC to correct the listed violations before the re-inspection date of October 12, 2015.

On September 30, 2015, Mr. Fielding, in his capacity as an official of the Department, sent an email to the owners of 1919 Market, informing them that he was assigned to the pending code enforcement issues with 1919 Market Street.

On November 24, 2015, Mr. Low, in his capacity as an official of the Department, sent a packet of documents to the owners of 1919 Market Street informing them that a re-inspection of 1919

Investigation Summary 2020; Investigation Summary 2018

Market Street had occurred on October 15, 2015, that the habitable conditions that were the subject of Code Enforcement Case No. 1501220 remained deteriorated, and that health and safety violations remained unabated. The letter also stated that the violations continued to endanger the residents and visitors of 1919 Market Street to the extent that the premises were determined to be a public nuisance and manifestly unsafe to occupy pursuant to the Oakland Building Maintenance Codes and the Oakland Building Construction Codes. The letter also stated that 1919 Market Street was declared substandard and a public nuisance, that its Certificate of Occupancy was revoked, and that administrative citations totaling \$5,000 were assessed against 1919 Market Street.

The November 24, 2015, letter also ordered the owners of 1919 Market Street to pay, within 14 days, relocation benefits to affected residential tenants to allow abatement work to commence, pursuant to Oakland Municipal Code section 15.60.

The November 24, 2015, letter also informed the owners of 1919 Market Street that they had the right to appeal the Substandard/Public Nuisance Declaration and Administrative Citation in writing by December 17, 2015.

In the packet of documents sent to the owners of 1919 Market Street on November 24, 2015, Mr. Low included a copy of the PG&E Letter, which was signed by Mr. Fielding, dated November 24, 2015, addressed to PG&E, and stated the following:

The subject property is unoccupied, and an attractive nuisance to children and detriment to the neighborhood. The City of Oakland has secured the building to prevent unauthorized entry but the electrical and gas service remain an extreme safety hazard that is endangering life, limb and property.

Pursuant to Oakland Municipal Code Sections 15.08.340D and E, this building is a Public Nuisance and the electric and gas service must be immediately disconnected.

The City has not received any response from the owners and is pursuing condemnation action. It is imperative that Pacific Gas and Electric take steps to immediately remove the meters, and service at the joint pole. The services should not be reconnected without notification from the City of Oakland.

Pursuant to the Department's written procedures, it was standard procedure to include a draft of such a letter addressed to PG&E in the packet sent to owners of properties that were the subject of abatement. According to the Department's records, the PG&E Letter was only sent to the owners of 1919 Market Street and never to PG&E. PG&E also independently confirmed that it never received the PG&E Letter.

On December 7, 2015, the Department received a request from the owners of 1919 Market Street to extend the deadline to vacate the building to January 31, 2016, to avoid a scramble by the tenants to find new housing during the holidays.

Investigation Summary 2020; Investigation Summary 2018

On December 23, 2015, the owners of 1919 Market Street and the Department agreed to a compliance plan that required the owners, among other things, to fully vacate the building by January 31, 2016.

On January 29, 2016, the Department “red-tagged” 1919 Market Street as an uninhabitable building. The red-tag notice was posted at the property and stated that no one was to enter the building after January 31, 2016.

On February 2, 2016, the Department re-inspected the property and determined that it was now vacant.

1919 Market Street has since been partially demolished, and is currently in the process of being converted into live/work housing.

V. CONCLUSION

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(1) by misusing City resources, the evidence indicates that Mr. Fielding sent the PG&E Letter to the owners of 1919 Market Street in the course of his duties as a Principal Inspection Supervisor for the Department, after several earlier attempts to resolve the alleged code violations at the property. No evidence indicates that Mr. Fielding sent the PG&E Letter to the property owners “for personal or non-City purposes not authorized by law,” as required by GEA 2.25.060(A)(1). Therefore Mr. Fielding did not misuse City resources by sending the PG&E Letter.

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(2) by using his City position to induce or coerce someone for personal gain, there are two possible theories of liability under that ordinance, neither of which is supported by the facts. First, it might be argued that Mr. Fielding induced or coerced PG&E into shutting down services for the tenants at 1919 Market Street. However, Mr. Fielding’s letter was never actually sent to PG&E, so he could not have induced or coerced PG&E into any action.

Second, it might be argued that the mere threat of a utilities shutdown induced or coerced the tenants at that property to vacate their homes. Indeed, Mr. Low confirmed to the PEC that the Department’s intention in drafting the PG&E Letter was to convince the property owners that the City was serious about the abatement process. However, Section 2.25.060(A)(2) of GEA requires some corrupt action or intent outside the scope of one’s official duties. Here, according to Mr. Low and the Department’s written procedures, drafting such a letter was standard Department procedure. Also, the purpose of the PG&E Letter was to further the Department’s ongoing efforts to address the alleged code violations at the property and protect the health and safety of the tenants. Because the action and purpose of drafting the PG&E Letter were within the scope of Mr. Fielding’s duties with the Department, he did not violate Section 2.25.060(A)(2) of GEA.

VI. RECOMMENDATION

Because the investigation did not find that Mr. Fielding violated the Oakland Government Ethics Act, Commission Staff recommends that this matter be closed without further action.

Proposed Stipulation and Case Summary

1 Kellie F. Johnson
Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza, Rm. 104
3 Oakland, CA 94612
Telephone: (510) 238-4976
4

5 Petitioner

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION

8
9 In the Matter of

) Case No.: 19-24

10 LANE PARTNERS, and
11 ANDREW HAYDEL, PRINCIPAL

) **STIPULATION, DECISION AND
ORDER**

12 Respondent.
13

14
15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
17 respondent LANE PARTNERS, agree as follows:

- 18 1. This Stipulation will be submitted for consideration by the City of Oakland Public
19 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 20 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
21 the final resolution to this matter without the necessity of holding an administrative
22 hearing to determine the liability of Respondents;
- 23 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
24 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
25 Procedures, including, but not limited to, the right to personally appear at an
26 administrative hearing held in this matter, to be represented by an attorney at their own
27 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
28 testify at the hearing, and to have the matter judicially reviewed;

Proposed Stipulation and Case Summary

- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. Respondents violated the Oakland Campaign Reform Act by contributing \$1,000 to
6 *Lynette Gibson-McElhaney Legal Defense Fund* in October 2018 at a time when they
7 were subject to the City's ban on contributions from City contractors to candidates, in
8 violation of Oakland Municipal Code section 3.12.140.
- 9 6. The attached exhibit (Exhibit: Case Summary) is a true and accurate summary of the
10 facts in this matter and is incorporated by reference into this Stipulation;
- 11 7. The Commission will impose upon Respondents a total administrative penalty in the
12 amount of \$5,000;
- 13 8. A cashier's check from Respondents, in said amount, made payable to the "City of
14 Oakland," is submitted with this Stipulation as full payment of the administrative
15 penalty, to be held by the Commission until the Commission issues its decision and
16 order regarding this matter;
- 17 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
18 void, and within fifteen business days after the Commission meeting at which the
19 Stipulation is rejected, all payments tendered by Respondents in connection with this
20 Stipulation will be reimbursed to them; and
- 21 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
22 the Commission becomes necessary, neither any member of the Commission, nor the
23 Executive Director, shall be disqualified because of prior consideration of this
24 Stipulation.

Proposed Stipulation and Case Summary

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Dated: _____
Kellie F. Johnson, Enforcement Chief of the City of
Oakland Public Ethics Commission, Petitioner

Dated: _____
Andrew Haydel, on behalf of
Lane Partners, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Lane Partners,” PEC Case No. 19-24, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____
James Jackson, Chair
City of Oakland Public Ethics Commission

Proposed Stipulation and Case Summary

INTRODUCTION

In June 2019, Commission Staff initiated a pro-active investigation after Andrew Haydel's lawyer called to report that Haydel, a commercial real-estate investor and principal at Lane Partners LLC, "may have made a contribution" to an Oakland political candidate's defense fund during a time when he and Lane Partners, a City contractor, was subject to the contractor campaign contribution ban.

Between 2016-2018, Lane Partners was involved with several different development projects with the City of Oakland. One such project was the Eastline project.

PROCEDURAL FACTS:

The Respondent and Staff reached a settlement agreement in February 2020. Staff prepared a Stipulation recommending that the Public Ethics Commission (PEC) impose a penalty of \$2,000. In the Matter of Haydel was scheduled on the PEC's March 2020, Agenda. At the PEC's March meeting, the Commissioners rejected the recommended penalty of \$2,000 and instead informed the Respondent that a \$5,000 penalty was a more appropriate penalty based on the facts and experience of the Respondent. The PEC instructed Staff to renegotiate the Stipulation with a penalty of \$5,000. Staff reached out to the Respondent who initially agreed to sign a revised Stipulation and pay the increased penalty of \$5,000.

Between late March 2020 and September 2020, the City of Oakland, because of a national declaration of a pandemic, shut down in person services offered by the City and an Emergency City Operation Provision was enacted. The October 2020, PEC meeting was the first opportunity, after the imposition of the Emergency Order, that the Respondent was able to appear to resolve the outstanding PEC matter. The Respondent intends to appear before the PEC, not to dispute the underlying facts of the Campaign Finance Violation but to request that the PEC reconsider the imposition of a \$5,000 penalty. In the event the PEC does not reconsider the imposition of a \$5,000 penalty, the Respondent will submit this signed revised Stipulation and pay the imposed penalty of \$5,000.

STATEMENT OF FACTS

1. Eastline, located at 2100 Telegraph

Eastline was a City-owned property located at 2100 Telegraph Avenue. The property contained a public parking garage.

On March 26, 2015, the City Council voted to authorize an Exclusive Negotiating Agreement ("ENA") between the City and an entity called TB2 Retail Complex, LLC ("TB2") for the development of a mixed-use residential/retail project at the site. The ENA envisioned either a sale or long-term lease of the property to TB2.

Separately, two other private entities -- Lane Partners and Walton Street Capital -- had been acquiring other privately-owned properties that shared the same block as 2100 Telegraph. Those

Proposed Stipulation and Case Summary

entities eventually approached TB2 with a proposal to change the envisioned project at 2100 Telegraph into a larger office/retail complex, with possible residential units being added in a second phase. The new project would encompass the entire block, effectively merging the City-owned property at 2100 Telegraph (which TB2 was currently trying to acquire under the ENA with the City) with the adjacent properties owned by Lane Partners and Walton Street Capital. The plan called for TB2, Lane Partners, and Walton Street Capital to form a joint venture called W/L Telegraph Owner, LLC (“W/L”) for purposes of developing the project.¹

In order to make the new project a reality, TB2’s ENA with the City would need to be reassigned to the new entity, W/L. In November 2015, TB2 submitted a request to the City an assignment of the ENA from TB2 to W/L. That reassignment was approved by the City Council’s Community and Economic Development Committee by unanimous vote on June 28, 2016, and via consent calendar by the full City Council on July 5, 2016.

On July 9, 2019, the final terms of the ENA came before the City Council for a vote. The basic terms of the ENA were that W/L would acquire the property from the City for the fair market value of \$28 million, for purposes of constructing an office tower. W/L had earlier worked out an agreement with Kaiser Permanente, whereby Kaiser would become the anchor tenant of the building (assuming Council approved the sale); Kaiser would then probably purchase the property from W/L, and W/L would continue to oversee construction.

At the Council meeting, Andrew Haydel spoke during public comment in favor of the sale, and also (by request of Council) returned to the podium during Council discussion to answer a Councilmember’s question regarding parking impacts of the project (*see* 6:22:00 of the Council meeting video). The Council voted to approve the deal on first reading (6-0-2; Kaplan and Fortunato Bas abstaining).

On July 16, 2019, a second reading of the proposed agreement took place at the Council (with some portions of the accompany staff report amended, correcting earlier projected tax revenue from the project). Andrew Haydel again spoke in favor of the project during public comment. A public speaker from the main behind-the-scenes developer of the project, SUDA, also thanked Councilmember McElhaney for her help in moving the project along early on when “technical” problems were arising. The item passed via consent agenda

The main negotiators on the project with the City have been Alan Dones and Regina Davis of SUDA, and that Haydel has been the main negotiator for Lane Partners. Scott Smithers of Lane Partners also occasionally took part. Their legal representatives were from Wendell, Rosen, Black and Dean.

SUMMARY OF THE LAW:

Under the 2014 Oakland Campaign Reform Act (OCRA):

“no person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, for selling or leasing any land or building to the City, or for purchasing or leasing any land or building from the City, whenever the value of such

Proposed Stipulation and Case Summary

transaction would require approval by the City Council shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such elected City Official or candidate at any time between¹ commencement of negotiations and one hundred eighty (180) days after the completion of the termination of negotiations for such contract.”²

Pursuant to the 2014 Oakland Campaign Reform Act O.M.C. 3.12.420 a person is defined as, an individual, proprietorship, joint venture, syndicate, business, trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

VIOLATION

Count 1: Making an Unlawful Contractor Contribution During a Prohibited Period

Here, the contract for the Eastline project falls within the contractor contribution ban because it was a contract for the sale /development of land owned by the City, the value of which required a City Council vote. Lane Partners was the counterparty to that contract, and as such was subject to OCRA’s ban on contributions to candidates, their committees and/or defense funds from City contractors.

The blackout period for 11 West Partners began as early as on November 2015, when Lane Partners entered into a reassignment with TB2’s ENA with the City to form a new entity, W/L. In November 2015, TB2 submitted a request to the City an assignment of the ENA from TB2 to W/L., and continued through July 9, 2019, When the City voted to approve the final terms of the ENA.

Lane Partners contributed \$1,000 in its own name to *Lynette Gibson-McElhaney’s Defense Fund*, the controlled defense fund of an elected official, on October 21, 2018, which was within the blackout period. Because Lane Partners was a City contractor, it therefore contributed \$1,000 to *McElhaney’s Defense Fund* in violation of the contractor contribution ban.

Date Rec’d	Contributor	Candidate/Elected Official	Amount
10/21/2018	Lane Partners	Lynette Gibson McElhaney’s Defense Fund	\$1,000

¹ The project is referred to as the “Eastline project”; see <http://www.eastline-oakland.com/> (accessed April 30, 2019).

² OMC § 3.12.140 (A).

Proposed Stipulation and Case Summary

CONCLUSION

According to the Enforcement Division's penalty guidelines, the baseline penalty for a violation of the contractor contribution ban is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contribution is \$1,000, which brings the baseline penalty to \$2,000.

In determining an appropriate final penalty amount, the PEC may consider the following aggravating and mitigating 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.

Here, Commission staff originally recommended the baseline fine of \$2,000. While the violation is mitigated by the fact that the Respondent contacted the PEC to self-report the violation, and the making of the contribution during the contractor ban period appears to be negligent in that respondent was not aware of the rule and had no prior record of such violations, a contribution of \$1,000 is not excessive (considering there are no limits on contributions to legal defense funds) but also not insignificant and was made during the time in which the respondent was seeking Council action. Therefore, the baseline fine is appropriate and should not be adjusted in either direction. The seriousness of the harm caused by both of these violations was minimal. The amount unlawfully contributed by Lane Partners was nominal compared to other donations they had given in the past to other candidates.

There was no evidence here of any intention to conceal, deceive, or mislead. Although it appeared the Respondent may have been prompted by a news article that discussed unlawful campaign contributions, the Respondent did contact the PEC to self-report the violation. Lane Partners has no previous history of violating this provision of OCRA.

The PEC, however, modified the penalty amount, see the revised recommendation below.

Proposed Stipulation and Case Summary

REVISED RECOMMENDATION

In March 2020, Staff presented this Stipulation with a recommendation of \$2,000. The PEC rejected the recommendation of a penalty of \$2,000 and instead directed Staff to renegotiate the Stipulation with the imposition of a \$5,000 penalty. Pursuant to the PEC's directive, Staff has revised its penalty recommendation to reflect the PEC's preference of a \$5,000 penalty.

PROPOSED PENALTY

Pursuant to the directive of the PEC, Staff is recommending that the Commission impose a \$5,000 penalty.

Proposed Stipulation and Case Summary



CITY OF OAKLAND

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

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

March 10, 2020

To: Andrew Haydel
Client of: Zack Wasserman

Re: PEC Case No. 19-24; Warning Letter

Dear Mr. Haydel:

The City of Oakland Public Ethics Commission (PEC) enforces the Oakland Campaign Reform Act (OCRA). Under OCRA, any person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City is prohibited from making any contribution to a Mayor, a City Council Member or a candidate for City Council or any other designated public official, or committee controlled by such elected City Official or candidate at any time between commencement of negotiations and one hundred eighty (180) days after the completion of the termination of negotiations for such contract.

Your attorney brought to the attention of the PEC that Lane Partners, a real estate development company, of which you are the principal, made a \$1,000 contribution to Oakland City Councilmember Lynette Gibson-McElhaney's legal defense fund on October 21, 2018, at a time when Lane Partners was in active contract negotiations with the City of Oakland for the sale of City property, the East-line Project. That contribution was in violation of O.M.C. § 3.12.140 (A).

For this violation of the contribution limit, the PEC accepted the proposed Stipulation of Resolution but rejected the penalty amount of \$2,000. Instead, based on aggravating factors, the PEC directed staff to pursue a fine of \$5,000. Further, the PEC issued this warning letter to educate you on the relevant contractor ordinance and provide an opportunity for you to make changes to your organization's contribution practices.

In the future, you are warned to refrain from making contributions to elected officials or their controlled committees, including legal defense funds, if and when you commence

Proposed Stipulation and Case Summary

PEC Case No. 19-24; Warning Letter
Page 2

contract negotiations with the City of Oakland or one hundred eighty (180) days after the completion of the termination of negotiations for such a contract.

Please let me know if I can assist you in better understanding Oakland ethics laws. If you would like further information or have additional information regarding this matter, you can reach me at (510) 238-4976 or KJohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Enforcement Chief
City of Oakland Public Ethics Commission



James E.T. Jackson, Chair
Jill M. Butler, Vice-Chair
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

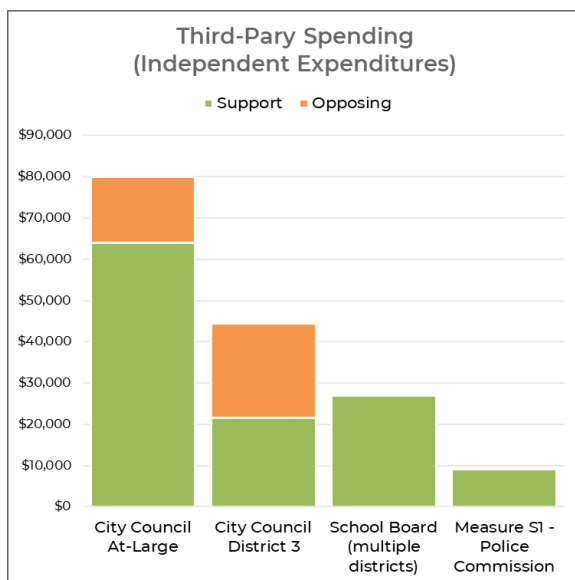
Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: September 25, 2020
RE: Disclosure and Engagement Report for the October 5, 2020, PEC Meeting

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

Filing Officer/Disclosure

Campaign Finance – The first pre-election filing deadline for the November election falls on September 24. All candidates on the November ballot must file. Candidates raising or spending \$2,000 or more file their campaign statements on FPPC Form 460. Candidates intending to keep their campaign under \$2,000 must file FPPC Form 470. Ballot measure committees and other recipient committees with fundraising or spending activity connected with the November ballot must also file for the pre-election deadline.



As reported previously, August 5 started the 90-day period leading up to the election when late contribution reports (FPPC Form 497) and late independent expenditure reports (FPPC Form 496) must be filed within 24-hours for contributions or independent expenditures of \$1,000 or more. After the September 24 deadline, staff will screen campaign statements for untimely and un-reported late contributions and independent expenditures and assess late fees as required.

Since August 5, \$873,000 in late contributions received have been reported, with the bulk of the funds (79 percent) going to third-party committees (not candidate-controlled or ballot measure committees) spending on independent expenditures.

Four committees reported \$160,481 in independent expenditures to influence election results in Oakland. The largest independent expenditures were in connection with the City Council At-Large and District 3 seats.

These figures are based on reports received through September 23 and will likely increase substantially when the data from the September 24 pre-election deadline is available.

Lobbyist Registration and Reporting – July 30 marked the deadline for quarterly lobbyist activity reports covering the period from April 1 through June 30, 2020. To date, 63 lobbyists representing 82 clients have registered using the new OakApps Lobbyist Reporting System. Sixty-two quarterly activity reports have been submitted electronically. A small number of pdf forms were accepted for lobbyists with no reportable activity to disclose.

Oakland lobbyists reported \$475,605 in payments from clients to influence City decisions, and a total of 271 contacts with City officials have been reported to date. No employment relationships with City officials or solicited political contributions were reported for the second quarter.

Illuminating Disclosure Data

Open Disclosure – The www.OpenDisclosure.io campaign finance app is live and newly updated every 24-hours with data for the 2020 election. Team volunteers will demonstrate the updated app live at the October Commission meeting. New features implemented for the 2020 elections include:

- Donor search across all elections and campaigns;
- Election overview pages with data highlights such as contributions reported, the three most expensive races, candidates with the largest proportion of small contributions, and a breakdown of contributions overall by source.

Open Disclosure is a project of OpenOakland volunteers in partnership with the Public Ethics Commission. OpenOakland is part of Code for America, a national network of community organizers and technologists seeking to put technology to work for the benefit of their local communities.

Lobbyist Disclosure – Commission staff continues our collaboration with the IT Department to automate publication of lobbyist disclosure data to the City's OakData open data portal in a user-friendly format.

Limited Public Financing Program (LPF)

The deadline for candidates to opt-in to the LPF program was August 27. Fifteen candidates opted-in to receive public financing. Their next step was for candidates to submit their LPF application (LPF Form 2) demonstrating that they met all of the program's qualification requirements along with their initial reimbursement request (LPF Form 3) by September 18.

Seven candidates met the September 18 deadline and will move forward with public financing for the 2020 election. Staff will now reallocate the available funding per the Commission's two-phased approach, resulting in an increase of \$11,657 for each participating candidate. Participating candidates are now eligible for a maximum of \$21, 857 in public financing. The table below lists the participating candidates and their respective districts:

Name	District
Dan Kalb (Incumbent)	1
Stephanie Dominguez Walton	1
Lynette Gibson McElhanev (Incumbent)	3
Carroll Fife	3
Noel Gallo (Incumbent)	5
Richard Santos Raya	5
Treva Reid	7

Staff is now verifying submitted documentation and processing reimbursement claims. Over the next several weeks, staff will work closely with each participating candidate and their treasurer to facilitate claim submission and payments to campaigns. Staff followed up with candidates who did not meet the deadline and found that most of them were not able to meet the program’s five percent contribution eligibility threshold.

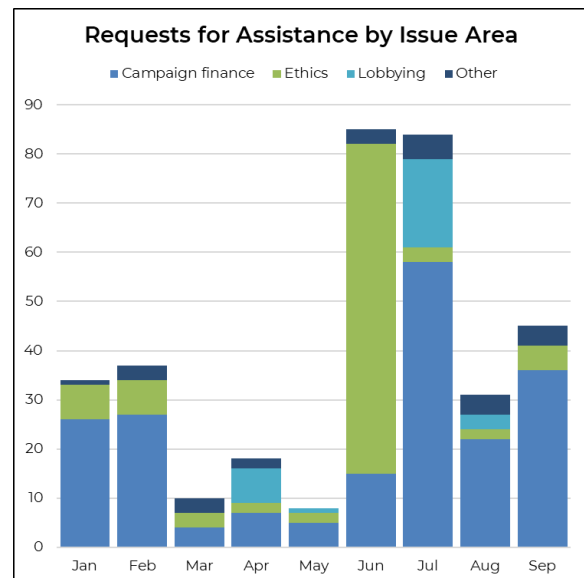
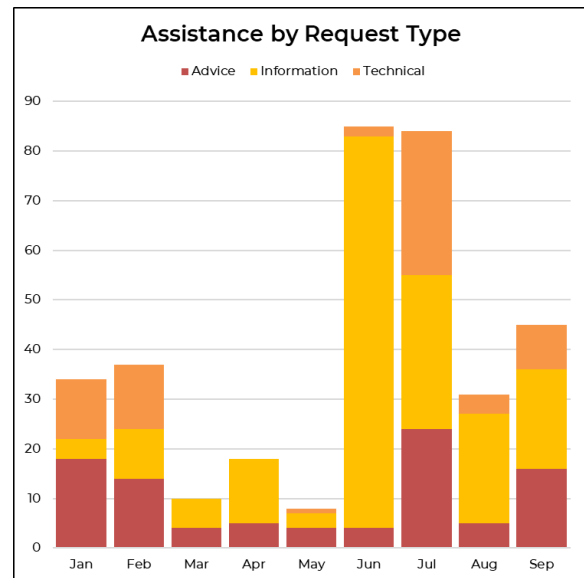
Advice and Engagement

Advice and Assistance – Commission staff responded to 76 requests for advice and assistance during the months of August and September. Over 70 percent of requests were related to campaign finance. Commission staff fulfilled 352 requests for advice and assistance this year.

Candidates and Campaigns – As part of campaign education efforts, staff routinely provides advisories to ensure that candidates and committees are aware of local rules during the election season. On September 22, staff issued an advisory regarding common filing errors to help campaign committees void mishaps when filing their pre-election statements. Staff also coordinated with the City’s Public Information Officer to send a city-wide reminder about campaign activity rules and restrictions for officeholders and city staff.

On August 20 and August 21, staff provided trainings for candidates interested in participating in the Limited Public Financing program. All ballot-certified candidates except one either attended or had a campaign representative attend the training to learn about program requirements and the payment process.

Ethics – On July 29, PEC staff conducted a live Government Ethics Training for Form 700 Filers via Zoom. The training was hosted by the Department of Human Resources (HR) and served as an alternative



for employees that have not completed the PEC's online training. Staff will continue to coordinate with HR to provide ethics trainings.

Staff continues to make presentations at the City's monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). During the months of July, August and September, 82 new employees received training on GEA provisions.

General Outreach

Social Media – Communications in August and September focused on promoting the Commission's report *Race for Power: How Money in Oakland Politics Creates and Perpetuates Disparities Across Income and Race*, Open Disclosure, campaign filing deadlines, recruitment for upcoming Commission vacancies, and the latest PEC newsletter.



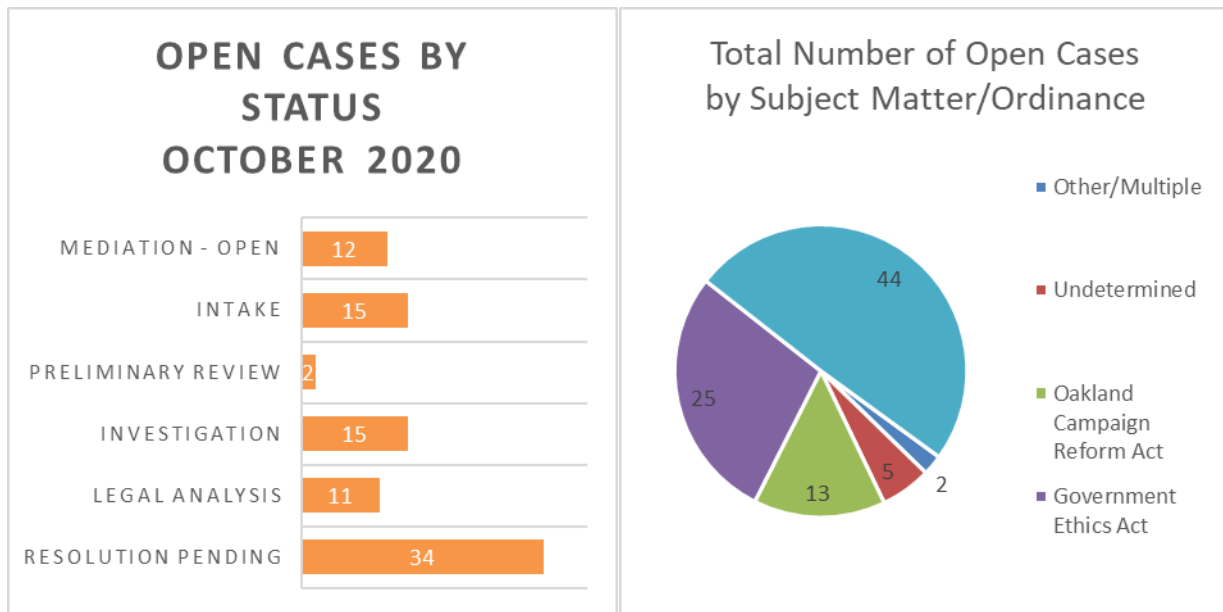
James E.T. Jackson, Chair
 Nayeli Maxson Velázquez, Vice Chair
 Jill M. Butler
 Michael MacDonald
 Janani Ramachandran
 Joseph Tuman
 Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Kellie Johnson, Enforcement Chief
 DATE: September 22, 2020
 RE: Enforcement Program Update for the October 5, 2020, PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on July 6, 2020, Commission staff received 4 complaints. This brings the total Enforcement caseload to 89 enforcement and mediation cases: 15 matters in the intake or preliminary review stage, 15 matters under active investigation, 11 matters under post-investigation analysis, 34 matters in settlement negotiations or awaiting an administrative hearing, and 12 ongoing public records request mediations.



Summary of Cases:

Since the last Enforcement Program Update in August 2020, the following status changes occurred:

1. *In the Matter of Andrew Haydel and Lane Partners (Complaint No. 19-24)*. In June 2019, Public Ethics Commission (PEC) Staff initiated a pro-active investigation after Andrew Haydel's lawyer called to report that Haydel, a commercial real-estate investor and principal at Lane Partners LLC, "may have made a contribution" to an Oakland political campaign during a time when he and Lane Partners was subject to the contractor contribution ban. Staff's preliminary investigation determined that Lane Partners, on October 21, 2018, made a \$1,000 contribution to the Lynette Gibson-McElhaney Defense Fund at a time when they were subject to the City's ban on contributions from City contractors to candidates, in violation of Oakland Municipal Code section 3.12.140. Staff and the Respondent reached a stipulated settlement agreement. This matter came before the PEC in March 2020 and was postponed after the PEC increased the penalty amount from \$2,000 to \$5,000. Staff recommends that the PEC approve the Stipulation and impose a \$5,000 penalty. (See Action Items)
2. *In the Matter of Supervisor Rich Fielding City of Oakland Building and Planning (Complaint No. 16-11)*. In July 2016, the PEC received this complaint that alleged that Rich Fielding, a Principal Inspection Supervisor at the City of Oakland's Planning and Building Department, in November 2015 sent a letter to PG&E and incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service at that address. The complainant alleged that this conduct was either a misuse of City resources or a misuse of Fielding's authority both of which violated the Oakland Government Ethics Act (GEA). Between July 2016 and October 2018, the PEC Staff investigated the facts alleged in the complaint and on October 26, 2018, prepared an Investigation Summary and Recommendation to the PEC for dismissal because the investigation did not find that Mr. Fielding violated GEA. The matter was presented to the PEC on November 5, 2018. Staff recommended closure. The complainant attended the PEC meeting and made a request to submit additional information to the PEC to substantiate her claims. The PEC continued the matter for further review and requested that the Staff determine whether the City or Fielding ordered a power shutoff at the 1919 Market Street Property. Staff conducted extensive additional review including interviewing additional witnesses and contacting employees of PG&E. After further close review of the facts, witnesses and evidence provided, Staff's recommendation is that this matter be closed without any further action. (See Action Items)
3. *In the Matter of The Oakland City Attorney Barbara Parker and City Councilmember Lynette McElhaney (Complaint NO. 17-17)*. In August 2017, the PEC received this complaint that alleged, among other things, that the Oakland City Attorney Barbara Parker, City Councilmember Lynette Gibson McElhaney violated unspecified provisions of the Government Ethics Act (GEA) the Oakland Campaign Reform Act (OCRA) and other laws under the PEC's jurisdiction by engaging in a pattern or practice of using their office resources or position to conduct an attack on your development project and violate your tenant protection rights. In November 2018, this complaint was dismissed because it lacked sufficient information to warrant an investigation by the PEC. The complainant contacted the PEC, provided additional information, and gave a statement alleging additional facts that were not reviewed by the previous Enforcement Chief. On December 10, 2018, Staff with the PEC Enforcement Unit re-opened the preliminary investigation for further review. After close review of the allegations, further discussing the matter with the complainant, and giving the opportunity to provide additional information or evidence, as well as a thorough review of the applicable Oakland ordinances, Staff determined that the allegations, including the additional information subsequently

provided does not constitute a violation of any of the laws under the PEC's jurisdiction. We therefore dismissed the complaint pursuant to Enforcement procedures. (See Attachment)

4. *In the Matter of the Oakland City Attorney Barbara Parker* (Complaint No. 20-10). On May 14, 2020, the PEC received this complaint via email (#20-10) which alleged that Barbara Parker, the City Attorney for Oakland, violated the Government Ethics Act and the City Charter by failing to attend regular City Council meetings. The complaint also alleged that the City Attorney missed 10 consecutive regular meetings of the City Council. No laws under the PEC's jurisdiction regulate the attendance record of the City Attorney, and, further review of other City laws also indicates no specific attendance requirements for the City Attorney. The complaint was dismissed pursuant to Enforcement procedures. (See Attachment)
5. *In the Matter of William Gilchrist, Director of the City of Oakland Planning and Building Department* (Complaint No. 20-11) on June 12, 2020, the Public Ethics Commission received this complaint alleging that an unspecified person in the Oakland Planning and Building Department violated unspecified provisions of the laws under the PEC's jurisdiction when it approved defective renovations done to the complainant's property by a contractor who was not licensed in the state of California. After careful review of the allegations and the law, we determined that the allegations do not constitute a violation of any of the laws under the PEC's jurisdiction. We therefore dismissed the complaint pursuant to Enforcement procedures. (See Attachment)
6. *In the Matter of the Oakland City Auditor Courtney Ruby* (Complaint No. 20-32). On July 22, 2020, the PEC received this complaint that alleged Courtney Ruby, the City of Oakland's Auditor violated the Oakland Government Ethics Act and the Oakland Campaign Reform Act by posting to a campaign mailing list, a synopsis of an audit of the Oakland Police Commission, urging the public to contact Police Commissioners with their concerns, and by posting a similar message in an opinion letter that appeared in the San Francisco Chronicle where it was alleged that the City Auditor made misrepresentations and stated mistruths. After reviewing the facts, relevant law and intake provisions of the PEC Enforcement Procedures, we determined that the allegations do not allege conduct that constitutes a violation within the jurisdiction of the Public Ethics Commission. (See Attachment)
7. *In the Matter of Oakland City Councilmembers [Kaplan/Kalb/McElhaney/Thao/Taylor/Gallo and Reid]* (Complaint No. 20-12 *). On or between July 9 and August 3, 2020, the PEC received a complaint that alleged on Tuesday, June 23, 2020, at a City of Oakland Council Meeting, the Council voted 5 to 1 in open session to approve and adopt the Midcycle FY20-21 Budget, with amendments. The amendments that were adopted along with the Budget were introduced to the City Council and the community on Monday, June 22, 2020 (less than 24 hours before the City Council meeting). The complaint alleged that the proponents of the Budget amendments failed to provide adequate notice or time to review the amendments before they were presented and adopted by the City Council. This conduct was alleged to have violated the California Brown Act or the Oakland Sunshine Act by adopting amendments that were

presented to the body less than 24 hours before the Budget was approved. Staff initiated a preliminary review of the allegations and the law and determined that the allegations did not constitute a violation of the Sunshine or the Brown Act within the Commission's enforcement jurisdiction. The formal complaint was dismissed pursuant to Enforcement procedures. (See Attachment)

*The PEC received a total of 19 complaints alleging the same and or similar violations against the City Council for conduct that occurred at the June 23, 2020 meeting. The synopsis and letter provided in Case No. 20-12 applies to each of the following Complaints: 20-13; 20-14; 20-15; 20-16; 20-17; 20-18; 20-19; 20-20; 20-21; 20-22; 20-23; 20-25; 20-26; 20-27; 20-28; 20-29; 20-30; and 20-31. (See Attachments)

CITY OF OAKLAND



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

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

September 23, 2020

Gene Gorelik

Re: PEC Complaint No. 17-17; Dismissal Letter

Dear Mr. Gorelik:

In August 2017, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that, among other things, The Oakland City Attorney Barbara Parker, City Councilmember Lynette Gibson McElhaney violated unspecified provisions of the Government Ethics Act (GEA) the Oakland Campaign Reform Act (OCRA) and other laws under the PEC's jurisdiction by engaging in a pattern or practice of using their office resources or position to conduct an attack on your development project and violate your tenant protection rights.

In November 2018, your complaint was dismissed because it lacked sufficient information to warrant an investigation by the PEC. You contacted the PEC and provided additional information and gave a statement alleging additional facts that were not reviewed by the previous Enforcement Chief. On December 10, 2018, Staff with the PEC Enforcement Unit re-opened your complaint for further preliminary review.

After reviewing the allegations in your complaint, further discussing the matter with you, and giving you the opportunity to provide additional information or evidence, as well as a thorough review of the applicable Oakland ordinances, we have determined that your allegation, including the additional information you subsequently provided, does not constitute a violation of any of the laws under the PEC's jurisdiction. We are therefore dismissing your complaint.

Included with this letter, I have attached a copy of the original dismissal letter that provided a detailed analysis of your complaint. Upon reconsideration of the facts and the law, the analysis provided in 2018 remains accurate. Because the alleged conduct does not constitute a violation of any of the laws under the PEC's jurisdiction, and there is no evidence that suggests that the City Attorney, any of the various City departments you named in your complaint, or Councilmember McElhaney had a conflict of interest or any other type of corrupt influence or intent, we are dismissing your complaint pursuant to the PEC's Complaint Procedures. The PEC's Complaint Procedures is available on the PEC's website.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on October 5, at 6:30 p.m. by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be

taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson
Enforcement Chief

CITY OF OAKLAND



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Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

September 22, 2020

Concerned Citizen
[REDACTED]

Re: PEC Complaint No. 20-10; Dismissal Letter

Dear Concerned Citizen:

On May 14, 2020, the City of Oakland Public Ethics Commission (PEC) received your email (#20-10) alleging that Barbara Parker, the City Attorney for Oakland, violated the Government Ethics Act and the City Charter by failing to attend regular City Council meetings. Further, you allege that the City Attorney missed 10 consecutive meetings. No laws under the PEC's jurisdiction regulate the attendance record of the City Attorney, and, further review of other City laws also indicates no specific attendance requirements for the City Attorney.

The City of Oakland Charter, Article II The Council, Section 206 - Vacancy provides, among other things, that a council member absents himself continuously from the City more than 30 days without permission from the Council or ten consecutive regular meetings except on the count of illness or permission of the Council. Section 200- Composition of the Council, provides that the Council consists of eight council members nominated and elected... the Mayor shall not be a member of the Council. Our preliminary review found that the City Attorney is not subject to the provisions of the Oakland City Charter Section 200 or 206.

The City Attorney has several functions, which can be categorized as follows: 1) Serving as chief counsel to the city for both elected officials and staff, 2) Reviewing and drafting ordinances, resolutions, contracts, deeds, leases and other legal documents, and 3) Representing the city in litigation as a defendant or a prosecutor. None of the City Attorney's duties are those of the elected City Council Members. Often, a Deputy City Attorney represents the City Attorney in meetings, in court, and in the drafting and submission of legal documents.

There is no provision within the City Charter that would prohibit the City Attorney allowing a substitute attorney from her office or contracted with from another jurisdiction to fill in for her when she is absent from a meeting.

Because the allegations, if true, do not constitute a violation of law within the PEC's jurisdiction, we must dismiss your complaint pursuant to our Complaint Procedures. The PEC's Complaint Procedures are available on the PEC's website, and a copy has been included with this letter for your reference.

You could contact the City Auditors Office if you have evidence that the City Attorney violated her department rules or regulations. The City Auditor can be reached at (510) 238-3378 or emailed at cityauditor@oaklandca.gov.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on October 5, at 6:30 p.m. by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson,
Enforcement Chief

CITY OF OAKLAND



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Public Ethics Commission
Enforcement Unit

(510) 238-3593
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TDD (510) 238-3254

September 14, 2020

Barbara Whitfield

Re: PEC Complaint No. 20-11; Dismissal Letter

Dear Ms. Whitfield,

Thank you for submitting a complaint to the City of Oakland's Public Ethics Commission (PEC) on June 12, 2020, we received your complaint alleging that an unspecified person in the Oakland Planning and Building Department violated unspecified provisions of the laws under the PEC's jurisdiction when it approved defective renovations done to your property by a contractor who was not licensed in the state of California. Unfortunately, after reviewing the allegations in your complaint, further discussing the matter with you, and giving you the opportunity to provide additional information or evidence, we have determined that your allegation does not constitute a violation of any of the laws under the PEC's jurisdiction. We are therefore dismissing your complaint.

The complaint does not allege that any specified person within the department had any type of personal or financial interest in the decision to approve the permits or the final renovations that would have given rise to a conflict of interest or a violation of the Government Ethics Act. Nor does the complaint allege that any specified person acted outside the scope of their ordinary duties as a building official. No laws under the PEC's jurisdiction allow the PEC to second-guess the ordinary use of discretion by a City official conducting authorized procedures, in the absence of any evidence or allegation of corrupt influence or intent.

Because the alleged conduct does not constitute a violation of any of the laws under the PEC's jurisdiction, and there is no evidence that suggests that a department employee had a conflict of interest, misused their position, misused City resources or any other type of corrupt influence or intent, we are dismissing your complaint pursuant to the PEC's Complaint Procedures. The PEC's Complaint Procedures is available on the PEC's website.

You have the option of contacting the City Auditors Office at (510) 238-3378 or forwarding a complaint to the Whistle Blower hotline or email the Auditor at cityauditor@oaklandca.gov if you believe the Building and Planning Department has failed to comply with department rules or regulations in approving the work that was done to your property.

If you would like further information about the PEC's complaint process, please contact the Ethics Commission at the phone number or address below, or email Commission staff at EthicsCommission@Oaklandnet.com.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on October 5, at 6:30 p.m. by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

K. Johnson
Enforcement Chief

CITY OF OAKLAND



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Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

September 22, 2020

Elise Bernstein

[REDACTED]
94605

Re: PEC Complaint No. 20-32; Dismissal Letter

Dear Ms. Bernstein:

On July 22, 2020, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that Courtney Ruby, the City of Oakland's Auditor violated the Oakland Government Ethics Act and the Oakland Campaign Reform Act when on June 1, 2020, she or someone on her behalf posted to a campaign mailing list a synopsis of her audit of the Oakland Police Commission urging the public to contact Police Commissioners with their concerns. You also alleged that on July 21, 2020, the Auditor unethically posted a similar message in an opinion letter that appeared in the San Francisco Chronicle in which you alleged that she made misrepresentations and mistruths. After reviewing the matter with you, the facts, relevant law and intake provisions of the PEC Enforcement Procedures, we have determined that the allegations do not allege conduct that constitutes a violation of either of the above laws that are within the jurisdiction of the Public Ethics Commission.

The Oakland Campaign Reform Act (OCRA) Section 3.12.000- 3.12.360 is largely an Act designed to ensure fair and equal opportunity to participate in elective governmental process and moreover, establish campaign contribution limits, regulate campaign expenditures and regulate campaign finance and financial contributions to political candidates or elected officials in the City of Oakland. However, the Campaign Reform Act does not regulate speech, or the written content contained in campaign materials, except for the limited purpose of disclosing the primary big donor or financial contributors of a campaign. The facts as you allege are not prohibited by the Oakland Campaign Reform Act.

The Government Ethics Act (GEA) prohibits a City employee or elected official from using or permitting others to use public resources for a campaign activity or for personal or non-City purposes not authorized by law. (Misuse of City Resources, O.M.C. 2.25.060). GEA also prohibits a City employee or elected official from using his or her position or prospective position or the power of authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, ore economic gain to the City Public Servant or

candidature or any other person. (Misuse of City Position, O.M.C. 2.25.060 (2))

Our preliminary review found that Auditor Ruby is an elected official of the city of Oakland and was working in that capacity in the months of June and July of 2020, as alleged. As such, Auditor Ruby was prohibited from misusing City resources. However, we did not find the Auditor used or permitted others to use public resources to produce, publish or share (including the two communications you submitted in your complaint from June and July of 2020) for a campaign activity or for personal or non-City purposes outside of the law.

It is within the duties of a City Auditor to provide an independent assessment of whether City funded services and operations are managed properly and in compliance with laws and regulations and to communicate the outcomes of the review. In this case, the Auditor by an email advertisement and a letter to the editor, published to citizens the findings of an Audit with recommendations on how to address the situation, contacting members of the Police Commission. There are no facts to establish that the City Auditor used public resources for her own personal campaign purposes or a non-City purpose; therefore, the conduct alleged does not violation any provision of O.M.C. 2.25.060.

The City Auditor is also prohibited from using his or her position or the power or authority of the position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to themselves, a candidate or any other person. (O.M.C. 2.25.060 (2)) Again, we did not find any facts to support that the City Auditor published either document with the intent to coerce or induce a person to provide her with an advantage, benefit or economic gain. Moreover, there were no facts to establish that the Auditor published either document to provide an advantage, benefit or financial gain to any other person.

Because City Auditor Ruby's alleged conduct does not constitute a violation of the Government Ethics Act, and there is no evidence that suggests that the City Auditor violated the Campaign Reform Act, we are dismissing your complaint pursuant to the PEC's Complaint Procedures. The PEC's Complaint Procedures is available on the PEC's website.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on October 5, at 6:30PM by teleconference as will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson
Enforcement Chief

CITY OF OAKLAND



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Public Ethics Commission
Enforcement Unit

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September 22, 2020

Rebecca Ailisheva
[REDACTED]
[REDACTED]

Re: Case No. 20-12 Oakland City Council Budget Vote June 23, 2020

Dear Ms. Ailisheva:

On or between July 9- August 3, 2020, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that on Tuesday, June 23, 2020, at a City of Oakland Council Meeting, the Council voted 5 to 1 in open session to approve and adopt the Midcycle FY20-21 Budget, with amendments. The amendments that were adopted along with the Budget were introduced to the City Council and the community on Monday, June 22, 2020. The complaint also alleged that the proponents of the Budget amendments failed to provide adequate notice or time to review the amendments before presented and adopted by the City Council. This conduct, you assert, violated the California Brown Act or the Oakland Sunshine Act by adopting amendments that were presented to the body less than 24 hours before the Budget was approved.

Pursuant to Oakland Municipal Code Article II, Public Access to Meetings, Section 2.20.030 (A) and 2.20.030(B) (2) as interpreted by the Oakland City Attorney in an August 21, 2015 Legal Opinion, any member of a local governing body is “allowed to introduce written amendments or recommendations that pertain to an Agenda item and to Agenda related materials that were filed by the Sunshine deadline, so long as the amendment/recommendation is within the scope of the noticed item.”

The June 23, 2020, City Council Agenda and related documents provided public notice that the City Council would review amendments to the FY 20-21 Midcycle Budget and consider adopting a resolution amending the Budget. At that meeting, a group of Councilmembers proposed that the Council consider written amendments to the Midcycle Budget. The Council discussed the amendments and the amendments were adopted.

We also reviewed other sources, laws and provisions that may apply to the City Council’s actions. This included the City of Oakland 2013 Resolution 84385, “Oakland’s Budget Process Transparency and Public Participation Policy.” Resolution 84385 provides that in budget development years (which are typically odd-numbered years) “[a]lthough council members may submit proposed budget amendments anytime, the budget shall not contain substantive amendments made on the floor y Council member at the final meeting when the budget is adopted... all substantive amendments must have been published in the City Council Agenda

packet for at least 3 days prior to the budget final analysis.” Although informative, Resolution 84385 applies to budget development years and does not apply to Midcycle budget revisions like the process that occurred on June 23, 2020 at the Oakland City Council Meeting.

Our investigation included a review of the City of Oakland’s March 23, 2020, Emergency Order that suspended some of the provisions of the Oakland Sunshine Act and the Brown Act/Open Meetings Regulations. The Interim City Administrator issued this Emergency Order shortly after California Governor Gavin Newsome issued a statewide Emergency Order on government operations during the pandemic. Neither the City of Oakland’s Emergency Order nor the California State Emergency Order address or include a provision that limits Councilmembers submitting materials or making amendments to noticed items on the day of a Council meeting. The City Council did not rely on any provision of the Oakland Emergency Order when it voted to adopt the Midcycle budget on June 23, 2020.

After close review of both the Brown Act and the Oakland Sunshine Act, as well as supporting law and legal opinions and the Emergency Order, we found that there are no provisions in either Act that required the Council to have provided more notice of amendments to the Midcycle Budget, as long as the amendments were within the scope of the noticed item. Thus, the facts alleged do not constitute a violation of law within the Commission’s jurisdiction, and we must dismiss your complaint pursuant to our Complaint Procedures. The PEC’s Complaint Procedures are available on the PEC’s website and a copy has been included with the letter for your reference.

Thank you for expressing your concerns about this matter. Making good, fast decisions on any government budget is challenging under the best of circumstances. When you have a crisis of uncertainty like Covid-19 and its impact on the City resources as well as political unrest, it is more important than ever to ensure that the local governing body is acting with integrity and transparency. We understand and take each of the concerns you raised with earnest consideration.

We want you to know, the concerns you raised in this complaint were brought to the attention of the Oakland City Council. In response to the community concern over transparency of Council Meeting materials, City Council held a meeting on July 28, 2020 and amended its Rules of Procedure by adopting Resolution 88266 to effectively reinstate most of the Sunshine rules that apply to Council. (See the attached Resolution) In addition, after receiving input from the community on these same concerns, the Chair of the Ethics Commission wrote a letter to the City Administrator and City Council urging complete reinstatement of the Sunshine Ordinance Act (rather than merely a Council Resolution) and the allowance of public comment on each item of the Council’s Agenda (see attached letter).

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on October 5, 2020, at 6:30 p.m. by teleconference as will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However,

you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have other questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission
KJohnson3@oaklandca.gov

Executive Director's Report



James E.T. Jackson, Chair
Jill M. Butler, Vice-Chair
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: September 25, 2020
RE: Executive Director's Report for the October 5, 2020, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities completed or in progress since the Commission's last regular meeting that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and activities for 2019-20 for each program area.

Letter to City Administrator and City Council Regarding the Sunshine Ordinance

Following the Commission's discussion at its August 3, 2020, meeting, Commission staff coordinated with Chair Jackson in drafting a letter to the City Administrator and City Council requesting that the Administrator rescind his earlier suspension of the Sunshine Ordinance. A copy of the August 13 letter is attached to this memorandum.

PEC Commissioner Recruitment

The Commission received 10 applications to fill the current and upcoming vacant positions on the Commission. The recruitment subcommittee will interview candidates on October 1 and is expected to select a smaller number of candidates to invite to the November 2020 PEC meeting for final interview. The first vacancy will begin immediately for a term that ends January 21, 2022, and the second vacancy will begin January 22, 2021, for a term that ends January 21, 2024.

PEC Intern – Mediation Coordinator

Carly Johnson has joined the Commission's Enforcement team as Mediation Coordinator. Ms. Johnson is a sophomore at American University in Washington, D.C., double-majoring in Communications, Legal Institutions, Economics, and Government (CLEG) and Philosophy with a minor in Graphic Design. She's interested in government transparency, campaign finance, and equity, having debated about Citizen's United in 8th grade and more recently advocated for new equity policies in her local school district. Ms. Johnson will be interning with the Commission for the Fall semester, conducting mediations and drafting mediation summaries for the Enforcement team.

PEC Intern – Civic Technology and Data Analysis

Chris Mullins has joined the Commission's Disclosure team as Civic Technology and Data Analysis intern. Mr. Mullins is a graduate of Oakland Technical High School and a junior in Applied Computer Science at Make School, a program of Dominican University of California. He is interested in exploring how the intersection of technology and government can serve a more humanitarian agenda. Mr.

Mullins will be interning with the Commission for the Fall semester, assisting with the Commission's disclosure compliance program utilizing campaign finance and lobbyist disclosure data and data projects related to the Commission's review of the public records request system.

Part-Time Investigator

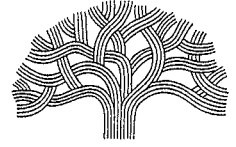
The Commission is recruiting for a part-time investigator to assist with campaign finance and ethics investigations, utilizing one-time funds received for Fiscal Year 2020-21. Staff is in the process of reviewing applications and scheduling interviews for the position, which will be a part-time, temporary role. Information about the position is available on the Commission's [webpage](#).

Attachments:

Letter to City Council and City Administrator Edward Reiskin
Commission Programs and Priorities

Executive Director's Report

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • SUITE 104 • OAKLAND, CALIFORNIA 94612

Public Ethics Commission

(510) 238-3593
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August 13, 2020

City Council President Kaplan and Council Members,
City Administrator Edward Reiskin
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

Dear City Council President Kaplan, Members, and City Administrator Edward Reiskin,

On August 3, 2020, the Public Ethics Commission (PEC) held a public discussion regarding the status of Oakland's open meetings laws during the current COVID-19 pandemic. The Commission reviewed the current framework of temporary adjustments to existing state and local laws and appreciates both the challenges of the present environment as well as the need for Oakland to continue its diligence in operating with transparency for our community.

To that end, we want to communicate our appreciation for the recent amendments to the City Council's Rules of Procedure (Resolution 88266) to restore advance-notice requirements for Council meetings.

In addition, the Commission respectfully requests that 1) the City Administrator issue a new executive order to rescind the suspension of the Sunshine Ordinance, and 2) the City Council return to its usual practice of allowing for public comment to be made upon each item of the Council's agenda at the time the item is being considered.

Background

As you know, the City Administrator's March 23, 2020, Executive Order suspended Oakland's Sunshine Ordinance (codified at O.M.C. Chapter 2.20) as well as the Oakland City Council's Rules of Procedure (codified in Resolution 87044 C.M.S.) for "the duration of the local emergency or until such time as this order is rescinded or the City Council terminates the emergency, whichever is earlier, to the extent necessary to allow the City to conduct its business in accordance with the California Brown Act, Government Code section 54950, et seq."

Executive Director's Report

The City Administrator's Executive Order further stated, "Oakland City Council, Council Committees, and City of Oakland boards and commissions shall conduct their public and closed meetings in accordance with the California Brown Act, Government Code section 54950, et seq., as amended/suspended/waived by the Governor's Executive Orders N-25-50- and N-29-20, including, but not limited to, the notice and speaker provisions, therein, for the duration of the local emergency or until such time as this order is rescinded or the City Council terminates the emergency, whichever is earlier."

Following the City Administrator's March Executive Order, City Council has amended its Rules of Procedure with the most recent and comprehensive changes adopted on July 28, 2020, in Resolution 88266. These changes reinstate many of the Sunshine provisions such as 10-day advanced notice for meetings, among other rules, putting many pre-COVID-19 practices back into place. However, these changes, made merely by Council Resolution, do not apply to any of the other roughly two dozen Oakland boards and commissions. In addition, it leaves all Sunshine Ordinance enforcement provisions ineffectual, eliminating all accountability mechanisms for all boards, commissions, and City Council.

Closing the Loop on Open Meetings Rules During COVID-19

While the Commission understands the initial need for the City Administrator's suspension of the Sunshine Ordinance in March, we believe that the past four months has provided the Council and other boards and commissions with the opportunity to learn and adopt new practices, including running public meetings virtually. With these practices now in place, **we ask that the City Administrator rescind the suspension of the Sunshine Ordinance** to both affirm and codify existing Council rules and show the public that City government is committed to operating at the same standard of transparency as always.

Lastly, the Commission has heard multiple criticisms regarding the timing and consolidation of public comment at the beginning of City Council meetings during this time. We understand that this issue, as well as other practical considerations such as adding video of Council members during meetings, may still be considered during the Council's recess. **We urge your serious consideration of reinstating public comment upon the consideration of each meeting agenda item so that the public can be heard at the time the item is about to be discussed.** We understand that this may be more difficult to manage from a practical perspective; however, it is one of the last remaining concerns that has been raised repeatedly by the public at City Council meetings and brought to our attention during open forum at our Public Ethics Commission meetings. We believe the public deserves to see that its government is working diligently to ensure that COVID-19 does not limit their ability to participate meaningfully in the process. To the contrary, this is an important opportunity to facilitate and maximize participation at a time when our community is impacted so severely.

The Commission believes that addressing these few remaining matters will be well worth the work required in showing that the City stands behind its commitment to accessible and

Executive Director's Report

transparent government meetings. It also would codify many of the recent changes made by City Council to its own procedures via resolution and extend these same measures to all City boards and commissions, so that all public meetings are conducted with the same degree of transparency and the public is assured of the City's commitment to open and accessible government.

Thank you for your consideration of these matters.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Jackson', with a long horizontal line extending to the right.

James Jackson
Chairman
Public Ethics Commission

PUBLIC ETHICS COMMISSION Programs and Priorities 2019-20

Program	Goal	Desired Outcome	Key Projects for 2019-20
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Adoption of PEC-drafted City Ticket Distribution policy and process changes 2. Campaign Finance/Public Financing Act Project to expand participation in the campaign process ✓ 3. Government Integrity Data partnership
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Online ethics training for Form 700 filers – ensure training delivered to a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Board/Commission member/liaison support/guidance; Sunshine/Meeting agenda posting Compliance Review ✓ 3. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2) 4. Sunshine and Lobbyist education materials
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Outreach to client groups: -City staff/officials -people doing business with the City 2. Sustain/enhance general PEC social media outreach 3. PEC Roadshow – focus on CF project outreach (Commissioners) 4. Engage Boards/Commissions regarding Sunshine requirements (ensure/review agenda postings online)
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Lobbyist Registration – pilot new e-filing system, create online open data format for public accessibility ✓ 2. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility ✓ 3. Initiate/develop project plan to establish contractor database 4. Open Disclosure 2020 – campaign data visualization project ✓ 5. Government Integrity Data Project planning and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Focus on ethics violations, proactive investigations ✓ 2. Conduct complaint intakes within 2 weeks 3. Collaborate with other government law enforcement agencies

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	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	4. Conduct audits to identify common, across-the-board compliance issues
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct hearings as needed 2. Complete City ticket cases 3. Expedite Sunshine Mediations ✓ 4. Amend Complaint Procedures ✓ 5. Resolve all 2014 and 2015 cases ✓ 6. Streamline and expand enforcement systems to incorporate broader tools
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Revise PEC Enabling Ordinance 2. Publish performance goals and data on PEC website – dashboards 3. Review data to adjust activities throughout the year 4. Ongoing: professional development and staff reviews