

CITY OF OAKLAND



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Public Ethics Commission
Enforcement Unit

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Mr. Gene Hazzard,

Re: PEC Complaint No. 17-22; Dismissal Letter Regarding City Council

Dear Mr. Hazard:

On December 14, 2017, the City of Oakland Public Ethics Commission (PEC) received your complaint (Complaint No. 17-22) that in 2017, City Council Members violated an unspecified City ordinance when members of the Council voted to amend the General Plan Estuary Policy and convey 64 acres to the Oak to Ninth Parcel (“Brooklyn Basin”), contrary to the original plan for Open Space Development Project of 2001. After a close review of the allegations, analyzing the facts, relevant law and Enforcement Procedures, we found that there are insufficient facts alleged in the complaint to establish that any member of the 2017 City Council engaged in conduct that constitutes a violation of the Government Ethics Act or any other City of Oakland ordinance.

Contrary to the allegations in the complaint, the Estuary Policy Plan or Estuary Plan, as it later came to be known, was developed after concerns raised in a 1998 report prepared by the League of Women Voters and other concerned Oakland community members.

In June 1999 the Estuary Policy Plan was published, and it defined the purpose of the plan as follows: “The Estuary Policy Plan calls for a system of open spaces and shoreline access that provides recreational use opportunities, environmental enhancement, interpretive experiences, visual amenities, and significant gathering places. A series of individual parks, open spaces and shoreline access points, connected by a continuous landscaped parkway with promenades, bikeways and shoreline trails, is recommended. In addition to enhancing existing facilities, new parks are proposed at the mouth of the Lake Merritt Channel, at the site of the Ninth Avenue Terminal, at Union Point, and within the Jack London District. Further, the Estuary Plan proposes a variety of uses that strengthen Oakland’s position as an urban center, accommodate economic growth, and encourage development that complements the downtown and adjacent neighborhoods. The plan reinforces the Jack London District as the East Bay’s primary dining and entertainment venue, by promoting mixture of retail, dining, entertainment and visitor-services...” (Please see the attached copy of the Estuary Plan)

Furthermore the plan proposed, “[t]he large-scale transformation of the area from the Lake

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Merritt Channel to the Ninth Avenue Terminal into a mix of artisan work/live lofts, hotel, cultural and commercial-recreational uses that will complement the planned open spaces and parks along the water. The plan recommends strengthening the livability of existing and future residential development within the Kennedy Tract, and suggests new opportunities for small-scale office, business and commercial establishments. In certain areas (e.g., around the Con-Agra facility in the San Antonio/Fruitvale District), the plan supports the retention of existing industries, but acknowledges that they may relocate for a variety of reasons. If that occurs, the plan suggests land use priorities for an appropriate transition to new urban development in the future...”

On March 15, 2006, the Planning Commission approved a set of amendments to the General Plan for recommendation to the City Council and the Council adopted them on June 20, 2006. The Council amended the plan and added the following language: “ a mix of land use can be accommodated within the Oak-to-Ninth District, including open space, recreation, commercial, civic uses, marinas, and as designated in the PWD-4 land use classification, residential development.” The Brooklyn Basin project broke ground on March 13, 2014. (For additional information please consult the webpage [Waterfront Action.org](http://WaterfrontAction.org) Plans and Projects)

There is no provision within City ordinances or City Charter language enforced by the Public Ethics Commission that prohibits the City Council from amending a General Plan. There is no provision within the 1999 (reprinted in 2000) Estuary Policy Plan that prohibits the City Council from making amendments to the Plan. The investigation corroborated that, outside of voting on a measure to amend a City plan regarding the Oak to Ninth Parcel, there is insufficient information that any 2017 Council Member intentionally or knowingly participated in or aided and abetted another in violating any provision of the Oakland Municipal Code.

Because the alleged conduct does not constitute a violation of the Government Ethics Act or any other act under the PEC’s jurisdiction, we are dismissing the allegations against all members of the 2017 City Council in the complaint pursuant to the PEC’s Complaint Procedures. If you would like to review the PEC’s Complaint Procedures, they are 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 January 12, 2022, at 6:30 p.m. by teleconference as will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Kellie Johnson,
Enforcement Chief