



Item 13 - Executive Director's Report

Ryan Micik, Chair
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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: September 29, 2023 (Revised October 18, 2023)
RE: Executive Director's Monthly Report for the October 25, 2023, PEC Special Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2023 for each program area.

This Executive Director's Report is the same as the September 29, 2023, Director's Report for the cancelled October 11, 2023 PEC meeting, except the status of the PEC's LPF and LRA legislation has been updated and a section has been added discussing the PEC's mayoral appointee vacancy.

PEC Priorities and Roadmap for 2023-25

At its August retreat, the PEC discussed near and mid-term project priority setting over the next one to two years in three non-enforcement program areas, relating to public policy and executive priorities, disclosure priorities, and outreach priorities. In discussion, Commissioners identified the following priorities and approximate time period for working on and completing those priorities:

Executive/Policy Priorities

- Near Term (2023), in order of priority:
 - Work with the City Council to adopt the Limited Public Financing Program of 2024 (In Progress – High Priority)
 - Work with the City Council to adopt Lobbyist Registration Act Amendments (In Progress – High Priority)
 - Pilot a Voter Guide in the 2024 Election (High Priority)
 - Recommend whether the PEC should set the Mayor Salary (Medium)
 - Review City Charter provisions relating to the PEC with (Medium)
- Mid/Long Term (2024-25), in order of priority:
 - Bi-Annual Policy Review: LRA (High)
 - Strengthen Public Records/Mediation (High)
 - Build Ethics Commission Network (Low – begin with regular meetings)
- For Future Consideration, unordered:
 - Contributor Certification
 - Regular Auditing Program

Disclosure Priorities

- Near Term (2023), in order of priority:

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1. Update the Lobbyist Registration and Reporting Database (Not Started – High Priority)
2. Publish a Public Records Performance Dashboard (In Progress – High Priority)
- Mid Term (2024), in order of priority
 1. Update the Open Disclosure Portal for 2023 and 2024 (In Progress – High Priority – Medium Effort)
 2. Update the Show Me the Money Application for 2023 and 2024 (In Progress – High Priority – Low Effort)
- Mid/Long Term (2024 – 2025), as higher priority projects are completed and/or increased staff capacity allow, in order of priority:
 1. Digitize Schedule O Form/Searchable Contractor Database
 2. Create a Ticket Distribution (Form 802) Database/Improved Transparency Portal

Outreach Priorities

- Near Term (2023)
 1. Recruit for the PEC Vacancy
 2. Highlight the Need of Additional Enforcement Resources
- Mid Term (2024)
 1. Increase Awareness of the PEC's Campaign Finance Applications
 2. Increase Awareness of how to File Complaints/Anonymous Complaints with the PEC
- Additional considerations:
 1. Increase Awareness of the PEC and its Role

These priorities have been added **in bold** to the Programs & Priorities tracker (attached).

LPF and LRA Legislation (Updated October 18, 2023)

At its August meeting, the PEC adopted recommendations to the City Council to (1) reinstate a limited public financing (LPF) program for the 2024 election only and (2) make changes to the Lobbyist Registration Act (LRA), including codifying in the LRA recent changes adding a lobbyist registration fee and lobbyist reporting late fees adopted in the Master Fee Schedule, proposing a fee waiver and fee reduction program for certain lobbyists, and making other administrative changes to the LRA.

The two proposals, which were co-sponsored by Council President Bas, were heard by the City Council's Rules Committee on September 28, 2023, which approved both recommendations. The proposals were then passed by the full City Council ("first reading") on October 17. The ordinance will return for adoption ("second reading") on November 7.

Staffing

The PEC has experienced a number of staffing changes over the past few months and is actively engaging with Human Resources to use salary savings to bring on additional limited duration staff assistance.

In September, Lead Analyst Suzanne Doran was promoted to Acting Democracy Dollars Program Manager. Manager Doran has been leading the PEC's Measure W implementation work and has a

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wealth of experience with developing and administering complex data projects. Congratulations Suzanne! The Program Manager appointment is temporary until the completion of an open civil service recruitment and selection process for hiring a permanent Program Manager.

In September, Commission Analyst Ana Lara-Franco accepted a position with another department in the City of Oakland. Analyst Lara-Franco served seven years with the PEC, assisting with the PEC's finances, compliance with City administrative requirements, review of regulatory filings, constituent services, and more. We are grateful for Ana's service, and congratulate her on her next chapter! We have begun the process with HR for hiring a new Commission Analyst.

The PEC is also making progress on hiring for its permanent investigator position. Thirty-two candidates qualified and completed applications for the position. As part of the civil service process, those applications are now being screened by a panel of experts. We expect the applicant review and subsequent Department interview process to be complete around the end of October, with a hire likely occurring in November.

To address capacity issues within the Enforcement Program, the PEC is also actively pursuing a number of temporary hires using salary savings within its budget. The PEC has submitted requests through Human Resources to hire a full-time second investigator and two part-time law clerks through the end of this fiscal year (June 30, 2024). If the PEC is budgeted a second permanent investigator as part of the mid-cycle Fiscal Year 2024-25 budget, the temporary investigator could apply for that position.

Finally, the PEC is also exploring grant funding options to hire temporary staff to assist with the development of the Democracy Dollars Program, as discussed further in another report on this agenda.

Lobbying Rules Disclaimer

As part of its education work, the PEC updated its Lobbyist Registration Act (LRA) informational flyer and distributed 20 copies of the flyer to the offices of the Mayor and each councilmember. The PEC also drafted and submitted to Council President Bas a possible notice that could be added to City Council meeting agendas that would flag for people engaging in paid advocacy that they may be required to register as a City lobbyist. The suggested notice is as follows:

IMPORTANT NOTE: If you are being paid to communicate with City staff or officials to influence a government action, or lobbying is part of your duties as a salaried employee, you may first have to register as a lobbyist with the City of Oakland. To find out if you are required to register and for more information about lobbying rules and reporting requirements, consult Municipal Code Chapter 3.20 or visit the Public Ethics Commission's lobbying webpage: www.oaklandca.gov/topics/lobbyist-rules.

The Council President is presently reviewing the City Council's Rules and Procedures for potential updates, and will consider incorporating such a notice requirement in the Rules.

Equity Team

Under Administrative Instruction 580 (2021), City Departments are supposed to establish a Department Equity Team consisting of department staff to "support and expand development of

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department capacity for equity action.” In August, the PEC established its Equity Team, which met for the first time on August 31. The Team discussed future goals and reviewed and suggested additions to the PEC’s commissioner vacancy recruitment plans.

\$1,000+ Late Fees

Under City Charter Section 603(f), any assessment of a per diem late fee of \$1,000 or more must be placed on the PEC’s agenda. Pursuant to that requirement:

- **Kenny Session for District 6 2022** received a \$1,320 late fee for filing their October 23, 2022 to December 31, 2022, semi-annual campaign statement (Form 460) 132 days late. Because the statement was filed more than ten days after the PEC notified the committee that its report was late, under state law the fee cannot be waived.

Late Fee Waivers

Under City Charter Section 603(f), if the Executive Director waives any per diem fees for the late filing of campaign finance report, he or she must notify the Commission at their next regular meeting. Pursuant to that requirement:

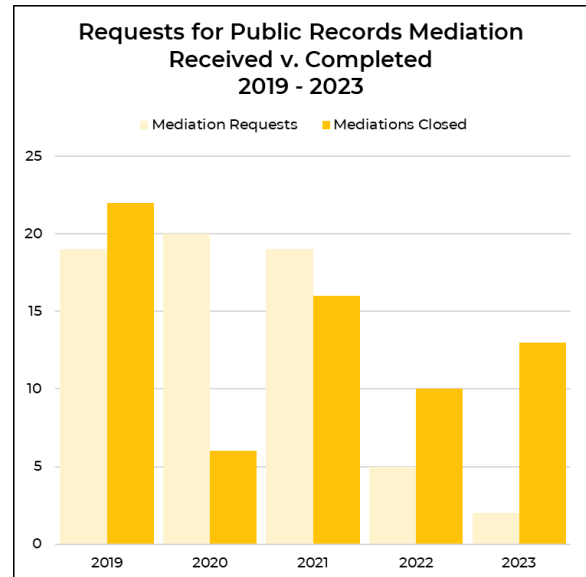
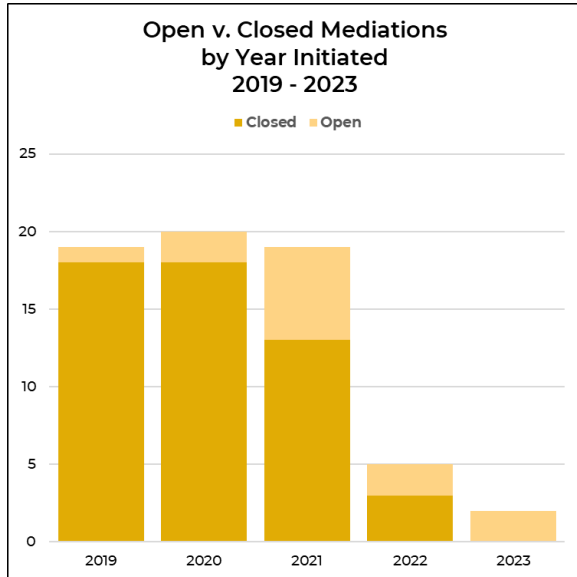
- The **East Bay Community Foundation (EBCF)** received a \$10 late fee for filing their July 1 – December 31, 2022, semi-annual campaign statement (Form 460) one day late and requested a fee waiver. Because this was EBCF’s first violation, the late filing was inadvertent and quickly corrected, and there was unlikely to have been significant public impact from the delayed disclosure, I granted the request and waived the per diem fee. Granting this waiver was also consistent with the PEC’s proposed new waiver policy, also under consideration this meeting.

Director Presentation

On September 9, 2023, Executive Director Heidorn took part in a panel discussion of local ethics commissions (San Diego, Los Angeles, and Oakland were represented) at a conference held by the California Political Attorneys Association (CPAA). Heidorn explained some of the PEC’s upcoming priorities and enforcement practices.

Mediation Program

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department’s control. The PEC currently has 13 open mediations. No new mediation requests were received and none completed since the last regular meeting.



Mayoral Vacancy (Added October 18, 2023)

The PEC currently has one commissioner vacancy, which is the position appointed by the Mayor. The Mayor's Office has indicated to PEC staff that they are hoping to fill the position before the end of this year.

Additional Attachment: Commission Programs and Priorities.

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PUBLIC ETHICS COMMISSION

Programs and Priorities 2023/24 (new additions in **bold**)

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
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	<ul style="list-style-type: none"> ○ Lead Measure W implementation ○ Engage in review of laws PEC enforces 	<ul style="list-style-type: none"> ○ Lobby Registration Act amendment to incorporate new fees and waiver policy ○ Ordinance for one-time LPF for 2024 elections ○ Voter Guide Pilot ○ Mayor Salary Setting Guidance ○ Charter Review Options ○ Policy Review: Lobbyist Registration Act ○ Ethics Commission Network ○ Strengthen Records/Mediations
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.	<ul style="list-style-type: none"> ● Regular ethics training ● Information, advice, and technical assistance ● Targeted communications to regulated communities ● New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance ✓ Public Records training
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.	<ul style="list-style-type: none"> ● Public Records mediations ● Commissioner-led public outreach ● Outreach to client groups – targeted training and compliance ● PEC social media outreach 	<ul style="list-style-type: none"> ○ Update guides and trainings to reflect Measure W and LPF changes ✓ Update public and stakeholders on Democracy Dollar postponement ✓ Update Lobbyist Registration Act educational materials and share with Council ✓ Recruit for PEC vacancy ○ Publicize Enforcement Needs ○ Publicize PEC campaign finance tools ○ Publicize how to file complaints

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Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
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>	<ul style="list-style-type: none"> • Monitor compliance (campaign finance/lobbyist/ticket use) • Proactive engagement with filers • Technical assistance • Assess late fees/refer non-filers for enforcement • Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars admin system development/issue RFP ○ Updates to Ticket Distribution (Form 802) database ○ Lobbyist App Updates ○ Public Records Performance Dashboard ○ Update Open Disclosure 2024 ✓ Update Show Me The Money ○ Digitize Schedule O Form
Detect/ Deter	<p>PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.</p>	<p>Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.</p>	<ul style="list-style-type: none"> • Process and investigate complaints • Initiate proactive cases • Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/ mediation request ○ Improve Enforcement database
Prosecute	<p>Enforcement is swift, fair, consistent, and effective.</p>	<p>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.</p>	<ul style="list-style-type: none"> • Prioritize cases • Conduct legal analyses, assess penalty options • Negotiate settlements • Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual ○ Expand streamline and diversion program
Administration/ Management	<p>PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.</p>	<p>PEC staff model a culture of accountability, transparency, innovation, and performance management.</p>	<ul style="list-style-type: none"> • Annual Report • Budget proposal • Ongoing professional development and staff reviews • Fill staff vacancies • Commissioner onboarding 	<ul style="list-style-type: none"> ✓ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council ○ Increase enforcement capacity