

January 17, 2024

Honorable Sheng Thao
Mayor
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

RE: PEC Request for Fiscal Year 2024-2025 Midcycle Budget Amendment - DRAFT

Dear Mayor Thao,

On behalf of the Public Ethics Commission (PEC), I am writing to ask that you include two amendments to the proposed Fiscal Year (FY) 2024-25 midcycle budget that are critical to the PEC's ability (1) to meet its core mission of ensuring compliance with and deterring violations of the City's ethics, anti-corruption, lobbying, and campaign finance laws, and (2) to successfully implement the City's landmark Democracy Dollars public financing program in the 2026 election cycle.

The PEC respectfully requests that the midcycle budget:

- **Add 2 FTE Investigators to address a severe enforcement backlog:** The PEC's caseload vastly exceeds its staff capacity, which has forced the Enforcement Program to place nearly two-thirds of its cases "on hold." The PEC is prioritizing for investigation only its most serious cases; however, a years-long delay in most investigations will significantly harm the Commission's ability to successfully prosecute cases and to deter intentional violations of the law. While the PEC's adequate staffing needs are significantly higher, in the very short-term the PEC needs a bare minimum of two additional Full Time Equivalent (FTE) investigators (for a total of three investigators) to keep pace with current caseload and make reasonable progress in decreasing its case backlog.
- **Add 1 FTE Ethics Analyst II beginning in January 2025 to assist with implementing the core elements of the Democracy Dollars Program:** Beginning with the 2026 election, the PEC will be mailing, tracking, processing, and redeeming Democracy Dollar vouchers sent to nearly a quarter of a million Oakland residents. Currently, the PEC has just one budgeted staffer to launch this administratively complex Program, out of the four required under Measure W (2022). The PEC will need additional senior staff to roll-out the policies, procedures, and core infrastructure of the Program well before March 2026, when vouchers will be mailed out. However, this will not be possible if these positions are not funded until July 2025 (the start of the next two-year budget cycle) and if they take several months to fill. The PEC needs at least one budgeted Ethics Analyst II beginning no later than January 2025 to ensure that person is onboarded at least six months to one year before vouchers are issued.

We are mindful that the City is projecting a tough budget year ahead and respect the difficult decisions you must make in how to allocate limited resources. The PEC has already reduced its budget by more than 50% in the current two-year Budget compared to the minimum funding levels required under Measure W, which is likely the largest proportional cut taken by any Department in this current cycle. In addition, the PEC has attempted to bring in outside resources to support its programs and lessen the burden on the General Purpose Fund; this fiscal year, the PEC pursued and was awarded \$210,000 in grant funding to hire 1 FTE to plan a broad and equitable roll-out of the Democracy Dollars Program. The above requests represent what we believe are the minimum required to run an effective enforcement program and to prepare the launch of a multi-million dollar public financing program that will receive national attention.

I. Enforcement Needs

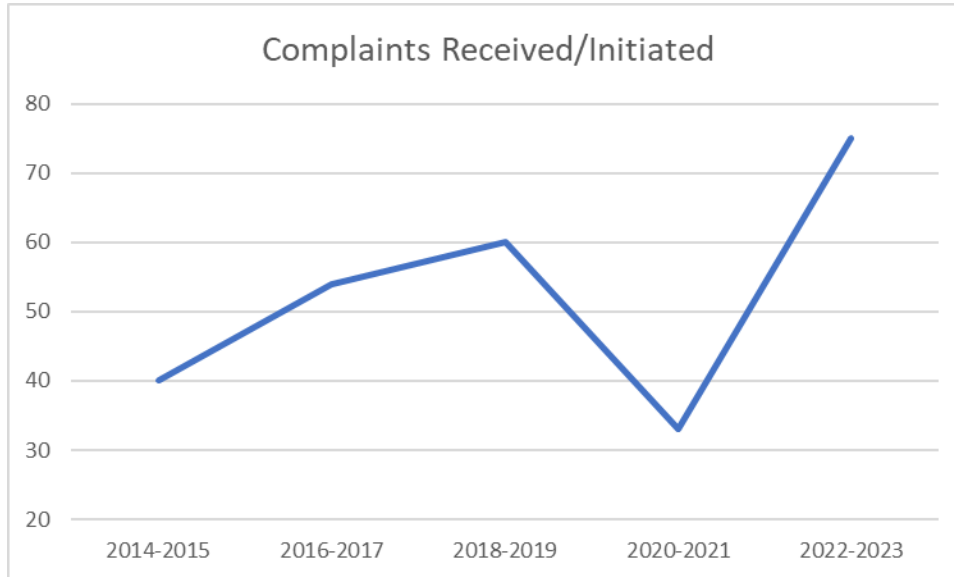
The PEC is responsible for enforcing City and some state laws relating to government ethics, campaign finance, lobbying, and transparency. This includes investigating complaints alleging bribery, conflict of interest, unregistered lobbying, and illegal campaign contributions. The prosecution and deterrence of these laws are vital for public trust in government as well as the fiscal health of the City. For example, if an employee administering government grants is involved in a decision in which they have a conflict of interest, it could jeopardize the legality of millions to tens of millions of dollars in contracts.

The PEC's current caseload vastly exceeds the Enforcement Program's staffing capacity to process complaints, investigate cases, and prosecute violations in a timely manner. As of January 1, 2024, the PEC currently has 87 active matters (not including public records mediations); however, of those, 53 (60%) have been placed "on hold" due to insufficient staff capacity to investigate the underlying violations. The PEC presently projects that most of its cases will take years to resolve at current staffing levels. However, justice delayed, it's often said, is justice denied. Older cases are harder to prosecute, because witnesses' memories fade and documentary evidence may be misplaced or destroyed; they place the City at-risk, because unpunished violations can create the appearance that there are no consequences for future violations; and they cause allegations to linger, depriving complainants and respondents of closure.

Although the pandemic and the ransomware attack contributed to the PEC's current case backlog by delaying the PEC's ability to fill a vacant investigator position, the far larger contributor to this backlog is structural. The PEC Enforcement Program's permanent staffing structure – consisting of 1 FTE Chief and 1 FTE Investigator – was set in 2014 with the passage of Measure CC and has remained largely unchanged since, even though the PEC's caseload has increased dramatically over the past decade.¹ For example, the PEC processed 40 new

¹ As the graph below demonstrates, the PEC's caseload has been steadily increasing over time, except for a brief COVID 19-related dip in complaints.

cases between 2014-15, compared with 75 new cases between 2022-2023 – a nearly 100% increase. To put this caseload in context, the PEC’s two permanent enforcement staff results in a ratio of 44 cases per staffer (based on current active caseload); by comparison, San Francisco’s Ethics Commission has a significantly more manageable 14:1 cases-to-staff ratio, which is more than three times lower than Oakland’s. In addition to the volume of cases growing, the complexity of these cases has increased dramatically over that time as well, requiring more investigatory and enforcement resources. For example, the PEC had only 1 active bribery case in 2015-2016, compared with 8 active bribery cases today (2022-2023).



Under the City Charter, the City is required to “appropriate a sufficient budget for the Public Ethics Commission to fulfill [its] functions and duties.” (City Charter Section 603(g).) To reach adequate staffing levels that align with the PEC’s actual caseload and match staffing best practices from peer jurisdictions like San Francisco, the PEC estimates it would need to hire three additional Investigators (going from 1 to 4 FTE) and one Staff Attorney to assist with new prosecutions. The PEC is currently attempting to address a small share of its staffing need through using past salary savings for temporary hiring, and has just brought on a limited duration Investigator and two part-time law clerks; however, these positions will end on June 30 and, as temporary employees, cannot be assigned complicated or longer-duration investigations, limiting their utility. Adding permanent staff in the midcycle budget is therefore critical to reversing the PEC’s backlog and making progress on high-priority cases. In the short term, adding two permanent Investigators – which includes making permanent the temporary Investigator position before it expires – are the bare minimum PEC staff estimates it would require to keep pace with incoming caseload and make some progress clearing older matters.

II. Democracy Dollars Startup Needs

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The Democracy Dollars Program is a signature piece of legislation affirming Oakland’s strong commitment to a democracy that includes all peoples and communities. In 2022, the City Council unanimously voted to place Measure W on the ballot to establish the Democracy Dollars Program, which will be administered by the PEC. Oaklanders overwhelmingly approved the measure, with 74% voting in favor. Under the Program, each eligible resident will receive four \$25 vouchers (for a total of \$100) which they may contribute to qualified candidates running for the office of Mayor, City Attorney, City Auditor, City Council, or School Board. Oakland is the second jurisdiction, after Seattle, to adopt this transformational approach to public financing, which seeks to boost civic participation, especially in Oakland’s marginalized and underrepresented communities.² While Measure W called for the Program to begin with the 2024 election cycle, due to the historic deficit leading into the FY 2023-2025 Budget, the Program was postponed to the 2026 election cycle.³

Under Measure W, the City is required to provide “adequate staff necessary to properly implement the Democracy Dollars Program,” including a minimum of one Program Manager and three additional FTE positions. (City Charter Sec. 603(g).) Due to budget constraints, for this two-year budget cycle, only the Program Manager position was funded. While this position has enabled the PEC to make progress in preparing the Request for Proposal (RFP) for creating the database that will distribute, track, and accept vouchers, additional staff will be needed to assist with the roll-out of this Program ahead of the 2026 elections. The scope of the Program – which includes distributing and tracking around 1 million vouchers mailed to around 250,000 Oaklanders, verifying redeemed vouchers, and disbursing funds to candidates – is significant; fully staffing up the Commission cannot wait until months before vouchers go out without jeopardizing the implementation of the Program.

The PEC has identified two core start-up staffing needs for the Program: (A) an Outreach Specialist, to ensure the Program is designed with principles of equity and inclusion to reach all of Oakland’s diverse communities; and (B) an Ethics Analyst II, to assist with creating the policy and regulatory framework of the Program, as well as setting up the infrastructure and logistics that are crucial for launch. As to the former, the PEC was able to secure a \$200,000 grant from the Haas Jr. Foundation to hire 1 FTE Outreach Specialist for one year to help with inclusive design and outreach strategic planning. The PEC also received a \$10,000 grant, also from Haas Jr., to support a graduate student to begin initial planning to support this work.

As to the latter, the PEC is requesting that the Ethics Analyst II be funded in this midcycle budget, ideally beginning at the start of the fiscal year in July 2024, but no later than in January

² The Council Resolution placing Measure W on the ballot cited a 2020 PEC report, which found that very few Oakland residents contribute to local campaigns, and that resident contributions come disproportionately from wealthier and whiter areas of the City. The voucher program was intended to ensure that wealth is not a barrier to participation in our political process. See Public Ethics Commission, [Race for Power: How Money in Oakland Politics Creates and Perpetuates Disparities Across Income and Race](#) (September 2020).

³ Measure W only authorizes the PEC to postpone the Program for the first election cycle following the Measure’s adoption, i.e. the 2024 election cycle. (O.M.C. 3.15.050(E).)

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2025. This ensures the position is filled more than half a year (and ideally a full year) in advance of Democracy Dollars being mailed out, likely in March 2026. However, if instead the Ethics Analyst is not funded until the start of the next two year budget cycle beginning in July 2025, and if hiring takes several months, that Analyst will be in their position only a few months before vouchers go out; this would be far too late to assist with Program design and logistics, and would place the entire burden of launching this Program on one Program Manager, which is highly inadvisable and risks jeopardizing the smooth roll-out of this Program.

Thank you for considering these two critical requests as you prepare your proposed revisions to the Midcycle Budget. The PEC is at an important crossroads for two of its core programs, and we appreciate the opportunity to clearly share our agency's needs. Should you have any questions, please feel free to reach out to the PEC Executive Director Nicolas Heidorn at (510) 238-3593 or NHeidorn@OaklandCA.gov.

Sincerely,

Ryan Micik
Chair
Oakland Public Ethics Commission
RMicik@OaklandCA.gov

CC: Oakland City Council