



Arvon Perteet, Chair
Ryan Micik, Vice Chair
Charlotte Hill
Joseph Tuman
Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: November 29, 2022
RE: Case No. 16-08 (a), In the Matter of Dan Kalb; Case No. 16-08(b), In the Matter of Abel Guillen; Case No. 16-08(c), In the Matter of Lynette Gibson McElhaney; Case No. 16-08(d), In the Matter of Annie Campbell Washington; Case No. 16-08(e), In the Matter of Noel Gallo; Case No. 16-08(f), In the Matter of Desley Brooks; Case No. 16-08(g), In the Matter of Larry Reid; Case No. 16-08(h), In the Matter of Rebecca Kaplan; Case No. 16-08(i), In the Matter of Libby Schaaf; prepared for the December 14, 2022, Commission meeting.

CONTENTS

INTRODUCTION1
SUMMARY OF FACTS AND LAW 2
 The Previous Ticket Distribution Policy..... 2
 Investigation of Compliance with Prior Ticket Distribution Policy 6
 The New Ticket Distribution Policy 8
RECOMMENDATION..... 11

INTRODUCTION

This report concerns a proactive investigation initiated by Commission Staff on June 7, 2016, to determine whether City officials’ use and reporting of free tickets received by the City to events at the Oracle Arena and the Oakland Coliseum were in violation of the Oakland Government Ethics Act. The investigation found ongoing and widespread violations of the City’s ticket distribution policy, though some officials’ violations were more serious than others. Training and oversight regarding the ticket distribution program were minimal.

After the opening of the investigation, Commission Staff began working with Council and Mayoral staff to improve education and compliance with the ticket policy. In response to a resolution passed by the PEC at its meeting of February 9, 2022, the City Council amended the City’s ticket distribution policy to address the systemic problems that had been highlighted by the Commission Staff investigation and media reports. Commission Staff has also developed a training on the new ticket distribution policy, which is now required of all elected officials and has been successfully completed

by the Mayor and all current City Councilmembers who have used tickets in the past. City officials' proper usage and reporting of tickets has improved significantly since the investigation and educational collaboration began.

Considering the demonstrated improvement in compliance with the City's ticket policy, as well as the newly-passed ticket distribution policy and training, Commission Staff recommends closing the open Enforcement cases relating to the old policy, in the belief that a more productive use of Commission Staff's resources on this issue would be focused on future training and compliance monitoring.

SUMMARY OF FACTS AND LAW

The Previous Ticket Distribution Policy

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

Under the City's previous ticket distribution policy (the one that was in place during the events examined in this investigation), elected City officials, including the Mayor and City Councilmembers, could not solicit or accept any gifts valued at more than \$250 cumulatively in a single calendar year from any single source.¹ They were also required to report any gifts valued at more than \$50 cumulatively in a single year from any single source.² A "gift" is anything that confers a personal benefit on a City official for which he or she does not provide equal or greater consideration in return.³

California Fair Political Practices Commission (FPPC) Regulation 18944.1, as amended February 13, 2016, and applicable for the duration of the activities in this case, provided an exception to the gift rule for tickets to events that an agency obtained pursuant to a contract for the use of public property.⁴ Under FPPC Regulation 18944.1(d)(2), a ticket that an agency obtained pursuant to a contract for the use of public property was not considered a gift if "the distribution of the ticket or pass is made in accordance with a policy adopted by the agency." For the exception to apply, the agency's adopted policy must have included all the following provisions:

1. A provision setting forth the public purposes of the agency for which the tickets may be distributed;
2. A provision requiring that the distribution of any ticket to, or at the behest of, an agency official accomplishes a stated public purpose of the agency; and

¹ Oakland Municipal Code (OMC) sections 2.25.030(D) and 2.25.060(C)(2); the City's gift limit provision incorporates, by reference, the State's definition of "gift."

² OMC section 2.25.040(B) and California Government Code (GC) sections 87200 through 87204.

³ GC section 82028(a).

⁴ FPPC Regulation 18944.1 was amended again in July 2019; however, at the time of the activities in this case, the prior version of Regulation 18944.1 applied.

3. A provision prohibiting the transfer of any ticket received by an agency official pursuant to the distribution policy except to members of the official's immediate family or no more than one guest solely for their attendance at the event.⁵

If the distribution of the tickets was not made in accordance with the policy adopted by the agency, then the tickets fell out of this exception and were considered a gift to the official.

State law also required the following information to be publicly reported on a Form 802 within 45 days of distribution of a ticket:

- A. The name of the person (or department)⁶ receiving the ticket;
- B. A description of the event;
- C. The date of the event;
- D. The face value of the ticket;
- E. The number of tickets provided to each person;
- F. If the ticket or pass is behested, the name of the official who behested the ticket; and
- G. A description of the public purpose under which the distribution was made, or alternatively, that the ticket or pas was distributed as income to the official.⁷

If a ticket was distributed to an outside organization, the agency had to report the name, address, description of the organization, and the number of tickets provided to the organization in lieu of the above details.⁸

Tickets received by a City official but not used by the City official and not transferred to another person were also not considered gifts to the City official.⁹ Tickets received or assigned to a City official but transferred to a nonprofit entity within 30 days without being claimed as a charitable contribution for tax purposes by the City official were also not considered gifts to the City official.¹⁰

In sum, tickets received by an elected City official from the City were not subject to the Oakland Government Ethics Act's gift limit or Form 700 reporting requirements if the tickets were distributed to the elected City official in accordance with the City Ticket Policy and were reported on a Form 802 within 45 days of the distribution of the ticket. Alternatively, tickets that were not used by the City

⁵ "Immediate Family" is defined by GC section 82029 as "spouse and dependent children."

⁶ FPPC Regulation 18944.1(f)(3).

⁷ FPPC Regulation 18944.1(f)(1).

⁸ FPPC Regulation 18944.1(f)(2).

⁹ FPPC Regulation 18946.1.

¹⁰ GC section 82028(b)(2).

Item 6 - Staff Memo

official and not transferred to a third party also were not considered gifts subject to limits and reporting requirements.

In accordance with the above state requirements, the prior City of Oakland Policy for Receipt and Distribution of Passes and Tickets (City Ticket Policy), adopted in 1999 and amended in 2009 by City Council, described the governmental purpose to be achieved through the distribution of tickets or passes to City officials, as well as the procedures for distribution of tickets to and from the City and its officials such that those tickets would not be considered gifts under the Political Reform Act.¹¹

The prior City Ticket Policy stated that, “in accordance with FPPC Regulation 18944.1, the distribution of any ticket or pass by the City to one of its officials, or distributed to a third party at the request of one of its officials, must accomplish a ‘governmental purpose’ of that agency.” The “governmental purposes” of the City to be accomplished by the distribution of tickets or passes included the following:

1. Oversight of facilities or events that have received City funding or support;
2. Oversight of facilities or events that may require City funding or support in the near future;
3. Reviewing a facility’s contribution to blight abatement within a Redevelopment Area;
4. Reviewing the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;
5. Reviewing the ability of a facility or its operator to participate in the City’s job creation goals or job training programs;
6. Reviewing the contribution of a facility or an event to the City’s goals for fostering arts and culture opportunities to City residents;
7. Rewarding a City of Oakland employee for his/her exemplary service to the City;
8. Rewarding a community activist for his or her service to the City of Oakland;
9. Rewarding a school or nonprofit organization for its contributions to the community; and
10. Rewarding an Oakland student for outstanding scholastic achievement.¹²

The receiving official could not directly transfer City tickets to any third party except to members of the official’s immediate family solely for their personal use in accompanying the official

¹¹ City of Oakland Ordinance No. 82032: *City of Oakland Policy for Receipt and Distribution of Passes and Tickets* (prior City Ticket Policy) section (I)(A).

¹² Prior City Ticket Policy section (III).

to the event.¹³ If more than one ticket was distributed to the official, the official could use the extra ticket to bring a guest to the ticketed event as long as the elected City official was also in attendance.¹⁴

The prior City Ticket Policy further required the receiving official to report the use of the ticket to the City within 25 days of receipt of the ticket from the Distributing Official (the Executive Assistant to City Council).¹⁵ The report was required to include the following information: the name of receiving official; a description of the event; the date of the event; the face value of the ticket; the number of tickets received; and a description of the public purpose under which the distribution was made.¹⁶ Within five days of receiving a completed report, the Distributing Official was required to approve the report and post it on the City's website to satisfy the Form 802 reporting requirements of FPPC Regulation 18944.1.¹⁷

To request that tickets be transferred to a third party, the receiving official was required to submit a written request to the Distributing Official, who would then distribute the tickets directly to the third party. Within 25 days of submitting the written request to the Distributing Official, the receiving official who made the request was required to report the third party's information to the City.¹⁸ The report was required to include the following information about the third party: The name of the person or organization receiving the tickets; a description of the event; the date of the event; the face value of the tickets; the number of tickets; the name of the Requesting Official; and a description of the specific public purpose under which the distribution was made.¹⁹ Within five days of receiving a completed report, the Distributing Official was required to approve the report and post the information on the City's website.²⁰

In sum, the prior City Ticket Policy required that tickets be used for a governmental purpose and provided a list of those purposes in the policy. In addition, the policy reiterated the required reporting of the ticket use by the receiving official – whether the use was for themselves or for a third party; however, the receiving official could not transfer the ticket to the third party but instead was required to request that the Distributing Official distribute the tickets to the third party recipient. Thus, if the tickets were not used for a government purpose, not reported within the timeframe required by the policy, were not distributed to third parties through the Distributing Official, or were otherwise used or distributed contrary to the City Ticket Policy, then the tickets were not distributed according to the City policy and the gift exemption provided by the policy no longer applied. Without this or another exemption, the tickets became a gift under the Government Ethics Act.

¹³ Prior City Ticket Policy section IV.

¹⁴ *Id.*

¹⁵ Prior City Ticket Policy sections (V)(A)(2) & (V)(A)(3).

¹⁶ *Id.*

¹⁷ *Id.* § (V)(A)(4).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* § (V)(B)(5).

Investigation of Compliance with Prior Ticket Distribution Policy

Commission Staff's investigation of compliance with the prior ticket policy included a review of all City tickets received by Mayor Libby Schaaf and City Councilmembers Desley Brooks, Annie Campbell Washington, Noel Gallo, Abel Guillen, Dan Kalb, Rebecca Kaplan, Lynette Gibson McElhaney, and Larry Reid, to events at the Oracle Arena and the Oakland Coliseum that occurred between January 1, 2015, and September 24, 2016. The purpose of the investigation was to determine whether Councilmembers and the Mayor complied with the Oakland Government Ethics Act's gift provisions. Commission Staff reviewed the distribution of City tickets to the Councilmembers and Mayor, and the reporting of the tickets they received. For tickets that were reported as "not used," Commission Staff confirmed whether the tickets were returned to the Distributing Official.

During the period reviewed in this matter, the City received 20 luxury suite tickets to every Oracle Arena event and 18 luxury suite tickets to every Oakland Coliseum event pursuant to contract agreements with the Golden State Warriors, Oakland Raiders, and Oakland A's. Councilmembers and the Mayor each received two suite tickets, and the Council President received four suite tickets, to every event at the Oakland Coliseum and Oracle Arena. In addition, City Councilmembers also received two field tickets (on top of the two or four suite tickets) to every A's game. This overall arrangement was pursuant to the City's agreement with the Coliseum Joint Powers Authority, of which the City was a part.

According to the Distributing Official (Executive Assistant to the City Council, Susan Sanchez), a representative of the Coliseum Authority would typically hand-deliver City tickets to the Distributing Official at the beginning of each month for all events scheduled for that month. The Distributing Official would then prepare sets of tickets for the Mayor and each Councilmember, or their respective agents, to pick up. The Distributing Official required each official or agent to sign for tickets that they picked up, and the Distributing Official advised each official to submit the required information about how they intended to use their tickets by completing the City's online Radar system for e-filing of FPPC-required Form 802 data. The Distributing Official also directed each elected City official that was assigned City tickets to return any unused ticket to her.

If an elected City official wanted a set of ticket assigned to them to be transferred to a third party, the elected City official was required to email the request to the Distributing Official and return the tickets to the Distributing Official, who would then keep the tickets and hand them directly to the third party.

Once an elected City official entered the Form 802 data into Radar, the Distributing Official reviewed and approved the information submitted by the official, and the data would be published on the City's website. The Distributing Official only verified that the elected City Official had completed the entire form, and did not inquire as to whether the elected City Official was properly using the ticket per the ticket distribution policy.

Item 6 - Staff Memo

Commission staff determined that most, if not every elected official included in the investigation had followed a longstanding cultural practice of using the Oracle and Coliseum event tickets as perquisites to give and use as the elected official saw fit. This was often done under the guise of “inspecting” the facilities or rewarding staff members (usually members of the official’s own staff). There was little oversight of the use of tickets and little attempt to ensure that tickets were used for truly public or governmental purposes by not only the Mayor and Councilmembers, but by the designated Distribution Official, who also had no authority to hold the ticket recipients accountable. Form 802s were often filed late, or not at all, with some officials being more egregious violators than others.

Elected officials and their staffs received conflicting information on reporting requirements. As new elected officials took office, there was little to no training provided to the staff or the elected official regarding the City Ticket Policy. Plainly put, no one was minding the store.

Many of these issues were made public by Commission Staff in its policy report, “Ensuring Ethical and Transparent Distribution of City Tickets,” in 2017. That report detailed various officials’ use of tickets, including which officials were more serious violators of the policy than others. The conclusion of the report, however, was that the problems with the ticket distribution policy were systemic rather than traceable to a few individual officials.

Following that report, PEC staff engaged with City officials regarding both policy and process recommendations made by the PEC, resulting in some changes to the way tickets were being used prior to facilities being closed down due to COVID-19. City officials’ appropriate use of tickets improved significantly since Commission staff initiated its investigation and began engaging with City officials on process improvements and compliance. In contrast to previous behavior, City officials are no longer saving the most valuable tickets for their own personal use; the average value of a ticket used by an official is comparable to the average value of tickets they distribute to others. Sharing of tickets between elected officials has also been reduced to near zero, meaning that officials are no longer using large numbers of tickets to bring a group of people with them to a single event. The proportion of tickets being used by officials for their personal use has also dropped precipitously compared with prior behavior. Some Councilmembers (e.g., Rebecca Kaplan) have also requested to stop receiving tickets altogether or (in the case of newer Councilmembers) have rarely or never used them at all (e.g., Treva Reid and Carroll Fife).

Meanwhile, as described below, the California Fair Political Practices Commission (FPPC) amended state regulations in 2019 to tighten restrictions on the quantity of tickets that could be used by City officials and to add new requirements that must be included in a City Ticket policy, among other changes.

Considering the systemic issues identified by the Commission Staff and media reports, the PEC voted on February 9, 2022, to recommend to the City Council that a new ticket distribution policy be adopted, with stricter reporting requirements and a narrowing of the number of tickets and

permissible purposes for which a City official could use tickets. The City Council voted unanimously on May 3, 2022, to approve the new ticket policy.

The New Ticket Distribution Policy

FPPC Regulation 18944.1, as amended in 2019, added specific language to be included in a city's ticket distribution policy and followed by agency officials, including the following. Under the new regulation, a city's ticket distribution policy was required to include a provision prohibiting the disproportionate use of tickets or passes by a member of the governing body, chief administrative officer of the agency, political appointee, or department head. The latter provision was specifically added by the FPPC in 2019 in response to reported abuses, with Alameda county officials expressly mentioned in the discussion of the regulatory changes.

The City's new ticket policy was written to comply with these state guidelines. The new ticket policy specifically states that City Councilmembers, Citywide elected officials, chief administrative officers, political appointees, and department directors may not disproportionately use City tickets.²¹ "Disproportionate use" is defined as using more than one set of two tickets to an event per facility per calendar year, or using a greater number of tickets than any other person who is not a City Councilmember, Citywide elected official, chief administrative officer, political appointee, or department director.²²

In contrast to the previous policy, in which receiving officials could receive more than two tickets to an event by obtaining them from other receiving officials, under the new policy a receiving official may receive no more than two tickets per event: one for their personal use under the policy and the other for a guest. No other transfer of a City ticket by a receiving official, other than the Ticket Administrator, is permissible, including the sale of a ticket by a public servant.²³

The new ticket policy has also improved the security of the process surrounding the tracking of ticket usage. Previously, the Ticket Distributor gave tickets to officials soon after the tickets arrived at the City, without requiring the prior filing of a Form 802. Now, officials are prohibited from collecting tickets prior to filing a Form 802 describing exactly how the ticket will be used.²⁴

Another significant difference from the prior policy, is that under the new policy the permissible purposes for which a ticket may be used are more restrictive when it comes to a receiving official's personal use of the ticket, or their distribution of the ticket to a third party. The distribution of any ticket pursuant to the policy must accomplish one of the following, specifically enumerated public purposes:

²¹ OMC section 2.26.080(B).

²² OMC section 2.26.080(B)(1)-(2).

²³ OMC section 2.26.080(A).

²⁴ OMC section 2.26.050(B).

Item 6 - Staff Memo

1. Further the City's work, mission, or duties;
2. Recognize or encourage young people by providing opportunities for youth development, civic engagement, mentoring, or participation in cultural, artistic, educational, recreational, or community activities in the City;
3. Promote City-controlled or City-sponsored events, activities, or programs;
4. Enable a Public Servant to work at or attend the event as part of the Public Servant's job duties for the City;
5. Promote or support community programs and resources available to City residents;
6. Support or show appreciation for programs or services rendered by nonprofit 501(c)(3), educational, or government organizations that benefit City residents;
7. Recognize significant academic, athletic, or public achievements of City residents;
8. Recognize the meritorious service of another current or outgoing Public Servant or volunteer;
9. Promote local and regional businesses, economic development, local culture, and tourism activities within the City, including conventions, conferences, and job creation opportunities;
10. Provide opportunities for economically disadvantaged or underserved residents to engage in cultural, artistic, educational, recreational, or community activities in the City; or
11. Facilitate a Public Servant's oversight or inspection of a City facility or event.²⁵

To close the loophole under the prior policy in which receiving officials could use tickets to "inspect" a facility without apparently conducting any actual inspection, the new policy now requires an official using a ticket for that purpose to produce a written inspection report of findings and recommendations by the official. That report must be submitted to the Ticket Administrator and included with the online ticket distribution data.²⁶

In addition, the new policy also closes a loophole under the prior policy in which City staffers being recognized for meritorious service (in practice, usually staffers of a Councilmember or Mayor) could receive a large number of tickets. Under the new policy, a public servant or volunteer receiving tickets in recognition of meritorious service to the City may only receive up to 4 tickets per event.²⁷

Unlike the prior policy, which lacked a specific mechanism for tracking and monitoring the use of tickets, under the new policy each Ticket Administrator shall establish a process for ticket

²⁵ OMC section 2.26.070(A)-(K).

²⁶ OMC section 2.26.070(K).

²⁷ OMC section 2.26.070(H).

distribution that ensures that tickets are tracked and distributed according to the public purposes and limitations of the policy. The Ticket Administrator and their designee are both responsible for determining whether the ticket distribution is made in furtherance of at least one of the public purposes provided in policy. The process shall be electronic so that it can be updated, searched, and provided to the public in electronic format.²⁸

Under the new policy, the Ticket Administrator must now collect the following information before distributing any tickets:

1. The ticket recipient's name and department if a public servant, or the ticket recipient's name and organization if a non-City individual;
2. A description of the event;
3. The date of the event;
4. The fair value of the ticket, which is the face value on the ticket, or, if no value is indicated or if the face value does not reflect the actual cost for a ticket in a luxury box or suite, the face value is the total cost of the suite divided by the number of tickets available for the suite;
5. The number of tickets provided;
6. If the ticket distribution to the Public Servant or non-City individual was requested by another City official, the name of the requesting or "behesting" official; and
7. The public purpose that best describes the reason for the distribution of the tickets, from the list provided in the policy.²⁹

The Ticket Administrator shall not distribute any City ticket, even temporarily, to any public servant or non-City individual without first receiving the above information.³⁰ The Ticket Administrator must also determine that a stated public purpose for the distribution of the ticket applies.³¹

For every City ticket received and distributed under the policy, the Ticket Administrator is responsible for ensuring that all ticket distribution data is complete, properly entered into the City's information management system created for this purpose with 25 days of the distribution of the ticket, and maintained as a public record subject to public inspection in real time in an electronic machine-readable format that is accessible, searchable, and downloadable.³²

²⁸ OMC section 2.26.050(A).

²⁹ OMC section 2.26.050(B)(1)-(7).

³⁰ OMC section 2.26.050(C).

³¹ OMC section 2.26.050(D).

³² OMC section 2.26.060(A)-(B).

Finally – in contrast to the old ticket policy – the PEC now has direct jurisdiction over ensuring compliance with the ticket policy, including Enforcement mechanisms if necessary.³³ Previously, the PEC had no direct oversight role and could only enforce the ticket policy via the Government Ethics Act’s misuse of City resources provision.

Commission Staff has also developed a training on the new ticket policy, which can be given live in-person to an official’s staff and is also available on the City’s online NeoGov training site. To date, the Mayor and all of the sitting City Councilmembers who have previously used tickets have completed the training.

RECOMMENDATION

Previous violations of the City’s prior ticket distribution policy were a systemic issue, resulting from vague laws, lack of training, poor oversight, and a long-term culture of noncompliance. Since the opening of this investigation, Commission Staff has worked closely with City officials to improve training and compliance with the ticket distribution policy, as well as to pass new laws intended to close loopholes and improve compliance and tracking of distributed tickets. In light of the demonstrated and substantial improvement in compliance with the City’s ticket distribution policy by elected officials, as well as the new laws recently passed to curb prior abuses, Enforcement staff believes that keeping open old cases focused on systemic issues under the old laws would not be a good use of limited staff resources. As such, Commission Staff recommends closing the Enforcement cases relating to the former ticket distribution policy (nos. 16-08(a)-(i)) and focusing instead upon monitoring current officials’ compliance with the newly-enacted laws.

³³ OMC section 2.26.090(C).