

### Oakland Public Ethics Commission Guidelines for Waiving Late Filing Fees

The late filing of campaign finance and lobbying statements denies voters, the press, the public, and other stakeholders of important information that should be current and readily available. Under State and City law, the Public Ethics Commission (PEC) is generally required to charge a \$10/day fee for the late filing of campaign or lobbying statements. However, the Executive Director of the PEC may waive these per diem late fees for good cause, subject to certain limitations in State and/or City law.

#### A. Applying for a For Cause Waiver

Within 14 days of the PEC sending out a notice to a filer that they are required to pay a per diem late fee, the filer may request in writing that the Executive Director waive the fee for good cause. PEC staff may prescribe the form in which a waiver request shall be submitted.

The Executive Director shall only grant a waiver if the late filing was not willful and if there is good cause to waive the fee. The Director may require that the filer provide adequate supporting documentation that good cause exists.

The following are examples of reasons that **do constitute good cause** and are eligible for a waiver:

- ***The filer was incapacitated for medical reasons.*** Adequate documentation may include the filer providing a signed statement by a medical provider, such as a doctor or therapist, on the medical provider's letterhead identifying the filer, the nature of the filer's incapacitation, and the date(s) thereof.
- ***The filer was hospitalized.*** Adequate documentation may include the filer providing a copy of the hospital bill or physician's statement showing the filer's name and the date(s) of the hospitalization.
- ***The filer was involved in a serious accident or was the victim of a crime.*** Adequate documentation may include the filer providing a copy of a police report showing the filer's name, the date and time of the accident or incident, and, if applicable, whether or not the vehicle was disabled, in addition to a written statement by the filer explaining how the accident caused the late filing.
- ***The filer's records were lost or are unavailable due to fire, flood, theft, earthquake or similar reason.*** Adequate documentation may include a copy of a police, fire or insurance report indicating the date of the occurrence and the extent of the loss or damage.
- ***The filer was unable to file on time because they were assisting an immediate family member who was medically incapacitated, hospitalized, or involved in a serious accident or was the victim of a crime.*** Adequate documentation may include documents described above and documents indicating that the affected person(s) are an immediate family member. Immediate family is defined as the filer's spouse or registered domestic partner; sibling; sibling's spouse or registered domestic partner; child or stepchild; child or stepchild's spouse or registered domestic partner; grandchild; parent; spouse or registered domestic partner's parent; or grandparent.
- ***Other compelling reasons beyond the filer's control.***

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The following are examples of reasons that **do not constitute good cause** and are not eligible for a waiver:

- ***The filer was not aware of the filing requirements.***
- ***The filer did not receive notice of the filing requirements.***
- ***The filer was not available to sign or verify forms in time for the submission of their report.***
- ***The filer sent the forms to the wrong official.***
- ***The filer did not know how to get forms or to submit their reports.***
- ***The filer did not have complete information by the filing deadline.***
- ***The filer was on vacation.***
- ***The filer was busy at work and unable to file.***

The Executive Director shall notify the PEC, at its next regular meeting, of any per diem late fees they have waived pursuant to these Guidelines.

### B. First-Time Late Filers

Notwithstanding Section A, if a filer is only 1-5 days late in filing the second campaign pre-election statement, or 1-7 days late for all other campaign or lobbying statements, and the filer has not been late filing any other statement in the prior six years for campaign statements and four years for lobbying statements, the Executive Director shall presume that the late filing was for good cause and automatically waive the late fee, without requiring the filer to apply for a waiver. For campaign statements that must be filed within a certain number of days of a qualifying contribution or expenditure, such as Form 496 or Form 497 reports, good cause will only be presumed if the statement was filed before the election.

For purposes of this Section, a prior late filing by a candidate's treasurer will preclude that candidate from receiving an automatic waiver, unless the treasurer can demonstrate that the prior violation was primarily due to the actions of others, and not the treasurer. In the absence of other proof, a treasurer may submit a sworn statement certifying that the prior violation was primarily due to the actions of others, and a description of the facts sufficiently detailed as to substantiate their claim. Knowingly filing a false statement will result in a reversal of any waiver granted, and may be used as an aggravating factor in any related Enforcement action.

### C. Non-Waiver

Notwithstanding Section A, the following late statements are not eligible for a waiver, even for good cause:

- Second pre-election campaign statements that are more than 7 days late.
- All other campaign statements that are more than 12 days late.
- Lobbyist statements that are more than 49 days late.

### D. Summary of Waiver Policy

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<b>2<sup>nd</sup> Pre-Election Statement</b>	<b>All Other Campaign Statements</b>	<b>Lobbying Statements</b>
<ul style="list-style-type: none"><li>• 1-5 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 6-7 days late: for good cause</li><li>• 8+ days late: no waiver</li></ul>	<ul style="list-style-type: none"><li>• 1-7 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 8-12 days late: for good cause</li><li>• 13+ days late: no waiver</li></ul>	<ul style="list-style-type: none"><li>• 1-7 days late: ~ <i>No priors</i>: good cause presumed ~ <i>Priors</i>: for good cause</li><li>• 8-49 days late: for good cause</li><li>• 50+ days late: no waiver</li></ul>

### E. Limitations on Liability

Under the Political Reform Act, Government Code Section 91013, per diem late fees for late campaign statements shall not exceed \$10 per day up to a maximum of \$100 or the cumulative amount stated in the late statement, whichever is greater.

The PEC's policy under the Lobbyist Registration Act is to cap per diem late fees for late lobbyist statements to a maximum of \$1,000.

The per diem late fees described in these Guidelines are in addition to any other penalties or remedies established under State or City law, and do not preclude a separate enforcement action by the PEC or another enforcement entity for the late filing of campaign or lobbying statements, nor do these Guidelines limit the amount in fines that may be imposed under a separate enforcement action.

### E. Appeal

The Executive Director shall generally decide a waiver request and notify the filer within 14 days. If the Executive Director denies a filer's waiver request, the filer may appeal the Director's decision to the full Commission within 14 days. PEC staff may prescribe the form in which a waiver request shall be submitted. The appeal shall be scheduled for a public hearing before the full Commission no later than the Commission's next regular meeting that is at least 15 days after the appeal is received, and shall provide the applicant with 10 days notice of the hearing.

To submit an appeal, an applicant must:

- Pay the applicable fee prior to filing their appeal. If the fee is not paid, the appeal shall be automatically denied.
- Submit a written application, explaining why the Director's decision was in error.
- Appear in-person at the full Commission to answer questions. If the filer does not appear, the appeal shall be automatically denied.

In any appeal, the PEC shall review the Executive Director's decision not to waive late filing fees under an abuse of discretion standard.