



In-Person Meetings: Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check www.oaklandca.gov for the latest news and important information about the City's [return to in-person meetings](#).

Public Comment: A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chair allocates additional time.

Members of the public may also submit written comments in advance of the meeting to EthicsPublicComment@oaklandca.gov. Please indicate the agenda item # you are commenting on in the subject line of the email.

Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Charlotte Hill Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Simon Russell, Enforcement Chief; and Treva Hadden, Ethics Investigator.

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION REGULAR MEETING AGENDA

PRELIMINARY ITEMS

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**
 - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
 - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at ethicscommission@oaklandca.gov for assistance filing a complaint.

ACTION ITEM

4. **Approval of Commission Meeting Draft Minutes.**
 - a. January 17, 2024, Regular Meeting Minutes. ([Meeting Minutes](#))



INFORMATION ITEMS

5. **Disclosure and Engagement.** Program Manager Suzanne Doran provides a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting. ([Disclosure Report](#))
6. **Enforcement Program.** Enforcement Chief Simon Russell provides a summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals. ([Enforcement Report](#); [Dismissal Notice in PEC No. 23-37 re: Jessie Amos, Mariano Rojo, Unidentified OPD Personnel](#))
7. **Executive Director's Report.** Executive Director Nicolas Heidorn reports on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives not covered in other staff reports. ([Executive Director's Report and Matrix](#))
8. **Lobbyist Registration Act Guide 2024.** Commission staff presents the final updated Lobbyist Registration Act Guide with recent changes that include an overview of the new lobbyist registration fee structure and lobbyist training requirements. ([Lobbyist Registration Act Guide](#))

ACTION ITEMS

9. **Proposed Settlement Agreement: In the Matter of Susan Montauk (PEC No. 19-01.2).** On April 2, 2020, the PEC opened an investigation into proactive (i.e., staff-generated) allegations that a ballot measure committee called The Oakland Fund For Measure AA had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled ballot measure committees. Respondent Susan Montauk, who was an officer of The Oakland Fund, has agreed to settle this matter with regard to her own liability, and to cooperate with any other enforcement actions that may be brought against other persons involved in this matter. Enforcement staff recommends that the Commission approve the settlement agreement and impose a financial penalty in the amount of \$500. ([Proposed Settlement Agreement](#))
10. **Oakland City Council Salary Adjustment.** The Commission will discuss and take action to adjust the salaries of Oakland City Councilmembers as required every two



years by Oakland City Charter Section 202. ([Staff Memorandum; Resolution](#))

11. **Review and Recommend Amendments to the City Charter and/or OMC Relating to the Ethics Commission.** The Commission will discuss and may adopt recommendations from Commission staff and the Charter Review Subcommittee relating to amending the City Charter and/or the Oakland Municipal Code (OMC) to change the Commission’s structure, processes, powers, and responsibilities. ([Staff Memorandum; Charter Section 603 and OMC Chapter 2.24](#))

DISCUSSION ITEMS

12. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission’s last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission’s work.

- a. **Transparency and Public Records Subcommittee** (ad hoc, created March 8, 2023) - Francis Upton IV (Chair) and Alea Gage. ([January 8, 2024 Minutes; January 22, 2024 Minutes; January 25, 2024 Minutes; February 1, 2024 Minutes; February 26, 2024 Minutes; Termination Statement; PEC Letter to Fire Department](#))

- b. **Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints, and Campaign Finance Subcommittee.** (ad hoc, created August 25, 2023) - Vincent Steele (Chair), Alea Gage, and Ryan Micik. ([Calendar of Events](#))

- c. **Charter Review Subcommittee** (ad hoc, created December 13, 2023) - Ryan Micik (Chair), Charlotte Hill, and Karun Tilak. ([February 9, 2024 Minutes; February 16, 2024 Minutes; February 21, 2024 Minutes](#))

CLOSED SESSION

13. **Executive Director Performance.** The Commission will meet in closed session to discuss the Executive Director’s performance. **This is a personnel-related matter authorized to occur in closed session pursuant to Government Code Section 54957(b).**

ACTION ITEM

14. **Executive Director Compensation and Management Leave.** The Commission will



consider and possibly approve increasing the Executive Director’s compensation and will consider and possibly approve awarding the Executive Director additional management leave. ([Staff memorandum; ED Job Description](#))

INFORMATION ITEM

15. Future Meeting Business. Commissioners and staff may propose topics for action or discussion at future Commission meetings.

The meeting will adjourn upon the completion of the Commission’s business.

The following options for public viewing are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference (via ZOOM):** Click on the link to join the webinar: <https://us02web.zoom.us/j/89169308829>. Please note: the Zoom link and access number are to view/listen to the meetings only. Public comment via Zoom is not supported at this time.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 669 444 9171 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 931 3860 or +1 689 278 1000 or +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 Webinar ID: 891 6930 8829
- **International numbers available:** <https://us02web.zoom.us/j/kc69Y2Mnzf>

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at ethicscommission@oaklandca.gov or visit our webpage at www.oaklandca.gov/pec.

Nicolas Heidorn

3/1/24

Approved for Distribution

Date

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Hearing Room 1
Wednesday, March 13, 2024
6:30 p.m.



This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email ethicscommission@oaklandca.gov or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a ethicscommission@oaklandca.gov o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

郵 ethicscommission@oaklandca.gov or 或致電 (510) 238-3593 或711 (電話傳達服務)。

Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ ethicscommission@oaklandca.gov or hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

Item 4 - Meeting Minutes

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Hearing Room 1
Wednesday, January 17, 2024
6:30 p.m.

DRAFT



Commissioners: Ryan Micik (Chair), Charlotte Hill (Vice-Chair), Alea Gage, Arvon Perteet, Vincent Steele, and Francis Upton IV.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Teddy Teshome, Commission Analyst; Treva Hadden, Ethics Investigator; Chris Gonzales, Commission Assistant; Simon Russell, Enforcement Chief.

City Attorney Staff: Farrah Hussein, Deputy City Attorney.

PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:30 p.m.

Members present: Micik, Hill, Gage, Upton IV, and Perteet.

Members absent: Steele.

Staff present: Nicolas Heidorn, Chris Gonzales, Simon Russell.

City Attorney Staff: Farrah Hussein.

2. Staff and Commission Announcements.

Micik reordered the agenda to go directly from item #3 (“Open Forum”) to item #9 (“OPD Public Records Presentation”), then return back to item #4 and follow the regular agenda order.

3. Open Forum.

Public Comment: None.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

Hill moved, and Perteet seconded, to adopt the December 13, 2024, regular meeting minutes.

Ayes: Micik, Hill, Gage, Upton IV and Perteet.

Absent: Steele.

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Noes: None.

Vote: Passed 5-0.

Public Comment: None.

9. OPD Public Records Presentation.

Deputy Director Kiona Suttle, Acting Records Manager Nikita Williams-Pierre, and Records Supervisor Ali Banda of the Oakland Police Department provided information on the Department's process, successes, and challenges in responding to public records requests, and answered Commissioners' questions.

Public Comment: None.

5. Review and Comment on a Proposed Public Safety Ordinance

Chief of Enforcement Simon Russell presented on a proposed ordinance by Councilmembers Kalb and Jenkins which would modify the enabling ordinances for the Police Commission, the Community Police Review Agency, and the Office of the Inspector General, and which would affect the PEC's enforcement authority with respect to those offices. Commissioners reviewed and discussed the proposal.

Chair Micik called a 10-minute recess at 9:02. The Commission reconvened at 9:12.

Micik moved, and Upton IV seconded, to adopt the staff recommendation with the following changes:

- That the legislation specifies who will assign complaints of misconduct;
- That the PEC recommend only Version #2 in the staff report in terms of the procedure the PEC will use to making the findings, i.e., that it incorporate a vote of the PEC;
- That the investigator (PEC or other body) can request that a case be reassigned for lack of capacity or for lack of subject matter expertise.

Ayes: Micik, Hill, Gage, Upton IV and Perteeet.

Absent: Steele.

Noes: None.

Vote: Passed 5-0.

Public Comment: Karun Tilak

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6. PEC Midcycle Budget Priorities & Letter.

Executive Director Heidorn presented, and Commissioners discussed adopting, a proposed budget letter to Mayor Thao expressing the PEC's priorities in the upcoming midcycle budget for Fiscal Year 2024-2025. Hill requested that the letter be changed to address some formatting issues, to emphasize on page 2 the budget-cutting steps the PEC has already taken, and to update the chart on page 3 to make its message clearer.

Micik moved, and Hill seconded, to approve the draft budget letter to Mayor Thao taking into account the input of Vice Chair Hill.

Ayes: Micik, Hill, Gage, Upton IV and Perteet.

Absent: Steele.

Noes: None.

Vote: Passed 5-0.

Public Comment: Gail Wallace (written)

7. Lobbyist Training Frequency & Deadlines

Executive Director Heidorn presented, and Commissioners discussed adopting, proposed Lobbyist Registration Act Administrative Rules requiring that lobbyists take a training on the Lobbyist Registration Act every two years and setting deadlines for the completion of that training.

Upton moved, and Perteet seconded, to adopt the proposed Administrative Rules.

Ayes: Micik, Hill, Gage, Upton IV and Perteet.

Absent: Steele.

Noes: None.

Vote: Passed 5-0.

Public Comment: None.

8. Election of Officers (Chair and Vice-Chair) of the Commission.

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Commissioners discussed who will serve as Chair and Vice Chair of the Commission for 2024.

Hill nominated Micik for the position of Chair of the PEC. Micik accepted.

Micik moved, and Hill seconded, to appoint Micik as PEC Chair.

Ayes: Micik, Hill, Gage, Upton IV and Perteet.

Absent: Steele.

Noes: None.

Vote: Passed 5-0.

Public Comment: None.

Hill nominated Upton IV for the position of Vice Chair of the PEC. Upton IV accepted.

Hill moved, and Micik seconded, to appoint Upton IV as PEC Vice Chair.

Ayes: Micik, Hill, Gage, Upton IV and Perteet.

Absent: Steele.

Noes: None.

Vote: Passed 5-0.

Public Comment: None.

DISCUSSION ITEMS

10. Discussion of Process for Adjusting City Attorney, City Auditor, and City Council Salaries.

Executive Director Heidorn presented on, and Commissioners discussed, the process and methodology for how the PEC has adjusted the salaries of the City Attorney, City Auditor, and City Council in the past and possible changes to the process in 2024. For setting the City Attorney and City Auditor's salary, Director Heidorn shared that PEC staff is considering making some changes to the process for this cycle, including collecting salary data from additional peer jurisdictions and requesting salary data directly from local jurisdictions rather than using State Controller data.

Public Comment: Gene Hazzard (written)

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11. Reports on Subcommittees and Commissioner Assignments.

- a. **Transparency and Public Records Subcommittee.** (ad hoc, created March 8, 2023) - Francis Upton IV (Chair), Arvon Perteet and Alea Gage.

Upton IV stated the subcommittee met on January 8, 2024.

- b. **Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints, and Campaign Finance Subcommittee.** (ad hoc, created August 25, 2023) - Charlotte Hill (Chair), Alea Gage and Vincent Steele.

Hill stated the subcommittee met on December 7, 2023. Hill stepped down as the Chair of the subcommittee. Gage said she would discuss with Steele who would take on the role of subcommittee chair and would share that information with Chair Micik. Micik appointed Gage the informal acting Chair of the subcommittee pending that conversation.

- c. **Charter Review Subcommittee** (ad hoc, created December 13, 2023) – Ryan Micik (Chair) and Charlotte Hill.

Micik stated the subcommittee did not meet.

- d. **Commissioner Selection Subcommittee** (ad hoc, created October 25, 2023; terminated December 13, 2023) – Ryan Micik (Chair), Francis Upton IV and Arvon Perteet.

Micik disbanded the subcommittee.

Public Comment: None.

INFORMATION ITEMS.

12. Disclosure and Engagement

Director Heidorn provided a year-end summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities, as well as an update on activities since the last regular Commission meeting

Public Comment: None.

13. Enforcement Program.

Enforcement Chief Simon Russell provided a year-end summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals, as well as an update on enforcement work since the last regular Commission meeting.

Item 4 - Meeting Minutes

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Public Comment: Gerald Cheney (written)

14. Executive Director's Report.

Executive Director Nicolas Heidorn provided a year-end summary of significant PEC activities not covered in other staff reports including budget, staffing, as well as ongoing PEC legislative and policy initiatives.

Public Comment: None.

15. Future Meeting Business.

Commissioners and staff may propose topics for action or discussion at future Commission meetings.

Public Comment: None.

The meeting adjourned at 10:39 p.m.



Item 5 - Disclosure Report

Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Program Manager
Jelani Killings, Ethics Analyst
DATE: February 26, 2024
RE: Disclosure and Engagement Monthly Report for the March 13, 2024,
Regular PEC Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities since the last regular meeting. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as required. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Compliance with Disclosure Requirements

Commission staff conducts filing officer duties as required by state and local law and aims to help candidates, lobbyists and City officials submit required disclosure reports and ensure residents can easily access campaign finance, lobbyist, and ethics-related data and information.

Campaign finance disclosure – A general election is scheduled this year, on November 5, 2024. Ten Oakland offices are up for election: City Attorney; City Council Member At-Large; Councilmembers for Districts 1, 3, 5, and 7; and School Board Directors for Districts 1, 3, 5, and 7. In addition to the November general election, a special election to fill the vacancy in the office of City Auditor is scheduled for March 5, 2024. Twenty-three candidates have declared their intention to run in 2024 elections, and 14 have registered campaign committees.

In an election year, there are four major filing deadlines for campaign statements, two semi-annual statements and two pre-election statements. The special election added additional pre-election deadlines for candidates on the March ballot. During January and February there were three campaign statement deadlines, pre-election deadlines on January 25 and February 22, for candidates on the March special election ballot and the semi-annual statement deadline for all registered committees on January 31, 2024.

Commission staff performed a surface review of 65 campaign statements for missing information and potential contribution limit violations. Requests for amendments or clarifying

information were issued to six filers. Staff contacted non-filers to gain compliance. Five filers were assessed late fees totaling \$440. The following non-filers were referred for enforcement:

| Filer | Treasurer | Last Statement |
|---|-----------------|----------------|
| Committee To Elect Shan Hirsch For City Council | Hirsch, Shan | None |
| Move Oakland Forward Now | Juarez, Mario R | 7/4/2023 |
| Oakland Public School Action 2020 | Ramos, Francis | 8/4/2023 |

Note: This list does not include current non-filers already referred for prior deadlines.

Campaign statements are available to view and download at the PEC’s [Public Portal for Campaign Finance Disclosure](#).

2023 Campaign Finance Summary: In 2023, Oakland committees reported over \$765,680 in contributions. Similar to prior years, less than half (40 percent) of contributions of \$100 or more listed a donor with an Oakland address. Of the remaining contributions, 53 percent listed a California address outside of Oakland, and 7 percent listed an out-of-state address. Sixty percent of contributions of \$100 or more came from individuals, 25 percent from political committees, and 15 percent from businesses or other organizations. About 60 percent of contributions went to candidate-controlled committees.

Lobbyist Registration Program – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Public Ethics Commission before conducting any lobbying activity. Registration renewals were due January 31. To date 48 lobbyists have registered with the City of Oakland for 2024 (Fifty-eight lobbyists were registered at the end of 2023).



In November 2023, the Oakland City Council adopted amendments to the Lobbyist Registration Act including a new annual lobbyist registration fee as well as a requirement that lobbyists take an online training provided by the Public Ethics Commission. In January and February, Commission staff worked with the IT Department to implement updates to the Lobbyist Registration app to track and monitor payment of the new registration and late fees as well as compliance with the lobbyist training requirement.

The LRA also requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. January 31 was the deadline for quarterly lobbyist activity reports covering the period from October 1 through December 31, 2023. Sixty-eight reports were filed. Staff contacted non-filers to gain compliance. Five lobbyists were assessed late fees and late fees for the three lobbyists without prior late filings were waived in accordance with the Commission’s late policy.

Lobbyists reported 131 contacts with Oakland public officials during the fourth quarter, for a total of 690 contacts to influence City decisions in 2023.

TOP TEN LOBBYIST CLIENTS BY NUMBER OF CONTACTS

| LOBBYIST CLIENT | CONTACTS WITH CITY OFFICIALS | PERCENTAGE |
|---|------------------------------|------------|
| EARTHJUSTICE | 206 | 30% |
| PACIFIC MERCHANT SHIPPING ASSOCIATION | 48 | 7% |
| OAKLAND ATHLETICS | 41 | 6% |
| OAKLAND PRO SOCCER LLC | 38 | 6% |
| BECKER BOARDS | 33 | 5% |
| SIERRA CLUB | 29 | 4% |
| HOUSING ACTION COALITION | 29 | 4% |
| MARSHALL RETAIL GROUP | 22 | 3% |
| EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION (EBALDC) | 21 | 3% |
| PRICEWATERHOUSECOOPERS LLP | 20 | 3% |

An up-to-date list of registered lobbyists and lobbyist activity reports with links to view and download individual reports is available at the PEC’s [Lobbyist Dashboard and Data](#) webpage.

Illuminating Disclosure Data

Campaign Finance – Commission staff continues to collaborate with volunteer developers to ensure the [OpenDisclosure](#) campaign finance website is live with data for the March and November 2024 Elections. OpenDisclosure is a nonpartisan tool developed by civic tech group OpenOakland in partnership with Commission staff to give all Oakland residents equal access to campaign finance data by providing easy to use graphs and search tools.

In addition to OpenDisclosure, the Commission’s [Show Me the Money](#) app visualizes campaign finance data submitted by 2024 candidates and builds maps showing the geographic source of campaign contributions and total donated by location. Followers of Oakland elections can find the [Show Me the Money](#) application via links on the Public Ethics Commission website, [OakData portal](#), and links on [OpenDisclosure](#) candidate pages.

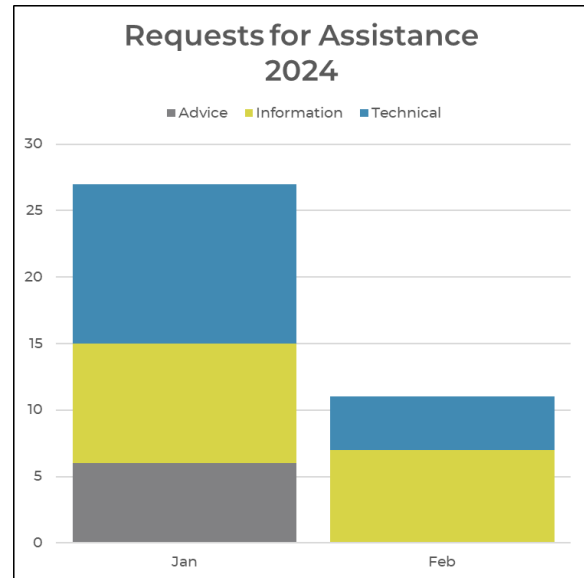
Advice and Engagement

The Commission’s Engagement program seeks to ensure Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.

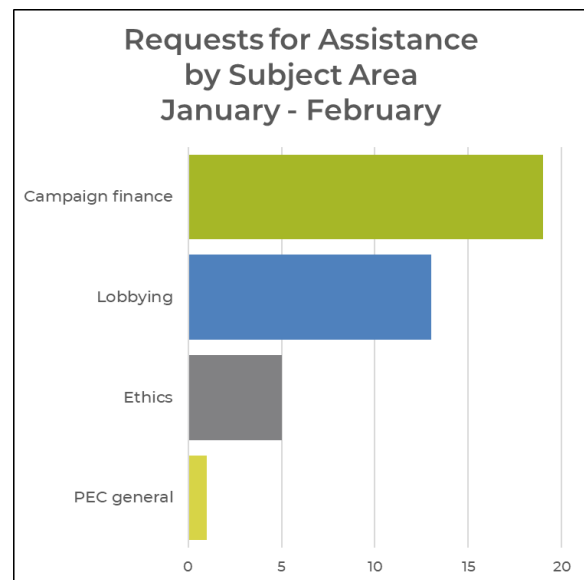
Advice and Technical Assistance – In January and February, Commission staff responded to 38 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine

law, or lobbyist issues. Inquiries from campaign filers (50 percent) and lobbyists (34 percent) made up the majority of requests.

New Employee Orientation – Staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). In the months of January and February, Staff trained over 120 new employees on GEA provisions. Employees required to file Form 700 were also assigned the PEC’s mandatory online Government Ethics Training for Form 700 Filers.



Ethics Training for Form 700 Filers – On February 15, PEC staff conducted a live Government Ethics Training for Form 700 Filers via Zoom. The training was hosted by the Department of Human Resources (HR) and served as an alternative for employees that have not completed the PEC’s online training. A total of 20 employees attended the training.



Supervisor Academy – On January 25, staff facilitated an ethics discussion for the City’s quarterly Supervisory Academy. The discussions are intended to allow for more meaningful dialogue concerning ethical values in decision making with a focus on identifying ethical dilemmas that City staff face in carrying out their daily duties. Staff provided an overview of the Government Ethics Act including conflicts of interests, gift restrictions, and postemployment restrictions. A total of 26 employees attended the training.

Lobbyist Registration Guide – Commission staff made substantial revisions to the PEC’s comprehensive guide to the Lobbyist Registration Act, designed to assist the regulated community in complying with local law. The guide provides a summary of the Oakland Lobbyist Registration Act provisions and was updated to incorporate newly adopted amendments including registration fees and training requirements.

Online Engagement

Social Media – In January and February, Commission staff continued producing monthly social media content highlighting the Commission’s upcoming meetings and Form 700 requirements.

Item 6 - Enforcement Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: February 29, 2024
RE: Enforcement Program Report for the March 13, 2024, PEC Meeting

This memo discusses the Enforcement Program's staffing, caseload, and other programmatic developments since the last Enforcement Report (submitted on January 3, 2024).

More (Temporary) Enforcement Staff Added; Case Numbers Show Improvement

We are very pleased to announce one new permanent hire and three new (temporary) additions to Enforcement staff:

- Treva Hadden has joined our team as a full-time, permanent Investigator. Treva comes to the PEC from the Internal Affairs Division of OPD, where she worked for a number of years as a civilian technician assigned to case intake and personnel matters. Prior to that, she also worked as a technician with the Alameda County Sheriff's Office. Treva has a BA in Psychology from Florida International University and a certificate in Management and Supervision from Oakland's own Laney College
- Alex Van Buskirk has joined our team as a full-time, limited duration Investigator. He comes to us after more than a decade working in political consulting and vulnerability research. Alex has extensive experience with the worlds of public affairs, campaign finance, and lobbying. As a consultant, Alex worked for both public and private sector clients, including Fortune 100 companies operating in highly scrutinized global industries. Alex also worked for elected officials, candidates, law and lobbying firms, and campaigns across 25 states. His contract term runs through June.
- Graham Willard has joined our team as a part-time, limited duration Law Clerk. He is a second-year law student at UC Law, San Francisco (formerly Hastings). He has previously worked as an intern for the Attorney General's office in Alaska, and also served as a research assistant with the Reckoning Project, which investigates police, prosecutorial, and judicial misconduct. His contract term runs through May.

One Frank Ogawa Plaza, Room 104, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

- Chris Nardi has rejoined our team as a part-time, limited duration Law Clerk, having previously served as our Law Clerk last winter as well. Chris is a second-year law student at UC Berkeley, and has also worked as a law clerk with the U.S. Attorney's office and as a judicial extern for the U.S. District Court, both in the Northern District of California. His contract term runs through May.

Unfortunately, Enforcement also lost one staff member, as our Enforcement Assistant Chris Gonzales accepted a promotion to the Planning and Building Department. We recently finished interviewing candidates for Chris's replacement, and hope to finalize an offer soon.

Despite the recency of these new hires (most did not start until mid-January) we have already begun to see an improvement in our case processing numbers. At the close of our last report (dated January 3, 2024) we had 86 open cases or complaints. Today, that total remains at 86 despite receiving 15 new complaints since January 3, meaning that we have already begun to improve both our intake and closure rate. Moreover, the number of cases "on hold" is now at 50, down from 52 on January 3. This is the first time that these statistics have either held steady or started to go down since we first experienced major staff turnover in the fall of 2022. As both new Investigators and Law Clerks continue to receive training and gain experience, we anticipate that these numbers will continue to improve over the medium- to long-term.

However, we must once again underscore the impossibility of maintaining these gains (let alone building upon them) without more permanent staff. All of our temporary hire contracts expire by this summer. Particularly for the Investigator, it is crucial to make this temporary position permanent, especially in light of the long training period needed to fully onboard a new Investigator handling complex campaign finance and anti-corruption cases. As stated in previous Enforcement updates, we would need four Investigators to ensure a timely and thorough response to all incoming complaints, or a bare minimum of two permanent Investigators just to keep pace. Our Law Clerks provide invaluable assistance with the more complex aspects of legal research, but a full-time attorney is needed to assist the Enforcement Chief in resolving post-investigation settlements and prosecutions in a timely and effective manner.

Updated Record Retention Policy for Enforcement Matters

Every time a City official conducts their work in a manner that leaves some sort of physical or digital record (e.g. reports and memos, emails, audio and video recordings, personal notes, etc.), or receives similar records in the course of their work (e.g. applications, supporting

documentation, voice messages, etc.), these records are presumed to be available to the public via a public records request.¹

The City has rules concerning how long Departments must retain these records. These rules are laid out in a document called the “Records Retention Schedule.” Recently, the City updated this document for the first time since 2003.

This update was of particular interest to the PEC’s Enforcement Unit because we had previously been unsure of the full scope of our record retention requirements. The previous (2003) version had said only that unspecified records relating to PEC “Complaint Investigations” needed to be retained.

This gave little guidance to the Enforcement Unit concerning what particular records needed to be maintained. Most pressing, we were unsure if we needed to retain what we informally refer to as “unused evidence.” This refers to documents submitted to us in response to a voluntary production or subpoena, but which we do not ultimately end up using to make internal findings or to publicly prosecute a case.

For example, we might subpoena someone for their personal emails and text messages relating to a suspected violation. We typically provide a date range and search criteria in order to make sure that only potentially relevant documents are turned over, and to avoid encroaching on the person’s purely private records not related to the matter being investigated. Once the records are turned over to the PEC, investigators then determine which of the documents are material to the matter being investigated, and incorporate them into investigative reports. The prosecutor, in turn, decides which of those material documents will be used to support a probable cause report (or finding of no violation) and/or prove the case at a hearing. In this way, Enforcement might end up using (say) 70% of the documents provided under the subpoena. The other 30% are what we call “unused evidence” and are retained in our file.

All evidence (used and unused) is saved in a manner accessible only to PEC staff and is almost never released under a public records request before a case is charged publicly. But once a case is resolved, the exemption for an ongoing investigation no longer applies. Given the sensitive nature of many of the records Enforcement staff may gather during an

¹ There are numerous reasons why certain records might not be released to the public, or at least might be partially redacted before being released. These reasons are laid out in the California Public Records Act (Government Code § 7920.000 et seq.; formerly Government Code § 6250 et seq.) and typically concern things such as protecting the privacy of members of the public who shared their personal information with the government; maintaining attorney-client privilege; ensuring the integrity of ongoing law enforcement or regulatory investigations; etc. But absent such an exemption, public records are presumed to be disclosable.

investigation (e.g. personal emails and text messages, bank records, internal business and political campaign records, personnel and law enforcement files, etc.), we were concerned about protecting parties' privacy rights (including in the event of an unauthorized data breach) while ensuring the public's right to access the records showing how Enforcement arrived at the conclusions it made in any particular case.

The new retention schedule specifies that the PEC will retain the following records in relation to a closed investigation or complaint:

- complaints;
- preliminary review memoranda;
- investigation reports;
- investigation summaries;
- legal analysis memoranda;
- request for settlement authority memoranda;
- dismissal, warning, and advisory letters;
- final settlement agreements;
- probable cause reports;
- hearing officer findings and recommendations; and
- evidence used in support of any of the above.

The new retention schedule also requires to PEC to maintain these records for five years after "final prosecution" of a case (which includes cases closed without a prosecution). This is the same as the requirement under the previous (2003) schedule. At this time, Enforcement has no plans to purge any of the records listed above after five years.

Overview of the Enforcement Process



The PEC's Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City's ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. “Formal” complaints are submitted on the PEC’s official complaint form and are signed under penalty of perjury. “Informal” complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an investigation into a formal complaint. By contrast, Enforcement has the discretion not to review an informal complaint and does not have to report rejected informal complaints to the Commission. Commission staff may also initiate its own “pro-active” complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called “Preliminary Review,” in which Enforcement determines whether there are sufficient legal and evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If Enforcement is unable to settle a case within a reasonable time (typically sixty days) or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting

evidence. A majority of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

Current Enforcement Caseload

Since the last Enforcement Unit Program Update submitted to the Commission on January 3, 2024, Commission staff:

- received one formal (sworn) complaint, which is currently in the intake phase;
- received eleven informal (unsworn) complaints, of which five were rejected, three were assigned complaint numbers and escalated to the preliminary review phase, and three are awaiting a determination as to whether to reject or escalate them²; and
- filed three proactive (staff-generated) complaints, of which two were assigned complaint numbers and escalated to the preliminary review phase, and one of which is awaiting a determination as to whether to reject or escalate it.

In the same period of time, Commission staff:

- dismissed one complaint following preliminary review;
- opened one complaint for a full investigation following preliminary review;

² Reasons for a delay in making this determination can include the need to contact the complainant and/or do further research in order to clarify the allegation(s) being made, and/or a decision to prioritize other matters that appear to be more time-sensitive or of greater public interest.

- initiated settlement negotiations in nine cases;
- executed settlement agreements in three cases (two of which were streamlined and one of which is pending Commission approval; see below);
- consolidated two cases into one for administrative purposes; and
- bifurcated one case into two for administrative purposes.

This brings the total Enforcement caseload to eighty-six (86) open complaints or cases: eleven (11) matters in the intake or preliminary review stage, thirteen (13) matters under active investigation, three (3) matters under post-investigation legal analysis, seven (7) matters in settlement negotiations, and two (2) matters awaiting an administrative hearing. The remaining fifty-one (50) matters are on hold pending additional staff resources and training (58% of the total).

Enforcement's current staffing is: one (1) Enforcement Chief, one (1) permanent full-time Investigator, one (1) temporary full-time Investigator, and two (2) temporary part-time Law Clerks.

Case Resolutions or Submissions

Since the last Enforcement Unit Program report on January 3, 2024, the following complaints or cases have been resolved or submitted to the Commission:

1. **In the Matter of Susan Montauk (PEC No. 19-01.2).** On April 2, 2020, the PEC opened an investigation into proactive (i.e., staff-generated) allegations that a ballot measure committee called The Oakland Fund For Measure AA had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled ballot measure committees. Respondent Susan Montauk, who was an officer of The Oakland Fund, has agreed to settle this matter with regard to her own liability, and to cooperate with any other enforcement actions that may be brought against other persons involved in this matter. Enforcement staff recommends that the Commission approve the settlement and impose a financial penalty in the amount of \$500. (**Proposed Settlement Agreement**)
2. **In the Matter of Jessie Amos; Mariano Rojo; and Unknown OPD Official(s) (PEC No. 23-37).** On November 27, 2023, the PEC received a formal complaint alleging that the City was being unethical by requiring property owners to fix the sidewalk in front of their properties and to pay for the abatement of related blight; that Planning & Building Department inspector Jessie Amos was being unreasonable in citing

complainant’s property for various violations and not agreeing to reschedule certain inspections; that his supervisor, Mariano Rojo, had been rude to complainant; and that the Oakland Police Department (OPD) was derelict in not preventing or adequately responding to the crime near complainant’s property. Enforcement conducted a preliminary review and determined that there was insufficient evidence of any violation of a law within the PEC’s jurisdiction. As such, we have dismissed the complaint with no further action. Complainant has been referred to the relevant City departments if they wish to pursue their allegations further. **(See Attachment 1)**

We also entered “streamlined” settlement agreements for the following low-level violations. Pursuant to recent amendments to the Commission’s Complaint Procedures, the Executive Director has the authority to resolve these minor violations on their own authority, without a Commission vote, so long as they meet the specific requirements laid out in our Complaint Procedures (Section VI(D), (H)) and Penalty Guidelines. The cases below are the Commission staff’s first use of this new authority.

| Form 700 – Late Filing Violations ³ | | | | | |
|--|--------------------------------------|---------------|------------------|----------------------|-------------------------|
| Respondent | City Position | Form 700 Type | Due Date | Date Filed | Resolution |
| Shirazi, Sahar | Commissioner, Planning Commission | 2022 Annual | April 3, 2022 | November 18, 2023 | Diversion (training) |

| Gift Limit Violations ⁴ | | | | |
|------------------------------------|--|--|--------------------------|---|
| Respondent | City Position | Description of Gift | Source of Gift | Resolution |
| Rhorer, Trent | Commissioner, Commission on Homelessness | NBA Playoff Ticket Value: \$285 Rec’d: 5/18/2022 | Golden State Warriors | \$35 disgorgement; warning letter |

³ Government Ethics Act section 2.24.040(B).

⁴ Government Ethics Act section 2.25.060(C).

Appendix: Current Caseload by Violation Type

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than our number of total cases, since one case can involve multiple types of violations.

| | On Hold | Intake | Preliminary Review | Investigation | Legal Analysis | Seeking Settlement | Administrative Hearing | Grand Total |
|--|-----------|----------|--------------------|---------------|----------------|--------------------|------------------------|-------------|
| Campaign Finance | 22 | | 7 | 11 | 2 | 17 | 1 | 60 |
| Campaign Using Multiple Bank Accounts | 1 | | | 1 | | | | 2 |
| City Contractor Making Campaign Contribution | 5 | | | 2 | | 2 | 1 | 10 |
| Coordination Between Candidate And "Independent" Campaign | | | 2 | 1 | | 2 | | 5 |
| Disguising Source Of Campaign Funding ("Campaign Money Laundering") | 1 | | 1 | 1 | | 1 | | 4 |
| Failure To Register A Political Campaign | 1 | | | 1 | | | | 2 |
| Inaccurate Reporting Of Campaign Finances | 5 | | 2 | 1 | 1 | 5 | | 14 |
| Late Filing Of Campaign Finance Report | 4 | | 1 | 2 | | | | 7 |
| Making/Receiving Campaign Contribution Over The Legal Limit | 1 | | | 1 | 1 | 3 | | 6 |
| Misuse Of Campaign Funds For Personal Purposes | 1 | | | | | 1 | | 2 |
| Inaccurate or Missing Disclaimer On Campaign Ad | 3 | | 1 | 1 | | 3 | | 8 |
| Government Ethics | 44 | 2 | 17 | 13 | 3 | | 2 | 81 |
| Bribery | 2 | | 3 | 1 | 1 | | 1 | 8 |
| Financial Conflict Of Interest | 3 | | 1 | | 1 | | | 5 |
| Holding Incompatible Public Offices | 1 | | | | | | | 1 |
| Inaccurate Reporting On Financial Disclosure Form 700 | 2 | | 3 | | | | | 5 |
| Late or Non-Filing Of Financial Disclosure Form 700 | 1 | | | 7 | | | | 8 |
| Misusing Official Powers For Private Gain (Coercion/Inducement) | 21 | 1 | 4 | 3 | | | 1 | 30 |
| Misuse Of City Resources For Personal Or Campaign Purposes | 9 | | | 2 | 1 | | | 12 |
| Receiving An Improper Gift Based On Amount | 1 | | 3 | | | | | 4 |
| Receiving An Improper Gift Based On Source | 2 | | 1 | | | | | 3 |
| Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door") | 1 | | | | | | | 1 |
| Awarding City Contract To Oneself ("Self-Dealing") | 1 | | 1 | | | | | 2 |
| Leak Of Confidential Info | | | 1 | | | | | 1 |
| Councilmember Interfering In City administration | | 1 | | | | | | 1 |
| Lobbyists | | | | | | | 1 | 1 |
| Failure To Register As A Lobbyist ("Shadow Lobbying") | | | | | | | 1 | 1 |
| Miscellaneous | 5 | | 3 | | 2 | 2 | | 12 |
| Failure To Produce Records To Police Commission Investigators | 1 | | | | | | | 1 |
| Lying Or Providing False Information To PEC Investigators | 1 | | | | 2 | 2 | | 5 |
| Misuse Of City Event Tickets | 1 | | | | | | | 1 |
| Retaliation Against Ethics Whistleblower | 2 | | 3 | | | | | 5 |
| Open Meetings & Public Records | 8 | | | 1 | | | | 9 |
| Failure To Produce Public Records Or Information | 3 | | | 1 | | | | 4 |
| Failure To Properly Agendize Or Follow Meeting Agenda | 5 | | | | | | | 5 |



Item 6 - Enforcement Report

ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

February 22, 2024

Jack Cohen

[REDACTED]
[REDACTED]

Via email: [REDACTED]

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-37

To Jack Cohen:

On November 27, 2023, the City of Oakland Public Ethics Commission (PEC) received your complaint (# 23-37) alleging that the City was being unethical by requiring property owners to fix the sidewalk in front of their properties and to pay for the abatement of related blight. In a follow-up interview, you also alleged that Planning & Building Department inspector Jessie Amos was being unreasonable in citing your property for various violations and not agreeing to reschedule certain inspections; and that his supervisor, Mariano Rojo, had been rude when you tried to complain about this. You also alleged that the Oakland Police Department (OPD) was derelict in not preventing or adequately responding to the crime near your property.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

The PEC enforces the City's anti-corruption laws; we are not a general appeals board for all City decisions, nor do we enforce any particular Department's internal rules or procedures. We do not have the authority to mandate changes in the law concerning blight abatement, nor can we second-guess whether a particular building inspection was scheduled or conducted properly. We therefore take no position on whether Inspector Amos followed departmental procedures during the inspection(s) in question, or if Inspector Rojo behaved appropriately in his interaction(s) with you. If you believe Inspectors Amos and/or Rojo may have violated an internal rule or procedure at the Building Department, you should make your complaint to either of the following people:

David Miles (Principal Inspections Supervisor)

(510) 238-6214

DMiles@oaklandca.gov

William Gilchrist (Director of Planning and Building)

(510) 238-2229

WGilchrist@oaklandca.gov

The only law the PEC enforces that might be applicable to your complaint is section 2.25.060(A)(2) of Oakland's Government Ethics Act. That section prohibits City employees from using their official position, or the power or authority of that position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain.

However, for someone to violate that law, they must have acted far outside the scope of their ordinary duties and/or made some sort of threat or solicitation in order to get a private benefit (for example, demanding a cash bribe in order to pass an inspection). You have not alleged or presented evidence of any such type of illicit action on the part of Inspectors Amos or Rojo. Ordering a property owner to repair blighted property is a lawful order and, even if an inspector were to make a good-faith mistake as to the existence or scope of a particular violation, their actions would have been taken for the purpose of carrying out their City duties rather than to obtain some type of private benefit. As such, no violation of section 2.25.060(A)(2) occurred.

As for the allegation that unnamed OPD personnel may have been derelict in their duties concerning your property, the PEC does not enforce any rules or laws concerning dereliction of duty on the part of police officers. Such complaints should be directed to the Internal Affairs Division of OPD at (866) 214-8834 or to the civilian Community Police Review Agency at <https://apps.oaklandca.gov/CPRAPublic/>

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will be on March 13, 2024, at 6:30PM, and the agenda 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 attend that meeting and 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.

PEC # 23-37
Notice of Dismissal

We are also enclosing a copy of the dismissal notice that we are sending to inspectors Amos and Rojo, as required under our Complaint Procedures.

Respectfully,



SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
City Hall, 1 Frank Ogawa Plaza, Room 104 |
Oakland, CA 94612
Phone: 510.238.2213 | Cell 510.424.3200 | Fax: 510.238.3315
Email: srussell@oaklandca.gov | he/him/his
www.oaklandca.gov/pec

Enclosure: Copy of dismissal letter to Jessie Amos; Copy of dismissal letter to Mariano Rojo.



Item 6 - Enforcement Report

ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

February 22, 2024

Jessie Amos
250 Frank H. Ogawa Plaza, Suite 2340
Oakland, CA 94612

Via email: jamos@oaklandca.gov

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-37

To Jessie Amos:

On November 27, 2023, the City of Oakland Public Ethics Commission (PEC) received a complaint (# 23-37) alleging that unnamed City personnel were being unethical by requiring property owners to fix the sidewalk in front of their properties and to pay for the abatement of related blight. In a follow-up interview, the complainant specifically alleged that you were being unreasonable in citing the complainant's property for various violations and not agreeing to reschedule certain inspections.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint without opening an investigation, for the reasons explained below.

The PEC enforces the City's anti-corruption laws; we are not a general appeals board for all City decisions, nor do we enforce any particular Department's internal rules or procedures. We do not have the authority to mandate changes in the law concerning blight abatement, nor can we second-guess whether a particular building inspection was scheduled or conducted properly. We therefore take no position on whether you followed departmental procedures during the inspection(s) in question. We have advised the complainant to take up his allegations directly with Planning and Building Department supervisors.

The only law the PEC enforces that might be applicable to the complaint is section 2.25.060(A)(2) of Oakland's Government Ethics Act. That section prohibits City employees from using their official position, or the power or authority of that position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain.

Item 6 - Enforcement Report

PEC # 23-37
Notice of Dismissal

However, for someone to violate that law, they must have acted far outside the scope of their ordinary duties and/or made some sort of threat or solicitation in order to get a private benefit (for example, demanding a cash bribe in order to pass an inspection). The complainant has not alleged or presented evidence of any such type of illicit action on your part. Ordering a property owner to repair blighted property is a lawful order and, even if an inspector were to make a good-faith mistake as to the existence or scope of a particular violation, their actions would have been taken for the purpose of carrying out their City duties rather than to obtain some type of private benefit. As such, no violation of section 2.25.060(A)(2) occurred under the facts presented in this complaint.

No action is required on your part; this letter is just a courtesy notice that we must send pursuant to our Complaint Procedures whenever we dismiss a complaint.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will be on March 13, 2024, at 6:30PM, and the agenda 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 attend that meeting and 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.

Respectfully,



SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
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Item 6 - Enforcement Report

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1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

February 22, 2024

Mariano Rojo
250 Frank H. Ogawa Plaza, Suite 2340
Oakland, CA 94612

Via email: mrojo@oaklandca.gov

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-37

To Mariano Rojo:

On November 27, 2023, the City of Oakland Public Ethics Commission (PEC) received a complaint (# 23-37) alleging that unnamed City personnel were being unethical by requiring property owners to fix the sidewalk in front of their properties and to pay for the abatement of related blight. In a follow-up interview, the complainant specifically alleged that you were rude to them when they tried to notify you of these allegations in relation to a particular inspector, Jessie Amos.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint without opening an investigation, for the reasons explained below.

The PEC enforces the City's anti-corruption laws; we do not have the authority enforce whatever internal rules or procedures the Building Department may have concerning general interactions with the public. We therefore take no position on whether you behaved appropriately toward the complainant. We have advised the complainant to take up his allegations directly with Planning and Building Department supervisors.

No action is required on your part; this letter is just a courtesy notice that we must send pursuant to our Complaint Procedures whenever we dismiss a complaint.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will be on March 13, 2024, at 6:30PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and

Item 6 - Enforcement Report

PEC # 23-37
Notice of Dismissal

no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and 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.

Respectfully,



SIMON RUSSELL | Enforcement Chief
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Item 7 - Executive Director Report

Ryan Welch, Chair
Charlotte Hill, Vice Chair
Alea Gage
Vincent Steele
Francis Upton IV
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: February 28, 2024
RE: Executive Director's Report for the March, 13 2024, PEC Regular 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 2023-24 for each program area.

Budget

The City of Oakland is beginning its Midcycle budget process for Fiscal Year 2024-2025 (July 1, 2024, to June 30, 2025). Based on January revenue reports from the Department of Finance, the City will likely need to close a significant budget deficit in the upcoming fiscal year. Presently, departments, including PEC, are providing budget information and priorities in response to requests by the City Administrator. PEC Staff submitted the Commission's budget request letter – requesting two additional investigators and an additional analyst for the Democracy Dollars program -- to the Mayor, City Administrator, and Council on January 29. The Mayor is expected to propose her FY 2024-2025 Midcycle Budget in early May.

Staffing

As discussed in the Enforcement Report, in January the PEC welcomed additional limited duration staff to assist the Enforcement Program. Alex Van Buskirk was hired as an Investigator and has already taken the lead investigatory role on several cases. The PEC hired two law clerks, Chris Nardi (who rejoins the PEC) and Graham Willard, who have both had an immediate impact assisting with the PEC's caseload and policy research. Welcome Alex, Chris, and Graham!

In early February, Administrative Assistant Chris Gonzales accepted a promotion with another City department. We are grateful for his service to the PEC and wish Chris well in his next position!

PEC staff interviewed multiple candidates to fill the Administrative Assistant position and made an offer to one candidate, who has conditionally accepted. We expect that person to begin with the PEC on March 18.

Staff also finalized the grant-funded hire of UC Berkeley Goldman School student Trishia Lim. Trishia's capstone project will focus on how the Democracy Dollars outreach and education campaign can best reach communities with historically low rates of voter participation and/or political giving so that we are intentional in reaching all of Oakland's diverse communities. Trishia has a great background to assist us in this work. She previously interned with the Berkeley Mayor's Office doing research on the

Equitable Black Berkeley initiative and as a Policy Consultant for Nourish California, researching how to increase access to CalFresh food benefits to vulnerable populations.

The Commission currently has one staff vacancy, for Interim Program Manager Suzanne Doran's temporarily vacated Ethics Analyst III position. PEC staff have identified a candidate for the position and is working with HR to fill the position.

PEC staff are also preparing to recruit for the Haas Jr. grant-funded Democracy Dollars Outreach Specialist position. We have sufficient funding for about 1 year, so will look to hire the person in May or June of this year so that their position terminates at the start of the next two-year budget cycle, when we plan to request that the City Council make the position permanent.

Police Commission Proposal

On February 1, Director Heidorn submitted the PEC's comment regarding the Police Commission proposal to Councilmember Kalb and Councilmember Jenkins, and copied the City Administrator and City Council. On February 7, Director Heidorn and Chief of Enforcement Simon Russell met with staff from the offices of the City Attorney, Councilmember Kalb, and Councilmember Jenkins to go over the PEC's recommendations, who indicated they would consider amendments to address the PEC's recommendations.

Measure W / Voter Guide Updates

Since the last regular meeting, PEC staff worked with a graphic designer to revise the first draft of the paper voter guide incorporating feedback from the Commission and user testing. Staff also worked with volunteers from civic technology group [Open Oakland](#) to explore potential designs for a mobile device-friendly online version of the guide that can be integrated into the Commission's webpages.

Staff has also been meeting with Open Oakland volunteers to design and prototype web interfaces for residents to interact with the Democracy Dollars program. The goal of the project is to conduct user testing on simple prototypes to provide opportunities for early community engagement and information gathering to enhance the design process once a vendor is selected.

\$1,000+ Late Fees / Late Fee Waivers

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. The PEC did not issue any late fees exceeding that amount since the last reporting period.

Under City Charter Section 603(f), if the Executive Director waives any per diem fees for the late filing of a disclosure report, including a campaign finance or lobbying report, he or she must notify the Commission at their next regular meeting. Pursuant to the PEC's [Guidelines for Waiving Late Filing Fees](#), I waived the following fees:

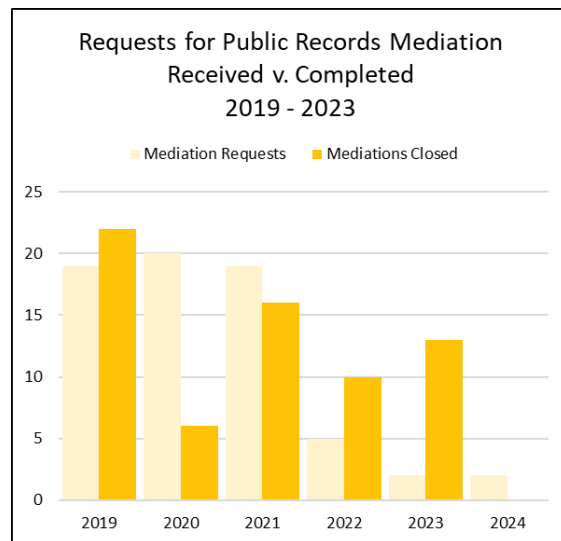
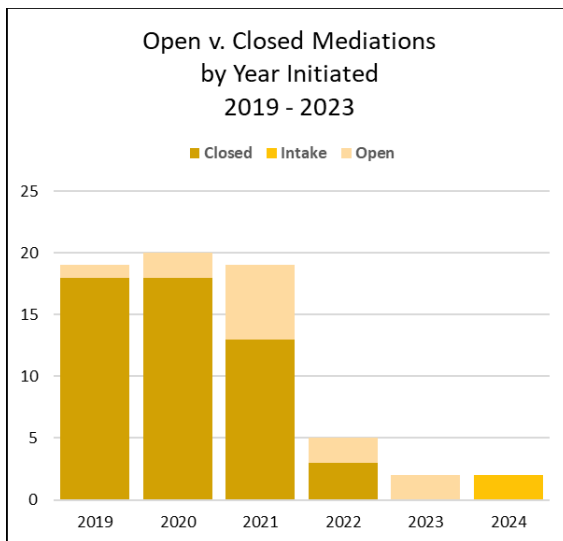
- [Lobbyist Report Late Fees](#):

| Lobbyist | Report | Waiver Eligibility | Days Late | Amount Waived |
|-----------------|----------------|--------------------|-----------|---------------|
| Sanchez, Arturo | Quarter 4 2023 | NO PRIORS | 1 | \$10 |
| Sickler, Heidi | Quarter 4 2023 | NO PRIORS | 1 | \$10 |
| Sullivan, Sean | Quarter 4 2023 | NO PRIORS | 5 | \$50 |

- Campaign Finance Report Late Fees: None.

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 15 open mediations. Two new mediation requests were received and none completed since the last regular meeting.



Additional Attachment: Commission Programs and Priorities.

PUBLIC ETHICS COMMISSION
Programs and Priorities 2023/24 (new additions in bold)

| Program | Goal | Desired Outcome | Regular Program Activities | 2023/24 Projects |
|--|---|---|---|---|
| <p>Lead/ Collaborate (Policy, Systems, Culture)</p> | <p>PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity, and innovation.</p> | <p>Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies</p> | <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 ✓ Invite Department Presentations on Records Request Responses |
| <p>Educate/ Advise</p> | <p>Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.</p> | <p>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.</p> | <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 |
| <p>Outreach/ Engage</p> | <p>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.</p> | <p>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.</p> | <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, LPF, and LRA 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 |

Item 7 - Executive Director Report

| Program | Goal | Desired Outcome | Regular Program Activities | 2023/24 Projects |
|---------------------------------------|---|---|--|---|
| | | | | <ul style="list-style-type: none"> ○ Publicize how to file complaints |
| 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 |

City of Oakland Public Ethics Commission



Lobbyist Registration Act Guide

2024

Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Room 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593



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INTRODUCTION

The Oakland Lobbyist Registration Act (LRA or Act) regulates individuals engaged in lobbying activity related to decisions by the City of Oakland. The Act is codified in Chapter 3.20 of the Oakland Municipal Code.

This **Guide to the Oakland Lobbyist Registration Act** (Guide) is intended to provide a general overview of the Act and does not cover all exclusions and inclusions. The Guide is intended to be **advisory only** and is not a substitute for legal advice. To the extent the Guide conflicts with the Act or other interpretation by the Oakland Public Ethics Commission (Commission), those authorities govern over this Guide in the implementation and enforcement of the Act.

SUMMARY OF THE ACT

The significant features of the Act include:

- Lobbyists intending to influence actions by the City and meeting certain qualifications are required to register and pay the applicable registration fee with the Commission annually.
- Lobbyists must file quarterly reports detailing their lobbying activities.
- Lobbyists are limited in giving gifts or payments that benefit Oakland officials.
- Lobbyists can be banned or penalized for failure to comply with the Act.
- Lobbyist registration and reports are submitted to the Public Ethics Commission.

The Commission is the administrative body that receives lobbyist filings, provides education and advice, and enforces the Act. If you have any questions about this Guide or your obligations under the Act, contact Commission staff.

Oakland Public Ethics Commission
One Frank H. Ogawa Plaza (City Hall), Room 104
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(510) 238-3593
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LOBBYISTS AND LOBBYING DEFINED

LOCAL GOVERNMENT LOBBYIST

The term “lobbyist” is interpreted broadly and includes any individual:

1. Who receives, or is entitled to receive, \$1,000 or more in compensation in a single calendar month to communicate with any public official for the purpose of influencing an action by the City (commonly referred to as a “contract lobbyist”); **or**
2. Whose duties as a paid employee, officer, or director of any corporation, organization, or association include communication with any public official for the purpose of influencing an action by the City (commonly referred to as an “in-house lobbyist”). [Oakland Municipal Code (OMC) 3.20.030(D)]

Who Qualifies as a Lobbyist?

An employee who plans to communicate their employer’s opposition to a proposed decision by a City commission to a member of the City commission **qualifies** as an in-house lobbyist and must register with the Commission before they make the communication.

An unpaid volunteer for a non-profit organization who meets with a member of a City board on the organization’s behalf **does not** qualify as a lobbyist.

A resident who talks to a City public works employee on behalf of a neighborhood association to get a stop sign placed at a busy intersection **does not** qualify as a lobbyist **unless** the person is being paid \$1,000 or more or is a paid employee, officer, or director of the neighborhood association.

If an individual falls into one of the two categories above, they must **register** as a lobbyist with the Commission and pay the applicable fee **before** attempting to lobby Oakland public officials. Both contract and in-house lobbyists have identical filing requirements under the Act.

In determining whether an individual is an in-house lobbyist, the Commission considers the nature and number of the individual’s contacts with public officials, as well as the individual’s roles and responsibilities in their organization.

Note: While the Act only requires individuals to register as lobbyists (and not companies or organizations), each employer and client of a lobbyist must be identified on both the Lobbyist Registration Form and Lobbyist Quarterly Reports.

LOBBYING ACTIVITIES

Lobbying is a broad term that includes any communication, whether direct or through agents, with any **public official**¹, made for the purpose of influencing any proposed or pending action of the City. Only ministerial actions by the City (*i.e.*, decisions requiring no discretion or judgment) are excluded. [OMC 3.20.030(D)]

An **agent** is a person acting on behalf of another person. However, members of the public who are asked to contact public officials regarding a specific issue are not considered agents of the person

¹ A **public official** means any elected or appointed officer or employee or officially designated representative, whether compensated or not, of any federal, state, or local government entity.

making the request. This practice, commonly referred to as “grassroots lobbying,” is not covered by the Act.

Note: A government action can also include a decision to refrain from action, delay action, or delay considering a matter.

WHAT IS NOT LOBBYING ACTIVITY

The Act does not apply to the following:

1. Public Officials acting in their official capacity. Public Officials include all elected and appointed officers, employees, and representatives of federal, state, or local governments. [OMC 3.20.030 (H)]

Example: An elected state official, in their official capacity, communicating with City Councilmembers to authorize a public works project **does not** qualify as lobbying.

2. The publication or broadcast of news, editorials, comments, or paid advertisements that urge government action.
3. Persons who have been specifically invited by a City official or employee to give testimony or information to assist the body or person extending the invitation.

Example: An architect’s expert testimony to City Council, in response to an invitation by City Council, **does not** qualify as lobbying.

4. Attorneys, architects, or civil engineers, whose attempts to influence government action are limited to appearance at, preparation for, or conversations with City employees working under the direction of the City Administrator about a public meeting, public hearing, or public proceeding.

Example: An architect representing an applicant before the Planning Department **does not** qualify as lobbying. However, an attorney contacting a member of the Planning Commission on behalf of a client outside a public meeting to help secure a permit **qualifies** as lobbying and may require the attorney to register and file as a lobbyist.

5. Persons who, without extra compensation and not as part of, or in the ordinary course of, their regular employment, present the position of their organization when that organization already

has a registered lobbyist.

6. Designated representatives of employee organizations engaged in collective bargaining negotiations regarding employment terms and agreements.
7. Participation in a public bid, proposal and/or contract award process. This exception does not apply to communication with an elected official or member of any City board or commission.
8. Contacts with representatives of the Oakland Unified School District including trustees, administrative staff, and faculty.

| Lobbying: | Not Lobbying: |
|---|---|
| <ul style="list-style-type: none"> • Requesting a variance to the City’s zoning laws for a new development qualifies as lobbying and may require the person to register and file reports as a lobbyist. • Attempting to influence the award or terms of a contract with the City by communicating with an elected official or member of any City board or commission qualifies as lobbying and may require the person to register and file reports as a lobbyist. | <ul style="list-style-type: none"> • Applying for a business license or library card does not qualify as lobbying because issuing a business license or library card is a ministerial act. • Setting up a website that opposes a proposed ordinance does not qualify as lobbying because the person has not communicated with a Public Official. “Grassroots lobbying” is not covered by the Act. |

[OMC 3.20.060]

LOBBYIST CLIENTS

The **client** is the person or organization for whose benefit the services of a lobbyist are being performed (the real party in interest). However, a person is not a client if they are simply a member of an organization that is represented by a registered lobbyist. [OMC 3.20.030(A)]

Example: An in-house lobbyist’s employer is that lobbyist’s client.

Example: The person or organization that hires a contract lobbyist is that lobbyist’s client.

Example: An individual member of a union is **not** a client when the lobbyist is representing the union, so long as the individual member does not pay any extra fees for representation by the lobbyist.

REGISTRATION AND REPORTS

INITIAL REGISTRATION

Once a person qualifies as a lobbyist, they are required to register with the Commission **before** beginning or continuing any lobbying activity. [OMC 3.20.040 and 3.20.120]

To register, a lobbyist must provide their name, employer or lobbying firm, contact information, and client information. The lobbyist must include all clients that have a pending interest before the City, regardless of how much the individual client pays the lobbyist. A lobbyist hired by a network of people or organizations should register all individuals or organizations who are part of that network as clients unless the network exists as its own legal entity. A lobbyist's registration is valid for the duration of the calendar year in which the lobbyist registered unless the lobbyist terminates their registration.



Register and File Quarterly Reports Online

Oakland lobbyists use the Commission's [OakApps](#) Lobbyist Registration and Reporting System for all filing requirements including registration, quarterly reports, annual registration renewal, and termination. See the Quick Start instructions in the appendix to this guide.

Visit <https://apps.oaklandca.gov/oakapps/>.

See the [Lobbyist e-filing quick-start guide](#) (Appendix I) for instructions. More resources are available on our online [FAQ](#)

Example: A person who recently began working as a contract lobbyist should register when the lobbyist receives, or becomes entitled to receive, a total of \$1,000 in any calendar month for lobbying.

REGISTRATION FEE

At the time of registering, a lobbyist must pay an annual registration fee of either:

- \$500 if the lobbyist registers between January 1 and June 30; or
- \$250 if the lobbyist registers between July 1 and December 31.

After registering through the OAKapps registration and reporting system, lobbyists will receive an invoice for payment of the registration fee from PEC staff. A lobbyist must use Oakland's [invoice payment portal](#) to pay the invoice online or send a check or money order for the applicable fee made out to "City of Oakland" to:

Public Ethics Commission
1 Frank H Ogawa Plaza
Room 104
Oakland, CA 94612

Attn: Lobbyist Registration

FEE REDUCTION AND WAIVER ELIGIBILITY

Lobbyists representing a small business or nonprofit organization that meets certain tax status and/or gross receipts/income thresholds are eligible to apply for reduced or waived registration fees.

The Public Ethics Commission will reduce the registration fees to \$100 for a lobbyist who registers between January 1 and June 30 and to \$50 for a lobbyist who registers between July 1 and December 31 who meet the following criteria:

1. is a salaried employee, officer, or director of any corporation, organization or association that received less than \$200,000 in gross receipts or gross income in its current tax year at the time of the local governmental lobbyist's registration and in its prior tax year; and
2. is exclusively representing that corporation, organization or association.

The Public Ethics Commission will waive the registration fees for a lobbyist who:

1. is a salaried employee, officer, or director of an organization or association that is exempt from taxation under 26 U.S.C. Sections 501(c)(3) and that received less than \$750,000 in gross receipts in both the organization's current tax year at the time of the local governmental lobbyist's registration and in the organization's prior tax year; and
2. is exclusively representing that organization.

A lobbyist of a chapter of a nonprofit organization or association is eligible to receive a fee waiver or fee reduction if all of the following are true:

1. The chapter is clearly presented to the public as being a chapter of the nonprofit organization or association;
2. The chapter has different leadership from the nonprofit organization or association; and
3. The chapter has its own budget and pays for the lobbyist's salary or lobbying expenses out of the chapter's budget.

The Public Ethics Commission may require that a lobbyist submit proof of an employer's gross receipts or gross income to receive the fee reduction or fee waiver as part of the lobbyist's registration or at any time thereafter.

To request a fee waiver or reduction, a lobbyist must submit an online application by visiting the PEC's [Request Lobbyist Registration Fee Waiver webpage](#).

ANNUAL REGISTRATION RENEWAL

Lobbyists are also required to re-register annually during the month of January and pay the applicable registration fee for that calendar year.

If a lobbyist does not reregister during the month of January and pay the applicable fee their registration will be automatically terminated effective December 31 of the previous calendar year.

NOTE: Even if a lobbyist files their initial registration mid-year (e.g., in June), the lobbyist must still renew their registration in January the following year if they will be continuing lobbying activity.

DEBARMENT FOR FAILURE TO REGISTER

If a lobbyist fails to properly register, they can be barred from acting as a lobbyist in addition to facing administrative and criminal penalties. [OMC 3.20.070]

MANDATORY TRAINING

All lobbyists must complete the PEC's lobbyist training within 60 days of the lobbyist's initial registration. Thereafter, local governmental lobbyists must complete any additional training sessions as required by the Public Ethics Commission. [O.M.C. 3.20.045] The PEC has recently adopted [Administrative Rules](#) requiring returning local governmental lobbyists to complete additional training once every two years, as specified.

To complete the mandatory training requirement, lobbyist must go to the PEC's [Lobbyist Training webpage](#) and complete the following steps:

1. Watch the PEC's online training video
2. Complete and submit a post-training quiz

The Public Ethics Commission may invalidate a registration for failure to comply with training requirements.

MANDATORY QUARTERLY REPORTS

In addition to initial registration and annual renewal, lobbyists must file quarterly reports that disclose all clients and lobbying activities during each calendar quarter.

Lobbyist Quarterly Reports must be filed by the last day of the month following the end of the calendar quarter in which the lobbyist is registered or should have been registered. [OMC 3.20.110] A registered lobbyist must file all Quarterly Reports **even if there is no reportable activity during the quarter.**

| Quarter | Reporting Period | Due Date |
|---------|----------------------|------------|
| 1 | January 1-March 31 | April 30 |
| 2 | April 1-June 30 | July 31 |
| 3 | July 1-September 30 | October 31 |
| 4 | August 1-December 31 | January 31 |

The Public Ethics Commission can impose a late filing fee of \$10 per day after the deadline until the information is received by the Public Ethics Commission or the fines reach \$1,000.

Note: There is no extension when a deadline date falls on a weekend. Reports may be filed prior to the deadline 24/7 using the online system.

LOBBYIST ACTIVITY THAT MUST BE DISCLOSED

Lobbyist quarterly reports must contain the following information: [OMC 3.20.110]

Contacts with City Officials

A lobbyist must report all contacts with City Officials seeking to influence a decision on behalf of a client or employer. A lobbyist must report every government action (i.e., municipal decision) that they are paid to influence along with the name of their client or employer. They must also include the name, title, and department of every City official that they contacted. All reported contacts must include a description of each position advocated by the lobbyist on behalf of the client.

Employment of a City Official or Candidate

A lobbyist must report when they, or one of their clients, employ any City officeholder, candidate, City employee or their immediate family member. The report must include the name of the person hired, a description of the services performed, and the total payments to the individual.

Employment by a City Official or Candidate

A lobbyist must report if they are employed by any City officeholder, candidate, City employee or their immediate family member. The report must include the name of the City official or candidate who hired the lobbyist. It must also include a description of the service performed and the total payment made to the lobbyist.

Political Contributions

A lobbyist must report any person or organization that they ask to make a campaign contribution to a City officeholder or candidate. The report must include the name of every person that the lobbyist asked to make a campaign contribution. It must also include the name of the officeholder or candidate (including any committee or fund) the request benefitted. **A lobbyist must report the request even if it does not result in a contribution.**

TERMINATION OF LOBBYING ACTIVITIES

Lobbyists who have stopped **all** Oakland lobbying activity during the calendar year in which they are registered are required to notify the Commission by filing a Termination Report on the OakApps reporting system, which shall terminate their registration. Once a person terminates their registration, they have no further obligations under the Act unless they begin lobbying again. [OMC 3.20.050]

Example: A lobbyist stops working on a campaign for Client A, but they are still engaged in lobbying activities for Client B. The lobbyist would **not** terminate their registration unless they stop performing regulated lobbying activity for **all** their clients.

If a lobbyist does not reregister during the month of January and pay the applicable fee, their registration will be automatically terminated effective December 31 of the previous calendar year. That lobbyist would still have to file their fourth quarter report for that prior year (due January 31), but would have no further reporting obligations under the Act.

If a lobbyist wishes to begin lobbying Oakland officials again after terminating their registration, the lobbyist must re-register with the Commission.

MANDATORY RECORD RETENTION

Lobbyists must keep all documents related to registration and quarterly reports for **five years**. This includes all books, papers, and documents, including Lobbyist Registration, Lobbyist Quarterly Reports, and Lobbyist Termination forms. [OMC 3.20.100]

If you are in doubt, it is better to keep all documents. It is the lobbyist’s responsibility to provide copies of records to the Commission upon an investigation, and it is a violation of the Act if required records are missing. While records are saved in the Lobbyist Registration and Reporting System, it is still recommended that lobbyists keep copies for their own records.

PROHIBITED ACTIVITIES

The Act prohibits lobbyists, clients, contractors, and persons doing business with the City from engaging in certain activities. The following section summarizes types of activities prohibited by the Act. Please consult the Act for specific details and a complete list of restrictions.

PERSONAL OBLIGATION

Lobbyists, clients, contractors, and persons doing business with the City may not take any action that places a City official or employee under personal obligation to the lobbyist, client, contractor, or person doing business with the City. [OMC 3.20.130]

Example: A lobbyist may not make a monetary loan to a City employee.

DECEPTION

A lobbyist, client, contractor, or person doing business with the City may not attempt to deceive a City official or employee regarding facts about a government action (pending or proposed). [OMC 3.20.140]

Example: A lobbyist may not provide false data that supports their position on pending legislation.

IMPROPER INFLUENCE

A lobbyist may not cause or influence a government action for the purpose of creating future lobbying business for the lobbyist. [OMC 3.20.150]

Example: A lobbyist may not influence the introduction of legislation when the lobbyist hopes to be later retained to promote or oppose that very legislation.

FALSE APPEARANCES

A lobbyist may not attempt to create a false appearance of public favor or disfavor of any government action. A lobbyist may not cause any communication to be sent to a City official or employee in the name of any fictitious person or in the name of a real person without that person's consent. [OMC 3.20.160]

Example: A lobbyist may not submit a letter in support of a proposed development on behalf of a neighborhood group that does not exist or on behalf of a neighborhood group that does exist without that group's consent.

PROHIBITED REPRESENTATIONS

A lobbyist may not represent that they can control or obtain the vote or action of any City officer or employee. [OMC 3.20.170]

Example:
A lobbyist may not tell a potential client that Councilmember A will vote however the lobbyist tells that Councilmember to vote.

RESTRICTIONS ON PAYMENTS AND GIFTS

Lobbyists and their clients may not make payments to, or incur expenses for, any officeholder, candidate, employee, or family member thereof, that exceed \$240 in any single calendar year. [OMC 3.20.180]. This restriction includes gifts, honoraria, and any other form of compensation, but does not include political contributions.

In addition, the City's Government Ethics Act prohibits a **restricted source** from giving a gift with a value of \$50 or more to a City official or employee [O.M.C. 2.25.060(C)(3)]. A restricted source means either a person doing business with or seeking to do business with the department of the City official or employee or a person who during the prior twelve (12) months knowingly attempted to influence a City official or employee in any legislative or administrative action.

Example: The client of a lobbyist is prohibited from giving the Mayor’s spouse a \$300 ticket to a musical concert.

“REVOLVING DOOR” RESTRICTIONS

A City officer, department head, or budget director may not act as a lobbyist for **two years** after leaving office. [OMC 3.20.190] This restriction applies to the Mayor, City Administrator, City Councilmembers, City Attorney, City Clerk, City Auditor, and executive officers.² In addition, the City’s Government Ethics Act prevents a board/commission member and other City employees not listed above from lobbying their former board or department for a period of one year after leaving their position. [OMC 2.25.050(C)]

Example: A director of a City department may not engage in lobbying for two years after leaving their City position. However, they may speak on their own behalf in support of a proposed ordinance.³

OTHER APPLICABLE OAKLAND LAWS — CONTRACTOR BAN

The Oakland Campaign Reform Act (OCRA) prohibits a person who contracts with the City, or who proposes to contract with the City, from making contributions to candidates, subject to certain exceptions. The restriction applies between the commencement of negotiations and 180 days after the completion or the termination of negotiations for such a City contract. [OMC 3.12.140(A)] For entities such as organizations or businesses, the restriction applies to anyone authorized to represent the entity before the City regarding the contract, including a paid lobbyist. Before making a campaign contribution, a lobbyist must determine the end of the contract negotiation period to avoid breaking the law.

Example: A lobbyist was hired by a local business to help the business get selected for a City contract. The lobbyist cannot contribute to a City candidate until 180 days after the completion or termination of the negotiation period has ended.

² **City officer** is defined by City Charter section 400.

³ There are additional “revolving door” restrictions in the Oakland Government Ethics Act. See OMC 2.25.050.

ENFORCEMENT

Persons who violate the Act are subject to administrative, civil, and criminal penalties. The Commission's Complaint Procedures and Complaint Forms are available from the Commission and are posted on its website.

LATE FILING FEES

If any lobbyist fails to submit any of the required information by the appropriate deadline, the Public Ethics Commission will impose a late filing fee of \$10 per day after the deadline until the information is received by the Public Ethics Commission or the total amount of late fees reach \$1,000. This late fee is in addition to, and does not preclude, the possible imposition of other administrative, civil, or criminal penalties for a late filing.

ADMINISTRATIVE/CIVIL PENALTIES

The Commission is responsible for enforcing the Act and is authorized to impose administrative penalties of up to \$1,000 for each violation. [OMC 3.20.200]

The PEC may also impose civil penalties of up to \$1,000 for each complaint sustained [OMC 3.20.210].

CRIMINAL PENALTIES

In addition to potential for administrative and civil penalties, any person who knowingly or willfully violates the Act is guilty of a misdemeanor. No person convicted of a misdemeanor violation of the Act may act as a lobbyist, advise a client, or otherwise attempt to influence a government action for compensation for one year after the conviction. [OMC 3.20.220]

APPENDIX I: LOBBYIST REGISTRATION AND REPORTING SYSTEM

QUICK START GUIDE

The City of Oakland’s Lobbyist Registration and Reporting System allows users to register as an Oakland lobbyist, maintain a client list, enter lobbyist activity, draft disclosure reports, and submit them online.

CREATE OAKAPPS ACCOUNT

1. First time users must first create an [OakApps](#) account (OakApps provides access to numerous City of Oakland applications). Click **REGISTER** in the upper right side of the page. Provide the requested information to create your account. Note: Lobbyists should select “Business” as the account type.
2. Verify your email and set your password.

REGISTRATION

1. From [OakApps](#) click on the **PUBLIC ETHICS COMMISSION** button or enter <https://apps.oaklandca.gov/pec/> in your browser to proceed to Lobbyist Registration and Reporting.
2. Click the **REGISTRATION** icon and then the **REGISTER** link within the text.
3. Enter your contact and employer information.
4. Enter clients.
5. Contract lobbyists: Add information for each client.
6. In-house lobbyists: Your employer will automatically be entered as a client. Please click **EDIT** to complete the client information.
7. When the information is complete, click **REVIEW** to check your draft registration form for accuracy. Click the **BACK** button if you need to add, edit, or delete any data.
8. If the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and then click **REGISTER**.
9. Your registration is complete! You will receive a confirmation by email. You may print or download a copy of your registration for your records from your Profile page.

DRAFTING AND SUBMITTING LOBBYIST ACTIVITY REPORTS

1. Go to <https://apps.oaklandca.gov/pec/> . Click the **MY ACTIVITY REPORTS** icon and then the **REPORTS** link in the text below. If you are already logged in to your account, you can click **REPORTS** on the main menu.
2. Select the reporting period from the dropdown list in the upper right corner to start a new report. When a new report is added a draft is saved and will be displayed in the Drafts table until submitted.
3. In the Clients Represented section, click the **ADD** icon to add the clients you represented during the period, compensation received, and whether you have reportable activity on behalf of that client. Note: If you added a new client after submitting your registration, add the client from the Registration page and amend your registration before proceeding.

4. In the Contacts with City Officials section, click the **ADD** icon to make an entry for each contact with a City Official made to influence a government (municipal) decision on behalf of a client or employer. Enter elected officials and board and commission members by name. Enter City employees by Department and Title only.
5. In the Employment of a City Official or Candidate section, click the **ADD** icon to enter a City officeholder, candidate, employee, or member of their immediate family employed by you (or a client at your behest) during the reporting period.
6. In the Employment by a City Official or Candidate section, click the **ADD** icon to enter a City officeholder, candidate, employee, or member of their immediate family, who employed you during the reporting period.
7. In the Political Contributions section, click the **ADD** icon to enter each person or organization you solicited for political contributions to a City officeholder or candidate during the reporting period.
8. You may exit the system and return to continue editing your draft report by locating the draft on the Reports page and clicking **VIEW**. You may also print out your draft from the Reports page.
9. Once the draft is complete, click **REVIEW REPORT** to check your report for accuracy. Click the **BACK**
10. button to continue editing.
11. If the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **SUBMIT**.
12. Your Quarterly Activity Report is filed! You will receive a confirmation of your filing by email. Submitted filings are shown in the bottom section of both the Reports page and your Profile page. You may print or download a copy of your report for your records from either location.

AMENDING YOUR REGISTRATION

Any time your registration information changes, such as contact, employer or client information, you must amend your registration. It is a violation of the Lobbyist Registration Act to lobby on behalf of an employer or client before registering them with the Public Ethics Commission, so keep your registration information current.

1. Go to <https://apps.oaklandca.gov/pec/>. Click the **REGISTRATION** icon and then the **REGISTER** link within the text. If you are already logged in to your account, you can amend your registration by clicking **PROFILE** on the main menu and then the **AMEND** button to edit your registration information.
2. Make edits to your contact, employer, and client information, then click **REVIEW** to check your amended registration form for accuracy. Click the **BACK** button to continue editing.
3. If the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **AMEND**.
4. Your amended registration is complete! You will receive a confirmation of your amended registration by email. You may print or download a copy of your registration for your records from your Profile page.

AMENDING YOUR REPORT

1. Go to <https://apps.oaklandca.gov/pec/>. Click the **MY ACTIVITY REPORTS** icon and then the **REPORTS** link in the text below. If you are already logged in to your account, you can click **REPORTS** on the main menu.

2. Locate the report you want to amend in the Reports Filed section and click **AMEND**. You may exit the system and return to continue editing your draft amendment by locating the draft on the Reports page and clicking **VIEW**. You may also print out your draft.
3. Use the **ADD**, **EDIT** and **DELETE** functions to revise your report.
4. Once the draft is complete, click **REVIEW REPORT** to check your report for accuracy. Click the **BACK** button to continue editing.
5. If the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **SUBMIT**.
6. Your Amendment is filed! You will receive a confirmation of your amendment by email. Submitted filings are shown in the bottom section of both the Reports page and your Profile page. You may print or download a copy of your report for your records from either location.

TERMINATING YOUR REGISTRATION

If you will no longer be lobbying City of Oakland officials, you must notify the Public Ethics Commission by submitting a final Termination Report to be relieved of registration and reporting obligations.


Remember, once you terminate your registration it is a violation of the Lobbyist Registration Act to engage in any lobbying activity with the City of Oakland until you reactivate your registration.

1. Go to <https://apps.oaklandca.gov/pec/>. Log into your account and click **PROFILE** from the main menu items.
2. Click the **TERMINATE** button on the right side of the page.
3. Complete the Termination Report covering activities up to the date of termination.
4. When the draft is satisfactory, check “I agree” in the declaration box at the bottom of the page and click **SUBMIT**.
5. Your registration is terminated! You will receive a confirmation by email. Your lobbyist status will be updated to terminated and you will no longer receive notices. However, you will still be able to log-in to access your account information and filing history. You may also submit reports and amends for periods prior to your termination. You may re-register at any time.


MAIN MENU

The Oakland Lobbyist Registration and Reporting System main menu displays on each page and contains the following options:

- **HOME** - Returns your browser to the Lobbyist Registration and Reporting home page with links to Registration, Resources, and My Activity Reports.
- **PROFILE** - Displays your most recent registration status, registration information, and filing history. Allows you to amend or terminate your registration and print submitted registration and reports documents.
- **REGISTRATION** - Allows you to update registration information and client list, submit registration and amendments, and print or download your most recent registration.
- **REPORTS** - Allows you to draft and submit reports. Allows you to view, edit, print, and delete draft reports as well as view, print and amend submitted reports.

LOGGING OUT: Click the  OakApps logo in the upper right corner to log out of your account.

GET HELP

- **Tool Tips** – Throughout the system you will see tool tips. Simply hover over the  icon to open a floating window with instructions and information specific to the section you are viewing
- **Additional Resources** – From the Home page, click Resources to find links to the Lobbyist Registration Act, the Commission’s Lobbyist Guide, and our searchable [FAQ](#) page.
- **Email Assistance** – Contact Commission staff for support. Send an email to ethicscommission@oaklandca.gov.

APPENDIX II: SAMPLE COMPLETED REGISTRATION FORM



Lobbyist Registration Amendment 2

Lobbyist: Quetzalli Lara

FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/8/2021 1:16 PM

Lobbyist

Name Quetzalli Lara
Address 1 Frank H Ogawa Plaza
Room 104
Oakland, CA 94601
Phone (510) 238-2257
Email alarafranco@oaklandca.gov

Employer

Lobbyist Type Contract Lobbyist
Name Xochipilli
Address 1 Frank H Ogawa Plaza 1st Floor, Rm 104
Oakland, CA 94612
USA
Phone (510) 238-3593
Email alarafranco@oaklandca.gov

PEC Lobbyist Registration Form (2021)
PEC Advice: ethicscommission@oaklandca.gov (510)238-3593
www.oaklandca.gov/pec

1 / 2



Lobbyist Registration
Amendment 2

Lobbyist: Quetzalli Lara

FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/8/2021 1:16 PM

Clients

| Name | Address | Phone | Email | Website | Business Interest |
|-----------------------------------|---|----------------|---------------------------|---------|--|
| Xochipilli Inc. Type: Business | 1 San Sebastian Road, Oakland, CA 94601, USA | (510) 238-3593 | alarafranco@oaklandca.gov | | Interest: Construction |
| Ana Lara Type: Business | 123 San Sebastian Road, Oakland, CA 94612, USA | (510) 238-3593 | alarafranco@oaklandca.gov | | Interest: Accommodation and Food Services |

Verification

I, Quetzalli Lara, have reviewed this registration and agree to comply with all requirements pursuant to the Oakland Lobbyist Registration Act. I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge the information contained herein is true, complete and correct.

APPENDIX III: SAMPLE COMPLETED QUARTERLY REPORT



Quarterly Lobbyist Activity Report
Oct 01 to Dec 31, 2020

Lobbyist: Quetzalli Lara

**FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/14/2021 12:42 PM**

| Filed by Lobbyist | | Employer | |
|-------------------|--|----------|--|
| Type | Contract Lobbyist | Name | Xochipilli |
| Name | Quetzalli Lara | Address | 1 Frank H Ogawa Plaza 1st Floor, Rm 104 Oakland, CA 94612 USA |
| Address | 1 Frank H Ogawa Plaza Room 104 Oakland, CA 94601 | Phone | (510) 238-3593 |
| Phone | (510) 238-2257 | Email | alarafranco@oaklandca.gov |
| Email | alarafranco@oaklandca.gov | | |

Clients Represented

| Name | Address | Reportable | |
|-----------------|--|------------|---------------------|
| | | Activity | Payment to Lobbyist |
| Xochipilli Inc. | 1 San Sebastian Road, Oakland, CA 94601, USA | No | Not Stated |
| Ana Lara | 123 San Sebastian Road, Oakland, CA 94612, USA | Yes | \$ 20,000.00 |



Quarterly Lobbyist Activity Report
Oct 01 to Dec 31, 2020

Lobbyist: Quetzalli Lara
**FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/14/2021 12:42 PM**

Contacts with City Officials (Schedule A)

Contacts by lobbyist with City Officials to influence a governmental (municipal) decision on behalf of a client or employer.

| Client | Municipal Decision | Subject | Position | City Official |
|--|--|------------------------------|-----------------------|--|
| Ana Lara | Land Use (Permit, Zoning, Study) | Accessibility | Support | Noel Gallo, Council Member, District 5 |
| <i>Narrative:</i> approve permits for housing | | | | |
| Ana Lara | Public Contract | Airport | Support | Rebecca Kaplan, Council Member, At-Large |
| <i>Narrative:</i> approve new airport terminal | | | | |
| Ana Lara | Ordinance, Policy, or Other Legislative Matter | Cannabis regulation/taxation | Informational meeting | City Administrator's Office - Assist to the City Administrator |
| <i>Narrative:</i> met with Cannabis dept | | | | |
| Ana Lara | Other Permits, Administrative Decisions | Recreation and Parks | Oppose | City Council - Chief of Staff, Council District 3 |
| <i>Narrative:</i> oppose permits for new aprk | | | | |



Quarterly Lobbyist Activity Report
Oct 01 to Dec 31, 2020

Lobbyist: Quetzalli Lara

FILED WITH CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
12/14/2021 12:42 PM

Schedule B - Employment of a City Official or Candidate (Schedule B)

City officeholder, candidate, employee or immediate family member, employed by lobbyist, or by a client at the lobbyist's behest, during the reporting period.

No Activity Reported..

Schedule C - Employment by a City Official or Candidate (Schedule C)

City officeholder, candidate, employee or immediate family member who employed the lobbyist during the reporting period.

No Activity Reported..

Schedule D - Political Contributions (Schedule D)

Persons or organizations solicited for contributions to a City officeholder or candidate during the reporting period.

No Activity Reported..

Verification

Lobbyist Activity Report Form (2021)
PEC Advice: ethicscommission@oaklandca.gov (510/238-3593)
www.oaklandca.gov/pec

3/4



Public Ethics Commission
1 Frank Ogawa Plaza (City Hall), Room 104
Oakland, CA 94612
www.oaklandca.gov/pec
ethicscommission@oaklandca.gov
(510) 238-3593

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 19-01.2

14 SUSAN MONTAUK,

) **STIPULATION, DECISION AND**
) **ORDER**

15 Respondent.
16
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22
23 **STIPULATION**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondent SUSAN MONTAUK, agree as follows:
27
28

Item 9 - Proposed Settlement

- 1 1. This Stipulation will be submitted for consideration by the City of Oakland Public
2 Ethics Commission (Commission) at its next regularly scheduled meeting.
- 3 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
4 the final resolution to this matter without the necessity of holding an administrative
5 hearing to determine the liability of, or penalties and/or other remedies to be imposed
6 upon, Respondent.
- 7 3. Respondent knowingly and voluntarily waives all procedural rights under the Oakland
8 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
9 Procedures, and all other sources of procedural rights applicable to this PEC
10 enforcement action. These procedural rights include, but are not limited to, the right to
11 personally appear at an administrative hearing held in this matter, to be represented by
12 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
13 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed.
- 14 4. Respondent represents that they have accurately furnished to the Commission all
15 discoverable information and documents that are relevant to the Commission's
16 determination of a fair and comprehensive resolution to this matter.
- 17 5. Upon approval of this Stipulation and full performance of the terms outlined in this
18 Stipulation, the Commission will take no future action against Respondent regarding the
19 violations of law described in Exhibit #1 to this Stipulation, and this Stipulation shall
20 constitute the complete resolution of all claims by the Commission against Respondent
21 related to such violations.
- 22 6. If Respondent fails to comply with the terms of this Stipulation, then the Commission
23 may reopen this matter and prosecute Respondent to the full extent permitted by law,
24 except that the Statute of Limitations shall be waived for any violations that were not
25 discoverable by the Commission due to non-compliance with the terms of this
26 Stipulation.
- 27 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
28 does not preclude the Commission or its staff from referring the matter to, cooperating

Item 9 - Proposed Settlement

1 with, or assisting any other government agency with regard to this matter, or any other
2 matter related to it.

3 8. Respondent admits that they violated the provision(s) of the Oakland Municipal Code
4 specified in Exhibit #1 to this Stipulation, and in the manner set forth in that Exhibit,
5 which is expressly incorporated by reference in its entirety to this Stipulation and
6 represents a true and accurate summary of the facts in this matter.

7 9. Respondent will fully cooperate with any related enforcement actions that may be
8 brought against other Respondents in this or other related matters, including but not
9 limited to the provision of truthful testimony at an administrative hearing or similar
10 proceeding, should the need ever arise.

11 10. The Commission will impose upon Respondent the penalties and/or other remedies
12 specified in Exhibit #1.

13 11. A cashier's check from Respondent, in the amount specified in Exhibit #1 to this
14 Stipulation, made payable to the "City of Oakland," is submitted with this Stipulation as
15 full payment of the administrative penalty specified in Exhibit #1, to be held by the
16 Commission until the Commission issues its decision and order regarding this matter.

17 12. In the event the Commission refuses to accept this Stipulation, it shall become null and
18 void, and within fifteen business days after the Commission meeting at which the
19 Stipulation is rejected, all payments tendered by Respondent in connection with this
20 Stipulation will be reimbursed to them.

21 13. In the event the Commission rejects this Stipulation and a full evidentiary hearing
22 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
23 and neither any member of the Commission, nor the Executive Director or any member
24 of PEC staff, shall be disqualified from that hearing because of prior consideration of
25 this Stipulation.


26 14. This Stipulation may not be amended orally. Any amendment or modification to this
27 Stipulation must be in writing duly executed by all parties and approved by the
28 Commission at a regular or special meeting.

Item 9 - Proposed Settlement


1 15. This Stipulation shall be construed under, and interpreted in accordance with, the laws
2 of the State of California and the City of Oakland. If any provision of the Stipulation is
3 found to be unenforceable, the remaining provisions shall remain valid and enforceable.

4 16. The parties hereto may sign different copies of this Stipulation, which will be deemed to
5 have the same effect as though all parties had signed the same document. Verified
6 electronic signatures shall have the same effect as wet signatures.

7
8 So agreed:

9
10
11 
Simon Russell (Feb 28, 2024 15:27 PST)
12 Simon Russell, Chief of Enforcement
13 City of Oakland Public Ethics Commission, Petitioner

Feb 28, 2024
Dated

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17 
Susan Montauk (Feb 28, 2024 15:26 PST)
18 Susan Montauk, Respondent

Feb 28, 2024
Dated

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DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Susan Montauk,” PEC Case No. 19-01.2, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

Item 9 - Proposed Settlement

EXHIBIT # 1

In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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Item 9 - Proposed Settlement

EXHIBIT # 1

In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

INTRODUCTION

1
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3 This case concerns a ballot measure campaign committee active in the November 2018
4 election in Oakland that, unknown to the public, was controlled by an elected official whom
5 we shall refer to as “Candidate A” in this document.¹ The committee was called “The Oakland
6 Fund” and it supported a ballot measure meant to impose a parcel tax for purposes of funding
7 education-related programs. Candidate A was closely involved with that ballot measure
8 campaign and wished to use The Oakland Fund (which had existed for a number of years
9 without Candidate A’s involvement) as a public-facing mechanism for depositing and
10 disbursing campaign funds for it.

11 Because The Oakland Fund never registered as a “candidate-controlled” ballot
12 measure committee or incorporated Candidate A’s name into its own (which ballot measure
13 committees controlled by an elected official are required to do), it was able to avoid informing
14 the public that it was controlled by Candidate A during the 2018 election.

15 Respondent Susan Montauk was a board member of The Oakland Fund during this
16 time. She had personal knowledge of Candidate A’s involvement with the ballot measure
17 campaign and voted for The Oakland Fund to become the vehicle for depositing and
18 disbursing funds related to that campaign. However, she was unaware of the legal
19 implications of such an arrangement and had limited involvement with the rest of the
20 campaign operations.

21 PEC staff and Respondent have agreed to settle this matter without an administrative
22 hearing. Respondent has further agreed to cooperate with the PEC in any other enforcement
23 actions that may be brought against other persons involved in this matter, including by
24 providing truthful testimony concerning the facts laid out in this document, should the need
25 ever arise. PEC staff and Respondent are now presenting their stipulated agreement,
26 summary of the facts, and legal analysis to the City of Oakland Public Ethics Commission for

27 ¹ PEC staff is withholding Candidate A’s identity at this time due to other pending enforcement matters.
28

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EXHIBIT # 1

In the Matter of Susan Montauk

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1 its approval. Together, PEC staff and Respondent recommend approval of their agreement
2 and imposition of administrative penalties totaling \$500, as described in more detail below.

FACTUAL SUMMARY

“Candidate A” Convinces The Oakland Fund To Act as a Campaign Vehicle

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8 The Oakland Fund was a ballot measure committee that had been created long
9 before Candidate A ever got involved with it. It was originally formed by a group of Oakland
10 residents in 2008 to support various ballot measures meant to increase local tax revenue
11 and balance the City’s budget. Over the following years it had supported other initiatives as
12 well. As the 2018 campaign season approached, the Oakland Fund was being managed by a
13 three-person board and did not have any plans to engage in that year’s election.

14 Meanwhile, an elected official whom we shall refer to as “Candidate A” had been
15 closely involved in the preparations for an initiative that had recently qualified for the ballot,
16 called “Measure AA.” Some funds for that campaign had already been raised and a
17 campaign plan worked out, but the Measure AA backers still lacked an official ballot
18 measure committee through which funds would be deposited and disbursed, and which
19 would serve as the public face for the campaign.

20 At that point, Candidate A personally called two of the Oakland Fund board members
21 (Eugene Zahas and Susan Montauk) and asked if the Oakland Fund could be used for those
22 purposes. Over lengthy discussion, an understanding was reached between Candidate A and
23 the Oakland Fund that the latter would receive contributions and pay the campaign’s bills,
24 but would not be involved in day to day operations. They also understood that the preferred
25 accounting firm of the Measure AA team would handle all of the necessary behind-the-
26 scenes paperwork, and that the Oakland Fund would receive a large initial donation to cover
27 the salary of Candidate A’s representative on the campaign team, as well as other campaign
28

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In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 expenses. And because The Oakland Fund already had a balance of about \$10,000 of its
2 “own” money before Candidate A contacted them, which would soon be mixed with
3 incoming Measure AA funds, the Oakland Fund was promised that they could keep \$10,000
4 at the end of the campaign in order to avoid potentially losing money.

5 In an internal email to other board volunteers (including Montauk), Oakland Fund
6 treasurer Zahas summarized his initial conversation with Candidate A in the following way:
7 “[Candidate A] wants the Oakland Fund to handle the [Measure AA] campaign. Actually, we
8 will just be acting as fiscal agent, as there is (or will be) a campaign committee.”² Two other
9 people we shall refer to as Person B and Person C also conducted follow-up conversations
10 with the Oakland Fund board volunteers about these arrangements; Zahas told the rest of
11 the board (including Montauk) that Person B and Person C were “carrying the ball for
12 [Candidate A].”

13 Despite some initial reluctance, the three board members of the Oakland Fund then
14 met and agreed to let their committee be used as Candidate A had requested. They also
15 changed the committee’s name to “The Oakland Fund For Measure AA.” This new name did
16 not mention Candidate A’s involvement, nor did any of the campaign forms that The
17 Oakland Fund filed throughout the campaign. At no point was Montauk advised that there
18 might be additional legal requirements arising from Candidate A’s involvement with the
19 Oakland Fund, nor did Montauk possess the training or experience to flag this as a potential
20 issue.

21 Throughout the campaign, The Oakland Fund received over \$1.8 million dollars in
22 contributions on behalf of Measure AA – far in excess of any amount of money it had ever

23
24 ² This is somewhat confusing terminology, in that the legal term “campaign committee” normally refers to the
25 entity that collects and disburses campaign funds (like The Oakland Fund). Here, Zahas was informally using
26 the term “campaign committee” to refer to a separate group of people who would apparently be in charge of
27 actually running the day-to-day operations of the campaign.
28

Item 9 - Proposed Settlement

EXHIBIT # 1

In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 received in previous elections – and wrote expenditure checks covering the same amount
2 (not including the \$10,000 it was allowed to keep for acting as the campaign vehicle).
3 Ultimately, Measure AA passed with 62% of the vote.

Campaign Forms Filed by The Oakland Fund

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5
6
7 Throughout the campaign, The Oakland Fund filed numerous campaign forms with
8 the PEC that failed to disclose that “Candidate A” was its controlling candidate.

Form 410

9
10
11 The first type of form that The Oakland Fund filed with the PEC is called a Form 410
12 (“Statement of Organization”). These are forms that a committee must file when its first
13 registers as a campaign, and whenever it changes its name, purpose, or main personnel. It
14 must also disclose on these forms whether it is a controlled committee of a candidate or
15 officeholder. The forms must be signed by the controlling candidate, under penalty of perjury.
16 Finally, it is the form on which a committee declares what its name will be. As explained in
17 more detail later in this Exhibit, candidate-controlled committees are required to put the last
18 name of their controlling candidate in the committee’s name (e.g. “Committee X, a Controlled
19 Committee of Oakland Councilmember Smith”). The purpose of the form is to inform the
20 public of who is running a particular campaign committee and whether it is controlled by any
21 elected officials or candidates.

22 The table below shows all of the dates that The Oakland Fund filed a Form 410 in 2018
23 (i.e., the time period when Candidate A was involved with the committee). It did not disclose
24 that it was a controlled committee, did not identify Candidate A as its controlling candidate,
25 and failed to include Candidate A’s last name in its committee name on any of these forms.
26 Candidate A did not sign any of the forms.

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EXHIBIT # 1

In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

| Form 410s Filed by The Oakland Fund, March – August 2018 | |
|--|-----------------------------------|
| Date Filed | Committee Name Given on Form |
| March 23, 2018 | “The Oakland Fund” |
| August 22, 2018 | “The Oakland Fund For Measure AA” |

Form 460

The Oakland Fund also filed multiple forms known as a Form 460 (“Recipient Committee Campaign Statement”). These are periodic reports that a committee must file in order to report all of the money that it has raised and spent throughout the campaign. It must use its full committee name on the form, and report whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. The purpose of the form is to inform the public where committees are getting their money from, and what they are spending it on. The purpose of declaring whether the committee is controlled by an elected official is so that the public can be informed of which donors might be indirectly benefiting from their donations to that official’s committee, as well as allowing the public to check whether any of those donors are City contractors.

The table below shows all of the dates that The Oakland Fund filed a Form 460 with the PEC, reporting the money it had raised and spent from January through December 2018 (i.e. the time period when Candidate A was involved with the committee). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund for Measure AA.” It failed to include Candidate A’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Candidate A as its controlling candidate on any of these forms. Candidate A did not sign any of the forms as its controlling candidate:

Item 9 - Proposed Settlement

EXHIBIT # 1

In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

| Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018 | | |
|--|--|-----------------------------------|
| Date Filed | Dates Covered | Committee Name Given on Form |
| April 25, 2018 | January 1 – March 31, 2018 | “The Oakland Fund” |
| July 24, 2018 | April 1 – June 30, 2018 | “The Oakland Fund” |
| August 10, 2018 | April 1 – June 30, 2018 (amendment) | “The Oakland Fund” |
| September 27, 2018 | July 1 – September 22, 2018 | “The Oakland Fund for Measure AA” |
| October 23, 2018 | September 23 – October 20, 2018 | “The Oakland Fund for Measure AA” |
| January 14, 2019 | October 21 – December 31, 2018 | “The Oakland Fund for Measure AA” |
| June 11, 2019 | October 21 – December 31, 2018 (amendment) | “The Oakland Fund” |

Form 497

The Oakland Fund also filed what are known as Form 497s (“Contribution Reports”, sometimes informally referred to as “24-hour contribution reports”). These forms must be submitted within 24 hours, whenever a primarily-formed committee (such as The Oakland Fund) receives \$1,000 or more from a single donor in the 90 days before the election concerning the measure that the committee is supporting. The purpose of the form is to the inform the public -- before the election -- of which donors are making large contributions benefitting certain committees, particularly if they are controlled by a candidate or officeholder.

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1 The table below shows all of the dates that The Oakland Fund filed a Form 497 with
2 the PEC, reporting the contributions over \$1,000 it had raised from August 2018 until the
3 election that same year (when Candidate A was its controlling candidate). On each of these
4 forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund For Measure AA.”
5 It failed to include Candidate A’s last name in its committee name:

| Form 497s Filed by the Oakland Fund While Candidate A Was Controlling Candidate | | |
|---|-----------------------------------|-------------------------------------|
| Date Filed | Committee Name Given on Form | Activity Reported |
| August 14, 2018 | “The Oakland Fund” | \$77,500 in contributions received |
| August 29, 2018 | “The Oakland Fund For Measure AA” | \$12,000 in contributions received |
| September 20, 2018 | “The Oakland Fund For Measure AA” | \$25,000 in contributions received |
| September 21, 2018 | “The Oakland Fund For Measure AA” | \$1,000 in contributions received |
| September 25, 2018 | “The Oakland Fund For Measure AA” | \$75,000 in contributions received |
| October 2, 2018 | “The Oakland Fund For Measure AA” | \$20,625 in contributions received |
| October 12, 2018 | “The Oakland Fund For Measure AA” | \$63,000 in contributions received |
| October 15, 2018 | “The Oakland Fund For Measure AA” | \$40,000 in contributions received |
| October 19, 2018 | “The Oakland Fund For Measure AA” | \$102,500 in contributions received |
| October 23, 2018 | “The Oakland Fund For Measure AA” | \$10,000 in contributions received |
| October 24, 2018 | “The Oakland Fund For Measure AA” | \$44,800 in contributions received |
| October 25, 2018 | “The Oakland Fund For Measure AA” | \$75,000 in contributions received |

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| | | | |
|-------------|---------------------|-----------------------------------|---------------------------------------|
| 1 2 3 | October 30, 2018 | “The Oakland Fund For Measure AA” | \$15,000 in contributions received |
| 4 5 | November 1, 2018 | “The Oakland Fund For Measure AA” | \$35,000 in contributions received |
| 6 7 | November 5, 2018 | “The Oakland Fund For Measure AA” | \$20,000 in contributions received |

Montauk’s Cooperation with the PEC

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Montauk was forthcoming and cooperative with PEC investigators throughout this investigation. She was open about her role with The Oakland Fund and the events described above, and provided what appears to be complete and truthful answers to PEC investigators’ questions. She also evinced an understanding of the potential public harm involved and indicated a good faith desire to work the PEC in order to address and remedy any errors or other violations that may have occurred. Montauk also voluntarily provided documents to the PEC concerning the events of this case, and her production of documents appeared to be complete.

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PEC staff found Montauk to be credible. As part of the settlement of this matter, Montauk has agreed cooperate with the PEC in its resolution of any related enforcement actions that might be brought against other persons involved, by stipulating to the facts of which she has personal knowledge and agreeing to provide truthful testimony should the need arise.

SUMMARY OF LAW & LEGAL ANALYSIS

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

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1 All definitions of terms are the same as those set forth in the California Political Reform
2 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
3 is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter
4 3.12) or the contrary is stated or clearly appears from the context.³

5 Provisions of the California Political Reform Act relating to local elections, including
6 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
7 (OCRA), except as otherwise provided in, or inconsistent with, or other provisions of local
8 law.⁴

The Oakland Fund Was A Candidate-Controlled Committee

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12 All of the alleged violations in this matter hinge on whether The Oakland Fund was
13 “candidate-controlled” during the events in question. Being a candidate-controlled
14 committee is not a violation in-and-of itself; but candidate-controlled committees have
15 additional disclosure requirements, and restrictions on the contributions they can accept.⁵
16 Therefore, to determine whether The Oakland Fund violated any of the laws applicable to
17 candidate-controlled committees, it must first be established that it was indeed “candidate-
18 controlled.”

19 A committee is candidate-controlled if a candidate or elected official has a “significant
20 influence” on the actions or decisions of the committee.⁶

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22 ³ OMC § 3.12.140.

23 ⁴ OMC § 3.12.240(d).

24 ⁵ For example, Oakland law specifies that candidate-controlled committee cannot receive contributions from
25 City contractors. Because Montauk largely lacks personal knowledge of any such possible violations and is not
26 being charged with any such possible violations, we will not be discussing them in this Exhibit.

27 ⁶ OMC § 3.12.040; Cal. Govt. Code § 82016.
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Element 1: Committee

The first element to establish is whether The Oakland Fund qualified as a “committee.” A “committee” is any person or combination of persons who directly or indirectly receives campaign contributions totaling two thousand dollars (\$2,000) or more in a calendar year, or who makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year.⁷

Here, The Oakland Fund received contributions in 2018 well in excess of \$2,000, according to its sworn campaign reporting forms. It was also registered as a campaign committee during all of the events in this case, having first registered as such in 2008.

Element 2: Candidate or Elected Official

The second element to establish if a committee is candidate-controlled is whether the person alleged to have controlled the committee was a candidate or elected official. The term “candidate” includes an elected officer.⁸ “Elected officer” means any person who holds an elective office.⁹

Here, “Candidate A” was a candidate or elected official because they were already serving as an elected Oakland official at the time of their involvement with The Oakland Fund. They were also a candidate for City office in the 2018 election (the same election in which

⁷ Cal. Govt. Code § 82013.

⁸ OMC § 3.12.040(B); Cal. Govt. Code § 82007.

⁹ OMC § 3.12.040; Cal. Govt. Code § 82020.

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1 Measure AA was to be voted upon). “Candidate A” also had at least one other open campaign
2 committee at the time, for which they were registered as the controlling candidate.

3 4 **Element 3: Significant Influence on the Actions or Decisions of the Committee**

5
6 Finally, to establish that a committee is candidate-controlled, there must be sufficient
7 facts to show that a candidate or elected official had “significant influence” on the actions or
8 decisions of the committee.¹⁰ Such influence can be direct or indirect.¹¹ Examples of the type
9 of behavior that might constitute significant influence include communicating with a
10 committee about its campaign strategy, messaging, or advertising, or making substantial
11 fundraising efforts for a committee.¹² Actions that do not constitute significant influence
12 include things such as publicly supporting a campaign, making donations from the official’s
13 own personal funds to a campaign, or appearing on a committee’s advertisements without
14 working on the messaging of those advertisements.¹³ It also does not include providing
15 ministerial or administrative support to a campaign (e.g. bookkeeping).¹⁴ It does not matter
16 whether the candidate has an official title or role on the campaign: “[P]ractical operational
17 realities, rather than job title, determine whether a committee is controlled.”¹⁵

18 Here, The Oakland Fund would not have been involved at all with the Measure AA
19 campaign were it not for Candidate A’s influence. It was Candidate A who contacted the
20 Oakland Fund and convinced them to become the vehicle for the Measure AA campaign

21
22 ¹⁰ Cal. Govt. Code § 82016.

23 ¹¹ Id.

24 ¹² *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021); FPPC *Pirayou* Advice Letter, No. I-10-159 (2010).

25 ¹³ *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 ¹⁴ *Lacy* Advice Letter, FPPC #I-03-076 (2003).

27 ¹⁵ *Lacy* Advice Letter, FPPC #I-03-076 (2003) at 2 (internal quotation marks omitted).

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1 despite the initial reluctance of the committee’s volunteer board. Candidate A also connected
2 The Oakland Fund with key personnel of the Measure AA campaign, including those that
3 Oakland Fund board members understood to be acting as agents for Candidate A.¹⁶ Only after
4 this intervention by Candidate A and their representatives did The Oakland Fund reorient its
5 existing plans and decide to get involved in the Measure AA campaign. The actual scope and
6 terms of The Oakland Fund’s interactions with the Measure AA campaign were also
7 determined by this intervention by Candidate A and their representatives, such as The
8 Oakland Fund’s hands-off role with day-to-day operations and its anticipated payment of
9 \$10,000 at the close of the campaign to make whole the bank balance that The Oakland Fund
10 account carried before mixing in the Measure AA funds. In short, all of The Oakland Fund’s
11 activity and the nature of its operations throughout the 2018 campaign was the result of
12 Candidate A’s influence.

The Oakland Fund Failed to Publicly Identify Candidate A as Its Controlling Candidate

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16 All committees must register with the appropriate filing officer¹⁷ and file periodic
17 campaign forms itemizing their contributions and expenditures.¹⁸ For committees that are
18 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose
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21 ¹⁶ Candidate A may also have influenced the strategy, budget, internal organization, and fundraising of the
22 Measure AA campaign before and after securing The Oakland Fund as a campaign vehicle, all of which would
23 be further evidence of Candidate A’s control over that committee. But because Montauk largely lacks personal
24 knowledge of such matters we are not including them in this Exhibit or asking the Commission to adopt any
25 such findings at this time.

26 ¹⁷ Cal. Govt. Code § 84101.

27 ¹⁸ Cal. Govt. Code § 84215.

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1 a candidate in an Oakland election, their filing officer is the PEC.¹⁹ The forms they must file
2 (including any amendments to those forms) include:

- 3
- 4 • the committee’s initial registration and termination statements (Form 410); and²⁰
- 5 • its pre-election and semi-annual campaign statements (form 460).²¹
- 6

7 Each of those reports, including amendments, must include the committee’s full
8 name.²² For a candidate-controlled committee, its name must include the last name of its
9 controlling candidate²³ (e.g. “... a controlled committee of Councilmember Smith”). The Form
10 410 and Form 460 must also be signed by the controlling candidate, under penalty of perjury.²⁴

11

12 **Element 1: Candidate-controlled committee**

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14 The first element to establish whether The Oakland Fund failed to file campaign forms
15 identifying Candidate A as its controlling candidate, is to show that Candidate A did indeed
16 control that committee. As demonstrated above, The Oakland Fund was a candidate-
17 controlled committee of Candidate A, an Oakland candidate and elected official.

18

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20 ¹⁹ OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).

21 ²⁰ Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

22 ²¹ Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

23 ²² Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee
24 name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b)
25 (full name required on late independent expenditure report).

26 ²³ Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

27 ²⁴ Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).

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Element 2: Failure to Disclose Candidate-Controlled Status on Forms

The next element to establish whether The Oakland Fund failed to file campaign forms identifying Candidate A as its controlling candidate, is to demonstrate the committee filed forms that lacked the required disclosure particular to each form.

Form 410

A Form 410 must include the committee’s full name. For a candidate-controlled committee, its name must include the last name of its controlling candidate (e.g. “...a controlled committee of Mayor Smith”). The Form 410 must also expressly disclose that it is a controlled committee, and identify its controlling candidate. The controlling candidate must sign the form under penalty of perjury.

Here, The Oakland Fund For Measure AA filed a Form 410 with the PEC on March 23 and August 22, 2018. Neither of those forms disclosed that it was a controlled committee, identified Candidate A as its controlling candidate, or included Candidate A’s last name in the committee name. Candidate A did not sign any of the forms.

Form 460

A Form 460 must include the committee’s full name. For a candidate-controlled committee, its name must include the last name of its controlling candidate (e.g. “...a controlled committee of Councilmember Smith”). The Form 460 must also expressly disclose that it is a controlled committee, and identify its controlling candidate. The controlling candidate must sign the form under penalty of perjury.

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1 On the following dates, The Oakland Fund filed a Form 460 with the PEC, in which it
2 did not disclose that it was a controlled committee, did not identify Candidate A as its
3 controlling candidate, and failed to include Candidate A's last name in its committee name:
4 April 25, 2018 (covering January 1 – March 31, 2018); July 24, 2018 (covering April 1 – June 30,
5 2018); August 10, 2018 (covering April 1 – June 30, 2018 (amendment)), September 27, 2018
6 (covering July 1 – September 22, 2018); October 23, 2018 (covering September 23 – October
7 20, 2018); January 14, 2019 (covering October 21 – December 31, 2018); and June 11, 2019
8 (covering October 21 – December 31, 2018 (amendment)). Candidate A did not sign any of the
9 forms.

Liability

13 Any person who violates any provision of the Oakland Campaign Reform Act, who
14 causes any other person to violate any provision of this Act, or who aids and abets any other
15 person in the violation of the Act, may be found liable for an administrative violation by the
16 PEC. If two or more persons are responsible for any violation, they shall be jointly and severally
17 liable.²⁵

18 "Person" means (among other things) an individual, joint venture, corporation
19 (including a nonprofit corporation), association, committee, or any other organization or
20 group of persons acting in concert.²⁶

21 The principal officer of a committee is any individual primarily responsible for
22 approving the political activity of the committee including, but not limited to authorizing the
23 content of the communications made by the committee, the committee's contributions or

26 ²⁵ OMC 3.12.270(C).

27 ²⁶ OMC 3.12.040(J)

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1 expenditures, or the committee’s campaign strategy. If more than one individual shares in the
2 primary responsibility for those activities, each such individual is a principal officer.²⁷

3 In addition to a committee itself, persons who qualify as principal officers of the
4 committee are jointly and severally liable for violations by the committee. For committees
5 controlled by a candidate, the candidate and the committee's treasurers are deemed to be
6 principal officers.²⁸ In addition, an agent acting on behalf of a person is jointly and severally
7 liable for a violation that arises out of the agent's actions. There is a rebuttable presumption
8 that “agents” of a committee include any current or former officer of the committee; any
9 person who has received compensation or reimbursement from the committee; and any
10 person who holds or has held a position within the committee organization that reasonably
11 appears to be able to authorize expenditures for committee activities.²⁹

12 “Aiding and abetting” is not itself a violation but rather a legal rule that allows the
13 Enforcement Unit to charge anyone who participated in the underlying violation, even if they
14 were not the direct perpetrator. The test of whether a person aided or abetted in the
15 commission of a violation is whether that person in any way, directly or indirectly, aided the
16 perpetrator(s) by acts or encouraged the perpetrator(s) by words or gestures, instigated or
17 advised the commission of the violation, or was present for the purpose of assisting in its
18 commission.³⁰ An aider and abettor must have knowledge of the illegal purpose of the
19 perpetrator(s) and have intentionally assisted them in the violation. The aider and abettor is
20 not only liable for the particular violation that to their knowledge their confederates were

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22 ²⁷ 2 Cal. Code of Regulations § 18402.1.

23 ²⁸ OMC 3.12.230(A)

24 ²⁹ OMC 3.12.230(B)

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26 ³⁰ *People v. Villa*, 156 Cal. App. 2d 128, 133, 134 (1957) (applying California Penal Code section 31, which contains a
27 similar “aiding and abetting” provision to that found under OMC 3.12.270(C)).

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1 contemplating committing, but they are also liable for the natural and reasonable or probable
2 consequences of any act that they knowingly aided or encouraged.³¹

VIOLATIONS:

SUSAN MONTAUK

7 Respondent, Susan Montauk (a principal officer of The Oakland Fund, who also
8 caused, aided and abetted the violation), violated the following Oakland Municipal Code(s):

Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms

12 On the following dates, The Oakland Fund filed a Statement of Organization (“Form
13 410”) with the PEC, in which it did not disclose that it was a controlled committee, did not
14 identify Candidate A as its controlling candidate, and failed to include Candidate A’s last name
15 in its committee name. Candidate A did not sign any of the forms.

| Form 410s Filed by The Oakland Fund, March – August 2018 | |
|---|-------------------------------------|
| Date Filed | Committee Name Given on Form |
| March 23, 2018 | “The Oakland Fund” |
| August 22, 2018 | “The Oakland Fund For Measure AA” |

21 As the controlling candidate, Candidate A’s last name was required to be included as
22 part of the committee’s name for all purposes. Also, Candidate A was required to be identified
23 as the controlling candidate on the committee’s Form 410, and was required to sign the
24 committee’s Form 410.

27 ³¹ Id. at 134.

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1 On the following dates, Respondent committee filed a Recipient Committee Campaign
2 Statement (“Form 460”) with the PEC, in which it failed to include Candidate A’s last name in
3 its committee name, did not disclose that it was a controlled committee, and did not identify
4 Candidate A as its controlling candidate. Candidate A did not sign any of the forms as its
5 controlling candidate:

| Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018 | | |
|--|--|-----------------------------------|
| Date Filed | Dates Covered | Committee Name Given on Form |
| April 25, 2018 | January 1 – March 31, 2018 | “The Oakland Fund” |
| July 24, 2018 | April 1 – June 30, 2018 | “The Oakland Fund” |
| August 10, 2018 | April 1 – June 30, 2018 (amendment) | “The Oakland Fund” |
| September 27, 2018 | July 1 – September 22, 2018 | “The Oakland Fund for Measure AA” |
| October 23, 2018 | September 23 – October 20, 2018 | “The Oakland Fund for Measure AA” |
| January 14, 2019 | October 21 – December 31, 2018 | “The Oakland Fund for Measure AA” |
| June 11, 2019 | October 21 – December 31, 2018 (amendment) | “The Oakland Fund” |

19
20 As the controlling candidate, Candidate A’s last name was required to be included as
21 part of the committee’s name for all purposes. Also, Candidate was required to be identified
22 as the controlling candidate on the committee’s Form 460, and was required to sign the
23 committee’s Form 460.

24 On the following dates, Respondent committee filed a Contribution Report (“Form
25 497”) with the PEC, in which it failed to include Candidate A’s last name in its committee name:
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Form 497s Filed by the Oakland Fund While Candidate A Was Controlling Candidate

| Date Filed | Committee Name Given on Form | Activity Reported |
|--------------------|-----------------------------------|-------------------------------------|
| August 14, 2018 | "The Oakland Fund" | \$77,500 in contributions received |
| August 29, 2018 | "The Oakland Fund For Measure AA" | \$12,000 in contributions received |
| September 20, 2018 | "The Oakland Fund For Measure AA" | \$25,000 in contributions received |
| September 21, 2018 | "The Oakland Fund For Measure AA" | \$1,000 in contributions received |
| September 25, 2018 | "The Oakland Fund For Measure AA" | \$75,000 in contributions received |
| October 2, 2018 | "The Oakland Fund For Measure AA" | \$20,625 in contributions received |
| October 12, 2018 | "The Oakland Fund For Measure AA" | \$63,000 in contributions received |
| October 15, 2018 | "The Oakland Fund For Measure AA" | \$40,000 in contributions received |
| October 19, 2018 | "The Oakland Fund For Measure AA" | \$102,500 in contributions received |
| October 23, 2018 | "The Oakland Fund For Measure AA" | \$10,000 in contributions received |
| October 24, 2018 | "The Oakland Fund For Measure AA" | \$44,800 in contributions received |
| October 25, 2018 | "The Oakland Fund For Measure AA" | \$75,000 in contributions received |
| October 30, 2018 | "The Oakland Fund For Measure AA" | \$15,000 in contributions received |
| November 1, 2018 | "The Oakland Fund For Measure AA" | \$35,000 in contributions received |
| November 5, 2018 | "The Oakland Fund For Measure AA" | \$20,000 in contributions received |

As the controlling candidate, Candidate A's last name was required to be included as part of the committee's name for all purposes.

In this way, Respondent violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and Regulation 18402(c)(1) and 18410(a)(13).

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PENALTIES

Oakland’s Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

| Violation | Counts | Base-Level Per Violation | Statutory Limit Per Violation |
|--|--------|--------------------------|-------------------------------|
| Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms | 1 | \$1,000 | \$5,000 |

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.³²

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);

³² OMC § 3.12.270(C).

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- 1 7. The degree to which the respondent cooperated with the PEC's enforcement activity
- 2 in a timely manner;
- 3 8. The relative experience of the respondent.
- 4

5 The PEC has broad discretion in evaluating a violation and determining the appropriate
6 penalty based on the totality of circumstances. This list of factors to consider is not an
7 exhaustive list, but rather a sampling of factors that could be considered. There is no
8 requirement or intention that each factor – or any specific number of factors - be present in
9 an enforcement action when determining a penalty. As such, the ability or inability to prove
10 or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an
11 enforcement action or impose a penalty.

12 Here, the violations resulting from various parties' actions in this case are among the
13 most serious in the Campaign Reform Act (OCRA). The strict rules applying to candidate-
14 controlled committees are not mere technicalities but go directly to the very purpose of
15 campaign finance law. Nearly every major Supreme Court case underpinning our campaign
16 finance system emphasizes that disclosure of the people controlling and donating to a
17 campaign is the core feature of these laws, and is one of the principal goals of OCRA.³³ This is
18 because campaign committees -- particularly those controlled by elected officials such as
19 Candidate A -- can raise a significant amount of money from sources whose business or other
20 interests could benefit from being in a candidate or official's good favor, even if that
21 relationship never rises to a formal quid pro quo. To reduce the possibility that those officials'
22 subsequent decision-making could be unduly influenced by those campaign contributions,

23
24 ³³ Another principal goal of OCRA is to limit or ban certain types of contributions to candidates, such as
25 contributions from City contractors or those in excess of the contribution limit. But if a campaign does not
26 disclose that it is controlled by a candidate, there is no way to know that these restrictions might even apply to
27 that campaign.
28

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1 public disclosure is required in order to reduce the actuality or appearance of corruption, and
2 to keep the public informed as to the relationship between campaign donors and elected
3 officials. And beyond these corruption-related concerns, disclosure of who is controlling and
4 funding a campaign is also upheld by courts as crucial to helping voters make informed choices
5 as to whether to support or oppose that campaign on election day.

6 In this case, Candidate A used their influence to effectively commandeer and
7 repurpose another committee to which Candidate A was not publicly attached. This gave a
8 false impression of independence between Candidate A and donors to the Oakland Fund. It
9 also prevented voters and regulators from checking whether any of the contributions
10 received by The Oakland Fund were in compliance with other laws specific to candidate-
11 controlled committees, such as the prohibition on receiving contributions from City
12 contractors.

13 Regarding Montauk in particular, however, there are significant mitigating factors that
14 support a lower penalty. Montauk was one of three members of a volunteer board and had
15 limited involvement or even knowledge of the violations that took place, other than voting to
16 support Candidate A's plans in the first place. She was not personally involved in preparing
17 The Oakland Fund's campaign forms and had limited knowledge of campaign finance law, nor
18 was she ever advised by more experienced and knowledgeable actors (such as Candidate A)
19 that there might be potential legal issues to consider. Simply put, Montauk was not really a
20 "bad actor" in the events described above.

21 Most importantly, Montauk has been forthcoming with PEC investigators, is willing to
22 cooperate in the resolution of any other related enforcement matters that might arise in
23 connection with these events, and wishes to work with the PEC to remedy any mistakes or
24 other violations that may have occurred. There is also a possibility that other people could
25 ultimately be charged with the same or related violations in connection with this matter, so
26 the penalty being imposed here is not necessarily meant to be a global resolution but rather
27 to impose a fair and proportionate penalty upon Montauk individually. While the PEC cannot
28

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EXHIBIT # 1

In the Matter of Susan Montauk

PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 simply “look the other way” given our enforcement responsibilities, the nature of Montauk’s
2 personal involvement, and the seriousness of the violation involved, we also believe the
3 mitigating factors described here are significant.

4 In light of these factors, PEC staff makes the following penalty recommendations:

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6 **Failure to File and/or Disclose Controlling Candidate Relationship on Campaign**
7 **Forms (Count 1)**

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9 Here, PEC staff and Respondent recommend a penalty of \$500:

| Count | Respondents | Baseline Penalty | Recommended Penalty | Maximum Penalty |
|-------|---------------|------------------|---------------------|-----------------|
| 1 | Susan Montauk | \$1,000 | \$500 | \$5,000 |

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14 **RECOMMENDATION**

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16 Based on the foregoing, PEC staff and Respondent recommend that the Commission
17 approve their stipulated agreement and impose the following financial penalties:

18 As to respondent SUSAN MONTAUK (Count 1), a penalty in the amount of \$500.
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Item 10 - Council Salary Adjustment



Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: February 28, 2024
RE: City Council Salary Adjustment as Required by Law for the March 13, 2024, PEC Meeting

Every two years, the Public Ethics Commission (PEC or Commission) is responsible for adjusting the City Councilmember salary level based on the increase in the Consumer Price Index (CPI) for the preceding two years, subject to certain limitations. While the PEC has set the salary of City Councilmembers for many years, this is the first time that the PEC will be adjusting City Councilmembers' salaries pursuant to the new rules adopted by the voters with the passage of Measure X (2022).

This memo explains the rules the Commission must follow in adjusting Councilmember salaries and provides a staff recommendation for the biannual salary increase consistent with these rules.

Background

Oakland City Charter Section 202, as amended in 2014, requires the Public Ethics Commission to “bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years.” In addition, the Commission was permitted to adjust the salaries beyond that increase up to a total of five percent for each year, and any increase in excess of that five percent per year had to be approved by the voters.

In November 2022, Oakland voters passed Measure X, which amended the process for setting City Councilmembers' salaries as follows:

The Public Ethics Commission shall bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the Commission shall have the discretion to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year.

Payroll adjustments take effect on the first payroll period after the beginning of the new fiscal year, which will begin in July 2024. The Commission last adjusted the salary for City Councilmembers by the CPI increase of 6.3 percent in 2022, resulting in a total annual salary of **\$103,621.82**.

The table below shows salary increases approved by the Commission from 2004 to 2022. Note that since 2016, PEC-authorized increases were made bi-annually as required by City Charter amendments in 2014; prior to that, PEC adjustments were made annually. Note also that this chart does not include any increases made pursuant to the new Measure X salary-setting rules.

Item 10 - Council Salary Adjustment

City Council Salary Adjustments, 2004-2022

| Year | PEC-Authorized Increase (%) | Annual Salary with Increase (\$)¹ |
|---------------|-----------------------------|-----------------------------------|
| February 2022 | 6.3 (CPI for two years) | 103,621.82 |
| February 2020 | 7.1 (CPI for two years) | 97,480.55 |
| February 2018 | 6.6 (CPI for two years) | 91,018.25 |
| January 2016 | 4.7 (CPI for two years) | 85,382.97 |
| June 2014 | 2.4 (CPI) | 81,550.11 |
| June 2013 | 2.4 (CPI) | 79,638.78 |
| July 2012 | 2.1 (CPI) | 77,772.25 |
| June 2011 | 2.8 (CPI) | 76,172.62 |
| June 2010 | 1.7 (CPI) | 74,097.88 |
| June 2009 | 0.8 (CPI) | 72,859.28 |
| June 2008 | 2.9 (CPI) | 72,281.04 |
| June 2007 | 5 | 70,243.94 |
| July 2006 | 4 | 66,899.04 |
| July 2005 | 2.1 (CPI) | 64,326.08 |
| June 2004 | 5 | 63,003.94 |

As of February 2024, a Councilmember currently receives a biweekly salary of **\$3,985.46** which amounts to a total of **\$103,621.96** annually.²

Minimum Salary Adjustment Mandated by City Charter

The Commission is required to adjust the annual salary according to the change in the Consumer Price Index for the preceding two years. The U.S. Bureau of Labor Statistics reports that the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-Hayward area rose 7.6 percent from December 2021 – December 2023.³ Since that two-year increase exceeds 5 percent, the Charter requires that the annual salary for City Councilmembers be increased by at least 5 percent, which would increase the annual Councilmember salary to **\$108,802.91**.

Additional Salary Increase Option

When total CPI over the prior two years exceeds 5 percent, the Commission has the discretion to increase City Councilmember salaries by up to five percent for each of those two years, but not more than the total CPI per year. Because CPI exceeded 5 percent in this two year-period, the PEC may award a higher salary increase.

The CPI between December 2021 and December 2022 rose 4.9 percent and the CPI between December 2022 and December 2023 was 2.6 percent. Since neither annual increases exceeded 5 percent, the Commission has the discretion to award an increase up to the total of the per year CPI increase in each

¹ This list reflects PEC-authorized amounts; actual salary amounts received each year may differ for each Councilmember depending on whether each member accepted the increase.

² Salary data provided by Anjali Saxena, Payroll Manager, February 20, 2024. Note that the actual Council salary is a few cents more than the amount the PEC approved in 2022, likely due to rounding because the PEC-approved amount was not perfectly divisible by 25 pay periods in a year.

³ U.S. Bureau of Labor Statistics. San Francisco-Oakland-Hayward, CA Consumer Price Index. December 2021 – December 2023.

<https://data.bls.gov/timeseries/CUURS49BSAo>. Data accessed February 16, 2024.

Formula using raw numbers: (December 2023 CPI / December 2021 CPI) – 1 x 100 = ____%

Item 10 - Council Salary Adjustment

year, or a 7.5 percent increase (4.9% + 2.6%), which would increase the annual Councilmember salary to \$111,393.46.

Staff Recommendation

Staff recommends that the Commission adopt a resolution (attached) increasing City Councilmember salaries by 5 percent, as required by the City Charter whenever the Consumer Price Index exceeded 5 percent in the prior two years. This amount would bring a Councilmember's total annual salary to \$108,802.91. Following Commission approval, Commission staff will transmit the salary adjustment resolution to the City Administrator, the Department of Human Resources (to amend the salary ordinance), and the Treasury Division - Payroll (to implement the increase).

Considerations for Future Salary Increases

In January of this year, the PEC recommended that the responsibilities for setting the Mayor's salary be transferred to the PEC. As part of that recommendation, the PEC requested that it have the option to waive or reduce a mayoral salary increase if General Purpose Fund revenues for the current fiscal year were projected to decline or if the Council declared that the City was facing an "extreme fiscal necessity" or "fiscal crisis or fiscal emergency." As the Council will likely be considering a Charter amendment this year to change how the Mayor's salary is determined, ***the Commission could similarly recommend that the City Charter be amended to give the PEC the discretion to not increase Council salaries in times of fiscal hardship.***

Item 10 - Council Salary Adjustment

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 24-01
[Proposed 3-13-24]

RESOLUTION AUTHORIZING A SALARY INCREASE OF FIVE PERCENT (5%) FOR THE OFFICE OF COUNCILMEMBER PURSUANT TO OAKLAND CITY CHARTER SECTION 202

By action of the Oakland Public Ethics Commission:

WHEREAS, Oakland City Charter Section 202 requires the Public Ethics Commission (Commission) to bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years, up to a total of five percent. If the increase in the consumer price index over the preceding two years exceeds five percent, the City Charter permits the Commission to adjust the salary for the office of Councilmember by an amount not exceeding five percent for each year, but not more than the total CPI per year; and

WHEREAS, the current Commission-authorized annual salary for Oakland City Councilmembers is \$103,621.82, effective July 2022; and

WHEREAS, the consumer price index in the San Francisco-Oakland-Hayward area increased by a total of 7.6 percent between December 2021 and December 2023; and

WHEREAS, the Commission wishes to authorize the minimum five percent salary adjustment mandated by the City Charter and does not seek to exercise the discretionary additional salary increase option;

Now, therefore be it:

RESOLVED, that the Commission does hereby authorize a salary increase of five percent (5%) for the office of Councilmember as mandated by City Charter Section 202, for a total annual salary of up to \$108,802.91, effective as of the first payroll period of Fiscal Year 2024-2025; and

FURTHER RESOLVED, that the Commission does not authorize any additional salary increase beyond that required by the Oakland City Charter for the purpose of this bi-annual salary adjustment for the office of Councilmember.

CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission held on March 13, 2024, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of _____ to _____.

AYES: GAGE, HILL, STEELE, TILAK, UPTON AND CHAIR MICIK

NOES:

ABSTAIN:

ABSENT:

Item 10 - Council Salary Adjustment

CITY OF OAKLAND
Public Ethics Commission



RESOLUTION NO. 24-01
[Proposed 3-13-24]

I hereby certify that the foregoing is true and correct.

Nicolas Heidorn, Executive Director
Oakland Public Ethics Commission

Date



Item 11 - Charter Review

Ryan Weik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: February 28, 2024
RE: Charter Review – Recommendations for Reforming the Ethics Commission’s Governance Structure

The Oakland Public Ethics Commission’s (PEC’s or Commission’s) core governance features are established in Section 603 of the City Charter, which defines the Commission’s organizational structure, key responsibilities and procedures, and staffing. Section 603 was adopted in 2014, when the voters approved Measure CC to significantly strengthen the independence and capacity of the Commission. However, in the ten years since Measure CC passed, there have been only minor revisions to that Charter section, and no significant re-examination of whether these provisions still reflect best practices for organizing an ethics enforcement body or meet the staffing and institutional needs of the modern Commission.

In late 2023, the Commission adopted a goal of reviewing City Charter provisions affecting the PEC, in anticipation of a possible ballot measure affecting the PEC later in 2024. In early 2024, a Charter Review Subcommittee (Commissioners Micik, Hill, and Tilak) was formed to review and recommend potential charter changes. The Subcommittee’s ten recommendations, presented below, would update Section 603 to reflect the PEC’s expanded scope and mission since the passage of Measure W (2022), establishing the Democracy Dollars Program; strengthen the PEC’s staff capacity, to better meet its expanded caseload and the new responsibilities added to the Commission by the City Council and voters; and strengthen the PEC’s independence, to ensure that, as the PEC takes on a larger role in protecting and enhancing the City’s governance and democratic process, the public and stakeholders continue to trust that the Commission is a fair and impartial body.

Staff and the Subcommittee recommend that the Commission discuss and adopt the recommendations below and direct staff to return with potential charter amendment language for a future meeting.

BACKGROUND & CHARTER REFORM GOALS

In 2014, the City Council unanimously proposed and the voters overwhelmingly (73.9% in favor) adopted Measure CC, which added Section 603 to the City Charter. For the first time, Measure CC guaranteed minimum staffing for the Commission and adopted other reforms to significantly strengthened the Commission’s independence. Measure CC also incorporated several ethics commission best practices to ensure the Commission would be a fair, effective, and impartial watchdog over, and enforcer of, Oakland’s ethics, campaign finance, lobbying, and transparency laws. In significant part due to the success of those reforms, the PEC’s workload and assigned responsibilities have expanded significantly in the decade since Measure CC’s passage. However, there have been only minor amendments to Section 603 since then; after ten years, the provisions in Section

603 no longer reflect the Commission's actual staffing and budgetary needs and have not kept pace with best practices for ensuring ethics commission independence.

At its August 25, 2023, retreat, the PEC set a goal of reviewing the City Charter provisions establishing the Commission as one of its 2023-2024 priorities. In January 2024, Chair Micik formed the Charter Review Subcommittee, which included himself (Chair), Commissioner Hill, and Commissioner Tilak, for the purpose of reviewing and proposing to the full Commission potential amendments to Charter Section 603 (and OMC Chapter 2.24) to recommend to the City Council. The Subcommittee met three times on February 9, February 16, and February 21.

In addition to examining each provision of City Charter Section 603, the Subcommittee also looked at the organizational structure and procedures of:

- Other City of Oakland independent commissions created after the PEC, including the City's Independent Redistricting Commission and Police Commission;
- The State Fair Political Practices Commission (FPPC);
- Other California local ethics commissions, and especially Oakland's closest peer commissions in Los Angeles, San Francisco, and San Diego;
- Select non-California local ethics commissions, including Seattle and New York; and
- Best practices for ethics commissions as identified by good government organizations such as the Campaign Legal Center or City Ethics.

To focus its work, the Subcommittee identified three primary principles to guide the types of reforms it would consider and propose, which build off of the important foundation set by Measure CC. Amendments should:

- I. **Strengthen PEC Staffing.** For the PEC to fulfill its functions, it must be adequately staffed. Traditionally, the PEC's staff has almost entirely grown by ballot measure. Minimum staffing/budget helps to ensure the PEC's independence when/if the Commission investigates or prosecutes current officeholders.
- II. **Strengthen PEC Independence.** The PEC plays a unique, important, and sensitive role in maintaining the integrity of Oakland's government and political process. It is vital that the PEC be perceived to be and actually be impartial and not beholden to any elected official or political faction.
- III. **Align the Charter with the PEC's New Mission of Building a More Inclusive Democracy.** The PEC's current mission is focused primarily on the Commission being an enforcement agency. However, the PEC's role has expanded with the passage of Measure W to encompass supporting a more inclusive, representative, and accountable democracy. The Charter should reflect that mission.

Guided by these principles, the Subcommittee adopted ten proposed charter reforms for the full Commission's consideration.

PROPOSALS

I. Strengthen PEC Staffing and Administration

These recommendations would strengthen the PEC staff capacity and independence to better fulfill the PEC’s mission.

1. Executive Director Selection

Current law: The Board interviews and nominates candidates to be the PEC’s Executive Director (ED). The City Administrator appoints the ED from those candidates.

Subcommittee proposal: To ensure the ED is solely selected for their alignment with the Commission’s mission and priorities, the Commission should directly appoint its ED.

Rationale: The Commission is an independent agency of the City. It is important that its ED, the chief executive officer for the Commission, be perceived to be and actually be independent from the City’s overall administration. The duties of the ED include providing oversight over the Commission’s policy implementation and enforcement work. Giving final hiring authority to the City Administrator, even from a list of candidates selected by the PEC, could create the risk or the appearance that an ED was selected who may be less aggressive in enforcing Oakland’s laws or, worse, that they are aligned with a current administration rather than independent.

Notably, of its primary peer jurisdictions (Los Angeles, San Diego, San Francisco), Oakland is the only jurisdiction that does not have the Commission select its own ED. Having the Commission appoint the ED is also a best practice in the field, recommended, for example, by the nonprofit [City Ethics](#), which promotes local government ethics best practices. Oakland also followed this practice in establishing its Police Commission, which was created more recently than the PEC, and authorizes that Commission to directly hire the Community Police Review Agency (CPRA) Director.

Other Jurisdictions – Executive Director Selection Process

| | Executive Director Appointment Process | Citation |
|----------------------------------|---|--------------------|
| Oakland | PEC reviews applications and nominates 2-3 candidates for ED to the City Administrator, who appoints the ED | C s603(g)(4) & (6) |
| Oakland Police Commission | Police Commission hires the Agency Director and Inspector General | C s604(e)(6) |
| FPPC | Commission appoints ED | GC s83107 |
| Los Angeles | Commission appoints ED | C s701(a)&(d) |
| San Diego | Commission appoints ED, subject to confirmation by the Council | MC s26.0411 |
| San Francisco | Commission appoints ED | C s15.101 |

2. Commission Enforcement Staffing

Current law: The City Charter mandates that the PEC have two enforcement staff: an Enforcement Chief and one Ethics Investigator. The Council may reduce this staffing set-aside by declaring that the City is facing an extreme fiscal necessity.

Subcommittee proposal: To ensure the PEC has sufficient staffing to fulfill its enforcement and watchdog role, the PEC's minimum staffing should provide two *additional* non-administrative enforcement staff, which could include an investigator, auditor, or staff attorney.

Rationale: The PEC must have sufficient staff to fulfill its core responsibility of ensuring the fair, effective, and timely enforcement of Oakland's ethics laws. The PEC's current enforcement staffing minimums of one Chief and one Ethics Investigator were set a decade ago, in 2014, with the passage of Measure CC.¹ Those staffing levels were based on the Commission's caseload at the time; however, over the past ten years the PEC's caseload has vastly increased, and these staffing minimums – which have not been increased through the discretionary budget process – are no longer sufficient to meet the Commission's caseload demands. Caseload now vastly exceeds staff capacity and, as of January 1, 2024, 60% of the PEC's cases had to be placed on hold. The PEC has also fallen far below the staffing levels of peer jurisdictions: for example, Oakland's PEC has an untenable staff to caseload ratio of one enforcement staffer per 44 cases, compared with San Francisco's more manageable ratio of one staffer per 14 cases. The Enforcement Program estimates that a bare minimum of two additional investigators are required to keep up with the PEC's current caseload, although the PEC's actual full staffing needs are significantly higher.

Increasing the charter-mandated minimum staffing is also important for preserving the PEC's independence. The Commission, as contrasted with every other City department or Board, regulates the conduct of Oakland's elected officials. Public confidence in the Commission is diminished if the PEC's ability to fulfill its core watchdog role through adequate staffing is perceived to depend on receiving the approval and funding of the very officials it regulates. Moreover, unlike other City programs, the PEC has no natural constituency to argue for increased funding for its services, which places the Commission at a disadvantage in the budget process; in fact, of the PEC's current 8 positions, all but one were created through the City charter, and not the biannual discretionary budget process.

3. Measure W Funding

Current law: To implement the Democracy Dollars Program, Measure W required that the PEC be provided with \$700,000 in startup funding; \$350,000 in ongoing administrative funding; \$4 million per two-year cycle for Democracy Dollars candidate funds; and four staff positions. However, these minimum budget and staffing set-asides may be reduced if the Council finds that the City is facing an extreme fiscal necessity. For this two-year budget, the Council declared a fiscal emergency and these minimums were reduced to \$525,000 in startup funding and one staff position.

¹ Prior to that, the PEC as a whole had only two staff total, none dedicated solely to enforcement. Measure CC originally provided for a "Deputy Director" rather than an Enforcement Chief, although that role was envisioned as being the chief prosecutor for the Commission.

Subcommittee proposal: To ensure that Measure W is properly implemented, and cannot be cancelled for political reasons, the Charter should provide that the PEC’s minimum staffing and budget for the Democracy Dollars Program may only be reduced in the same general *proportion* as any general budget reduction.

Rationale: Measure W allows the Council to cut Measure W funding where there is an extreme fiscal necessity, but “only as a part of general reduction in expenditures across multiple departments.” While the clause “part of a general reduction” was likely intended to ensure that a budget deficit was not disproportionately balanced using Measure W funding, this is in effect what occurred. For the current two-year cycle, the PEC budget was cut 58% compared to the baseline funding required under Measure W, likely a larger proportional cut than any other department. Because Measure W has yet to be implemented, the cut this cycle (while re-establishing the Limited Public Financing Program) largely preserved the status quo for public financing in Oakland; however, this disproportionate cut may have set a dangerous precedent that cancelling Democracy Dollars will be the first fix to balance future difficult budgets, undermining the will of Oaklanders in adopting this transformational program, and potentially making this program vulnerable to incumbent veto for political reasons. Under this proposal, the Charter (or City Code) would clarify that any cuts to Measure W must be in proportion to the general budget reduction, so that the PEC is contributing a fair but not disproportionate share to resolving the City’s fiscal challenges.

4. Legal Capacity

Current law: The City Attorney is the designated legal counsel for the Commission. If the City Attorney determines that the office may have a conflict in representing the PEC, the City Attorney may select an outside counsel to advise the Commission. None of the PEC’s staff, including the Enforcement Chief, are required to be attorneys.

Subcommittee recommendation: Because Oakland’s City Attorney is elected and subject to regulation by the PEC, they should not be the exclusive legal counsel to the Commission. The Charter should specify that:

- A. The Enforcement Chief is required to be an attorney.
- B. The PEC may hire legal staff, including outside counsel in its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual or perceived conflict in the City Attorney representing the Commission.
- C. The City Attorney should continue to provide legal advice and assistance to the Commission.

Rationale: The PEC administers and enforces a sometimes complex body of law, especially when applied to nuanced fact patterns. For reasons of capacity and independence, the Commission should have in-house staff with the specialized legal expertise to interpret, apply, and enforce these laws, including appearing in court when necessary (e.g., for an injunction or to enforce subpoena). The need for in-house legal expertise is especially true of the Enforcement Chief, who is the chief prosecutor for the Commission, and needs a firm understanding of the laws the Commission enforces as well as a general legal grounding in administrative law and substantive due process. Because the Commission regulates the City Attorney’s Office, the Commission should not be solely reliant on that office for legal

advice or services, which may create the appearance of a conflict; this is especially true in Oakland, where the City Attorney is an elected official who must campaign for office.

Other established ethics commissions in California either have attorneys on staff or the ability to hire outside counsel, which is generally considered to be a best or essential practice for ethics commissions. For example, the FPPC and Los Angeles Ethics Commissions are expressly authorized to employ attorneys, whereas San Diego and Sacramento require their commissions hire outside counsel to avoid the appearance that these boards are relying on the city attorney. “A commission should have its own independent experts, including investigators, auditors, general counsel, and trainers,” explains the Campaign Legal Center. “By relying on these independent experts, a commission can not only obtain independent advice and analysis of facts and law in specific cases, but also avoid the appearance that it depends on an elected official or appointee of an elected official, such as a secretary of state or city attorney.” In Oakland, likely for similar reasons, the more recently-established Police Commission is authorized to hire attorneys and outside counsel.

Under this proposal, the PEC would not exclusively rely on its own or outside counsel and would in fact continue to use the City Attorney for legal advice and services in most instances, especially for all issues outside of the Commission’s subject matter expertise. In rare cases where the City Attorney may be legally conflicted out of providing legal advice or services to the Commission, the Commission should select its outside counsel, to avoid any allegation that the Attorney may select a counsel sympathetic to their interests.

Other Jurisdictions – Legal Capacity

| | Role of City Attorney | Commission Legal Staff Positions? | Commission Can Hire Outside Counsel? | Citation |
|---|---|---|--|--------------------------------|
| Oakland | - City Attorney appoints one Commissioner - City Attorney is Commission’s counsel - PEC consults with City Attorney on oral advice and written opinions | None | City Attorney may retain outside counsel for Commission if there is a conflict | C. s603(b)(3) & OMC 2.24.060 |
| Oakland Police Commission (PC); CPRA | | PC: may hire attorneys CPRA: Requires minimum of 3 attorneys | PC: yes CPRA: not specified | C. s604(b)(12), (e)(1), (e)(4) |
| FPPC | May request legal advice from the Attorney General | May employ legal counsel | Can contract for services that can’t be performed by staff | GC s83117 |
| Los Angeles | City Attorney provides legal services to commission | May employ or contract for staff counsel to give advice to the commission and to take action on matters involving the City Attorney | Yes, see previous column | C s708 |

| | | | | |
|---------------|---|---|---|---|
| San Diego | City Attorney nominates appointees | Must retain own legal counsel outside of City Attorney | Must retain own legal counsel outside City Attorney (also has attorneys on staff) | MC s 26.0411 C s41(D) |
| San Francisco | - City Attorney is legal advisor to Commission - Commission reports findings to City Attorney when appropriate - Commission transmits some advisory opinions to City Attorney | Commission can employ individuals who have graduated from a law school to assist with advice and opinions | None Provided | C s15.102 MC s3.699-11 MC s3.699-12 |
| Sacramento | - City Attorney assists Commission with its investigatory procedures - Commission advises City Attorney on law firms to use to investigate sexual misconduct allegations | None Provided | Yes - required for all investigations | MC 2.112.030 |

II. Strengthen PEC Independence.

These recommendations would strengthen the Commission’s independence to promote public trust in the Commission’s work.

5. Commissioner Qualifications

Current law: To be eligible for appointment to the Commission, an applicant:

- **must** be a registered voter;
- **must** have attended one prior meeting of the PEC;
- for Mayor, City Attorney, and City Auditor appointees, **must** have a specified professional experience or background; and
- for Mayor, City Attorney, and City Auditor appointees, **cannot** have been paid during the past two years for work by a committee controlled by the appointing official.

Subcommittee recommendation: To avoid the appointment of a Commissioner who may appear biased in favor or against of a candidate, incumbent, or political faction, the Charter should **prohibit*** the appointment of an applicant who, at any point in the two years prior to the start of their term on the Commission, was:

- A. an elected official, or the partner or spouse of an elected official;
- B. a candidate for City or OUSD office;
- C. a paid staffer or paid consultant to a City or OUSD campaign;
- D. an officer or employee of a political party political party; or
- E. a substantial local campaign donor, defined as someone who has contributed in the aggregate more than two times the City contribution limits (2 x \$600 in 2024) to candidates for a City or OUSD office or to a campaign committee making independent expenditures in City or OUSD campaigns.
- F. **These new qualifications would apply only prospectively to new Commissioners.*

Rationale: Commissioners serve in a quasi-judicial role where they will adjudicate whether or not incumbents, candidates, and City officials have violated city ethics or campaign finance laws, among other laws. Commissioners also have the sensitive responsibility of administering the Democracy Dollars Program beginning in 2026, which will likely become the largest source of funding for candidates running for City office. The selection of a Commissioner who appears to be strongly biased in favor of an official, candidate, or political faction could undermine public trust in the Commission, its adjudications, and its implementation of critical programs like Democracy Dollars. In structuring an ethics commission, the [Campaign Legal Center](#), a good government nonprofit, advises putting up minimum qualification guardrails to protect against this so that it is “clear to the public that the ethics commission serves the public interest and not the interests of those groups subject to the commission’s oversight.” [City Ethics](#), a nonprofit that advocates for local ethics reform best practices, similarly advises prohibiting the appointment of commissioners who in the prior three years have been “party officials, recent government officials, individuals who have done substantial work in local political campaigns, large contributors, or political advisers.”

Oakland’s current Ethics Commissioner qualifications are fairly similar to, and in some ways stronger than, those of other established ethics commissions, like the Fair Political Practices Commission (FPPC), Los Angeles Ethics Commission, and San Francisco Ethics Commission. However, the trend among more recently-established ethics commissions, including Sacramento’s and Orange County’s, is to include stronger requirements up front to prevent recent political actors from being appointed to the Commission, mirroring the best practices identified by City Ethics above. Oakland has followed a similar model with respect to its more-recently established Independent Redistricting Commission, which similarly excludes from appointment applicants who were recently lobbyists, candidates, or consultant to a City political campaign. The PEC should adopt similar, but less strict, restrictions, in recognition of the fact that the PEC must recruit civically-active residents to serve on the Commission on a nearly annual basis, as compared with the Redistricting Commission which only recruits applicants once every ten years.

Other Jurisdictions - Commissioner Qualifications

| | Qualifying Criteria | Disqualifying Criteria | Citation |
|---|--|---|-------------------------|
| Oakland | -Oakland registered voter & resident -Attest to having attended one PEC meeting -Professional background requirements for Mayor, City Attorney, and Auditor appointees | -Mayor, Attorney, and Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official -See also during-service restrictions | C. s603(d)(1)-(2) & (e) |
| Oakland Redistricting Commission | -Oakland resident for 3 years | Cannot be: -City employee or commissioner - Redistricting consultant in prior 5 years - A person or their family who in prior 10 years was a: ~ Candidate or elected official ~ Paid consultant to a campaign ~ Registered lobbyist | C. s220((D)(1) & J)(5) |

| | | | |
|----------------------|--|--|------------------------|
| | | <ul style="list-style-type: none"> ~ Employee/consultant to elected official ~ Officer of a City campaign committee - Contributor over 50% of contribution limits to City candidate in last election | |
| FPPC | <ul style="list-style-type: none"> -Elector -Members cannot all be of the same political party | -See during service restrictions | GC s83101, 83102 |
| Los Angeles | - Registered voter | -See during service restrictions | C s700(d) |
| San Diego | <ul style="list-style-type: none"> - Professional background requirements for 5 members - At most 3 members registered with same political party - Must be a qualified elector of the City, subject to exceptions | <ul style="list-style-type: none"> - Can't have run for office against a current elected City official - Can't have served in a staff capacity for the campaign of a candidate running against a current elected City official | MC s 26.0404(b) |
| San Francisco | Mayor, City Attorney, and Assessor appointees must have certain professional backgrounds | Cannot be: <ul style="list-style-type: none"> - Any person removed from federal, State, County, or City office or employment for a moral turpitude felony in prior 10 years - Any person removed from federal, State, County, or City office or employment for official misconduct in prior 5 years - See during service restrictions | C s15.100 C s15.105 |
| Sacramento | <ul style="list-style-type: none"> -Sacramento resident -3 (of 5) members must meet professional background requirements | <ul style="list-style-type: none"> -Applicant (or partner/child) can't have given 50%+ of contribution limit in last 2 elections -Applicant (or partner/child) cannot have been a City employee, lobbyist, or local/state elected official appointee in prior 2 years -Applicant (or partner/child/parent/ sibling) cannot have been a City elected official, candidate, employee/contractor to a City elected official in prior 4 years -See also during-service restrictions | MC s2.112.040 (B) |
| Orange County | - Registered voter | 10 years prior to appointment, cannot have: <ul style="list-style-type: none"> - employed a lobbyist - been an elective County officer or County department head/executive - been a partisan political committee officer - been convicted of a felony or misdemeanor involving dishonesty or election law - worked for County of Orange, or any Special District operating in the County - worked with an County employee representative organization | CO s 1-2-354 |

6. Commissioner During & Post-Service Restrictions

Current law: PEC Commissioners cannot be involved in City politics during their term and cannot, during their term and for one year after, be employed by the City or register as or employ a lobbyist.

Subcommittee recommendation: To avoid the appointment of a commissioner who may appear biased in favor of or against a candidate, incumbent, or faction, amend the Charter to add:

- A. During-service restrictions*: While serving on the Commission, Commissioners may not:
 - i. Contribute or participate in an OUSD campaign
 - ii. Serve as an officer or employee of a political party
- B. During and post-service restrictions*: Commissioners may not:
 - i. Run for City or School Office while serving on the Commission and for 2 years after their term ends.
 - ii. Be a paid staffer or paid consultant to a City or School elected official, or receive gifts from the same officials, while serving on the Commission and for 1 year after their term ends.
- C. Exception: Commissioners should be able to advocate in support or opposition to ballot measures that affect the PEC or the laws it enforces.
 - **These new restrictions would apply only prospectively to new Commissioners.*

Rationale: The PEC already imposes a number of common sense restrictions on Commissioners while serving on the Commission, including that they cannot participate in local political campaigns, lobby, or be City employees. Because the Commission regulates campaigns, lobbyists, and city officials, these restrictions help to prevent Commissioners from having conflicts of interest or their appearance. In the campaign context in particular, these restrictions also reinforce Commissioners' impartiality, by avoiding a situation where a Commissioner's campaign activity may make it appear that they are biased for or against a candidate or ballot measure. This proposal makes modest extensions to these rules, modelled off of restrictions in other jurisdictions, by prohibiting commissioners from being staff or officers in political parties (which may suggest bias against other partisans) and clarifying that the restriction against Commissioners contributing to "municipal" campaigns also applies to OUSD campaigns.

Under current law, PEC Commissioners are also subject to two post-service restrictions: they cannot become a City employee or lobbyist (or employ a lobbyist) for one year after their term concludes. Post-service restrictions serve a slightly different purpose than during-service restrictions: they prevent the risk or appearance that a Commissioner may favor a party before the Commission in the hopes that they will receive a benefit from that party (e.g., employment) immediately after their service concludes. This proposal extends this restriction by similarly preventing Commissioners from being employed by or receiving gifts from an elected official for one year after their service. The proposal would also prohibit Commissioners from running for City or OUSD office for two years (one election cycle) after leaving the Commission. This restriction, which is fairly common among ethics commissions, prevents a situation where a Commissioner may vote to fine an elected official and shortly thereafter leave the Commission to run against that official, which could undermine public confidence in that adjudication.

One area where the proposal would *relax* restrictions is by permitting Commissioners to advocate for or against ballot measures affecting the PEC, which is the rule in San Diego. This would permit Commissioners, who are particularly knowledgeable about the Commission's structure and laws, to share this perspective with the public. Commissioners are generally prohibited from advocating for or against measures because the Commission may have to adjudicate whether a ballot measure committee has violated the City's campaign finance laws; however, for measures affecting the PEC,

the Commission’s practice is already to refer such complaint to other agencies, like another local ethics commission, to avoid the appearance of bias.

Other Jurisdictions -- During & Post-Service Restrictions

| | During Service Only | During & Post-Service | Citation |
|---|--|---|--------------------|
| Oakland | Cannot: - Seek election to public office in a jurisdiction intersecting with Oakland - Participate or contribute in an Oakland municipal campaign - Endorse or work on behalf of candidate/measure in Oakland election | <i>During & 1 year post, cannot:</i> - Be employed or contract with the City - Be a registered lobbyist or employed by/receive gifts from a registered lobbyist | C s603(e) |
| Oakland Redistricting Commission | | <i>During & 10 years post:</i> hold elective office for City <i>During & 4 years post:</i> - hold appointive City or OUSD office - serve as paid staff/consultant to Councilmember or OUSD member - Receive a no bid City contract - Register as a City lobbyist | C s220(D)(4) |
| FPPC | Cannot: - Hold or seek election to public office - Serve as an officer of any political party or partisan organization - Participate in or contribute to an election campaign - Employ or be employed as a lobbyist -Receive a gift over \$10/month | None specified | GC s83105, 83117.5 |
| Los Angeles | - Hold public office - Participate or contribute to a City or School Board campaign - Participate or contribute to a councilmember or school board member running for another office - Employ or be employed as a lobbyist | -Cannot run for City or School Board office unless it is 2 years past the end of their term | C. s700(d) |
| San Diego | Cannot: - make a financial contribution to candidate for City office - participate in a campaign supporting or opposing a candidate for City office - participate in a campaign supporting or opposing a City ballot measure (except one affecting the Commission) - become a candidate for elective governmental office - become a City lobbyist | - For 12 months, can't be a candidate for elective governmental office | MC s 26.0406 |

| | | | |
|-----------------------------|--|--|---|
| <p>San Francisco</p> | <p>Cannot:</p> <ul style="list-style-type: none"> - Hold any other City or County office or be an officer of a political party - Be a registered lobbyist, campaign consultant, or be employed by or receive gifts/compensation from same - Hold employment with the City - Participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office | <p>None</p> | <p>C s15.100 C s15.101</p> |
| <p>Sacramento</p> | | <p><i>During & 1 year post, cannot:</i></p> <ul style="list-style-type: none"> - Be appointed to a City Commission - Be paid staff/consultant to City elected official - Receive a no bid City contract - Register as a City lobbyist. <p><i>During & 4 years post, cannot:</i></p> <ul style="list-style-type: none"> - Hold City elected office | <p>MC s2.112.040 (B)(3)&(4))</p> |
| <p>Orange County</p> | <p>May not:</p> <ul style="list-style-type: none"> - Hold an elected or appointed position - Work for an elected/appointed officer - Work for an elected official appointee - Be a public employee of a body that is appointed by an elected official - Participate in or publicly support or oppose a candidate - Hire anyone working as a lobbyist - Have been convicted of a felony or misdemeanor involving dishonesty or election law - Provide services to candidates/elected officials within Orange - Engage in public affairs or legislative liaison services for employers doing business within Orange | <p>None</p> | <p>CO s 1-2-354</p> |

7. Ethics Commission Vacancy

Current law: Vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days **may** be filled by the City Council.

Subcommittee recommendation: To avoid long vacancies which could disrupt the effectiveness of the PEC, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy should transfer to the PEC.

Rationale: The PEC can only function if a quorum of its members attend a Commission meeting. Extended vacancies may impact the Commission’s ability to adjudicate cases or adopt policies. Currently, the PEC has had one vacancy for over one year and had to cancel one meeting last year for

lack of a quorum. Other ethics commissions, like Los Angeles's in 2023, have been legally unable to meet for months because the number of appointed commissioners fell below quorum.

Oakland's Charter attempts to prevent this situation by authorizing the City Council to fill a PEC seat appointed by a citywide official that has been vacant for more than 90 days; however, for the Council to exercise this option it would in effect be "taking" an appointment away from a citywide elected official, which is politically sensitive, and would likely only be done if the Council and citywide official were at odds. This proposal would provide citywide officials with more time to fill a vacancy, but a stricter remedy if that deadline is missed.

8. Ballot Referral

Current law: The PEC may recommend to the City Council changes to the laws the PEC administers or enforces.

Subcommittee proposal: The PEC should have the authority, by supermajority vote, to refer ordinances relating to its subject matter jurisdiction (campaign finance, government ethics, lobbying, and transparency) to the ballot for voter consideration.

Rationale: An important responsibility of most local ethics commissions is to periodically review and recommend improvements to the laws the commission enforces or administers to promote more honest and accountable government. Traditionally, an ethics commission, as is the case with Oakland's Ethics Commission, would only provide a recommendation for the city council's consideration. However, increasingly, academics and good government reformers have advocated that ethics commissions be authorized to place measures on the ballot by supermajority vote, in recognition of the fact that elected officials may have a conflict or appearance of a conflict in enacting or rejecting laws that directly regulate their conduct. For example, the Los Angeles Good Governance Project, which is a consortium of university research centers at UCLA, USC, Loyola Marymount, Pomona, CSU Northridge, and CSU Los Angeles, recently included this [recommendation](#) in its package of proposed ethics reforms for Los Angeles. Project authors explained in a [press conference](#) that, "for ethics matters in particular, the City Council is an interested party, so we would recommend that the Ethics Commission have the option ... to place measures directly on the ballot." Good government organizations, like nonprofit California Common Cause, have also advocated this reform as a best practice for ethics commissions, and the LA Ethics Commission has also sought this authority.

Currently, the San Francisco Ethics Commission is the only California commission to have this power, which it has used to propose limited reforms that were fairly uncontroversial with voters. Under San Francisco's City Charter, Commissioners may only place a measure on the ballot by a 4/5 vote. From 2013 to 2023, the Commission placed two measures on the ballot, accounting for less than 2% of all San Francisco ballot measures in that time period. Each measure responded to a local corruption scandal and was approved by large margins: Proposition C (2015) required additional lobbying reporting and passed with 75% of the vote and Proposition T (2016) restricted gifts from lobbyists to officials and passed with 87% of the vote. The Commission has placed a measure on the March 2024 ballot, Proposition D, which adds restrictions on gift-giving to City officials in response to another recent corruption scandal.

III. Align the Charter with the PEC's New Mission

These recommendations seek to align Section 603 with new responsibilities the PEC has taken on, principally of implementing Measure W, but also aligning the PEC's new salary-setting responsibilities for City elected officials with the Commission's best practice recommendation for setting the Mayor's salary.

9. Commission Mission

Current law: The City Charter defines the PEC's primary roles as being the (1) "enforcement of laws, ... intended to assure fairness, openness, honesty and integrity in City government," (2) education on such laws, and (3) "impartial and effective administration" of its programs. The Charter further enumerates a number of specific duties of the Commission, including different laws the Commission enforces.

Subcommittee proposal: To better align the Charter with the PEC's expanded role under Measure W, the Charter should be amended to:

- A. Add that one of the PEC's roles is to promote more inclusive, representative, and accountable democracy in Oakland; and
- B. Include the administration of the Democracy Dollars Program, including the creation of an impartial voter guide to assist voters in assigning their vouchers, as one of the PEC's enumerated duties.

Rationale: The PEC has traditionally been primarily an enforcement and government watchdog agency. However, with the passage of Measure W, the Commission's role expanded to administering a public financing that's stated goal is to promote a more inclusive and participatory democracy. This goal should inform how the PEC approaches its work and should be added to the PEC's enumerated core roles and responsibilities. Administering the Democracy Dollars Program, and adopting and administering policies that facilitate the implementation of this Program, such as creating a voter guide to assist voters in assigning their vouchers, should also be expressly added to the Charter.

10. Elected Official Salary-Setting

Current law: The PEC adjusts the City Council's salary every two years to account for inflation and adjusts the City Attorney and City Auditor's salary every year to provide for competitive compensation and equitable alignment.

Subcommittee proposal: To align the PEC's existing salary-setting process with the recommendations the Commission made for setting the Mayor's salary, the PEC, in its discretion, should have the authority to waive or reduce a salary increase for the City Council, City Attorney, or City Auditor if either (a) the City Council declares that the City is facing an extreme fiscal necessity/crisis or (b) if General Purpose Fund revenue for the current fiscal year is projected to decline.

Rationale: As explained in the staff report on options for adjusting the Mayor's salary for the PEC's December 2023 meeting, in years where the City is facing significant financial hardship, it may be inappropriate or controversial to award elected officials a large pay increase when the City is financially

struggling. This proposal, which the Commission endorsed for setting the Mayor's salary, would permit the PEC to waive or reduce a salary increase but only if an objectively-determined precondition is met, which is that a financial urgency exists.

SUMMARY OF PROPOSALS

For ease of reference, the proposals discussed above are re-listed here:

1. Executive Director Selection: The Commission should directly appoint the Commission's Executive Director.
2. Commission Enforcement Staffing: The PEC's minimum staffing should provide two *additional* non-administrative enforcement staff, which could include an investigator, auditor, or staff attorney.
3. Measure W Funding: The Charter should provide that the PEC's minimum staffing and budget for the Democracy Dollars Program may only be reduced in the same general proportion as any general budget reduction.
4. Legal Capacity: The Charter should specify that:
 - A. The Enforcement Chief is required to be an attorney.
 - B. The PEC may hire legal staff, including outside counsel in its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual or perceived conflict in the City Attorney representing the Commission.
 - C. The City Attorney provides legal advice and assistance to the Commission.
5. Commissioner Qualifications: In addition to existing Commissioner qualifications, the Charter should prohibit the appointment of an applicant who, at any point in the two years prior to the start of their term on the Commission, was:
 - A. an elected official, or the partner or spouse of an elected official;
 - B. a candidate for City or OUSD office;
 - C. a paid staffer or paid consultant to a City or OUSD campaign;
 - D. an officer or employee of a political party political party; or
 - E. a substantial local campaign donor, defined as someone who has contributed in the aggregate more than two times the City contribution limits (2 x \$600 in 2024) to candidates for a City or OUSD office or to a campaign committee making independent expenditures in City or OUSD campaigns.
6. Commissioner During & Post-Service Restrictions: In addition to existing during and post-service restrictions, add:
 - A. *During-service restrictions*: While serving on the Commission, Commissioners may not:
 - i. Contribute or participate in an OUSD campaign
 - ii. Serve as an officer or employee of a political party
 - B. *During and post-service restrictions*: Commissioners may not:
 - i. Run for City or School Office while serving on the Commission and for 2 years after their term ends.

- ii. Be a paid staffer or paid consultant to a City or School elected official, or receive gifts from the same officials, while serving on the Commission and for 1 year after their term ends.
- C. *Exception:* Commissioners should be able to advocate in support or opposition to ballot measures that affect the PEC or the laws it enforces.

7. Ethics Commission Vacancy: If a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy should transfer to the PEC.

8. Ballot Referral: The PEC should have the authority, by supermajority vote, to refer ordinances relating to the subject matter jurisdiction (campaign finance, government ethics, lobbying, and transparency) to the ballot for voter consideration.

9. Commission Mission: Amend the Charter to:

- A. Add that one of the PEC's roles is to promote more inclusive, representative, and accountable democracy in Oakland; and
- B. Include the administration of the Democracy Dollars Program, including the creation of an impartial voter guide to assist voters in assigning their vouchers, as one of the PEC's enumerated duties.

10. Elected Official Salary-Setting: The PEC, in its discretion, should have the authority to waive or reduce a salary increase for the City Council, City Attorney, or City Auditor if either (a) the City Council declares that the City is facing an extreme fiscal necessity/crisis or (b) if the GPF revenue for the current fiscal year is projected to decline.

CHARTER AMENDMENT PROCESS

Charter amendments require approval by a majority of Oakland voters to go into effect. There are only two ways for a charter amendment to make it to the ballot: the City Council may place a measure on the ballot or Oakland voters, through the local initiative process, may collect sufficient signatures to place a measure on the ballot. Prior amendments to the PEC's scope and responsibilities have been placed on the ballot by the City Council. To make the November 2024 ballot, the City Council would likely need to vote to place a measure on the ballot no later than August 2024. The Council is already likely to consider a proposal later this year to amend the City Charter to move the responsibility for setting the Mayor's salary from the City Council to the PEC.

SUBCOMMITTEE AND STAFF RECOMMENDATION

The Subcommittee and Staff recommend that the Commission vote to direct staff to draft potential language for a charter amendment, consistent with these recommendations, and to bring them back to the Commission at a future meeting. The Subcommittee is also still considering other changes to the City Charter and may bring those recommendations back to the full Commission at that time as well.

Attachment: Oakland City Charter Section 603 and Oakland Municipal Code Chapter 2.24.

OAKLAND CITY CHARTER

Section 603. Public Ethics Commission.

(a) Creation and Role. There is hereby established a Public Ethics Commission which shall be responsible for: (1) enforcement of laws, regulations and policies intended to assure fairness, openness, honesty and integrity in City government, including compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, and other persons subject to laws within the jurisdiction of the Commission; (2) education and responding to issues regarding the aforementioned laws, regulations and policies, and; (3) impartial and effective administration and implementation of programs to accomplish the goals and purposes of the Commission as defined by this Section. Such laws, regulations, policies, and programs shall include those relating to campaign finance, lobbying, transparency, and governmental ethics, as they pertain to Oakland. The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing. Nothing in this Section shall preclude other City officials, agencies, boards and commissions from exercising authority heretofore or hereafter granted to them, with the exception of Charter Section 603(b)(5).

(b) Functions and Duties. It shall be the function and duty of the Public Ethics Commission to:

- (1) Foster and enforce compliance with:
 - (i) Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") of this Charter, for violations occurring on or after January 1, 2015;
 - (ii) The Oakland Campaign Reform Act, Oakland Fair Elections Act, False Endorsement in Campaign Literature Act, Oakland's Conflict of Interest Code, code of ethics and governmental ethics ordinance, the Oakland Lobbyist Registration Act, the Oakland Sunshine Ordinance, any ordinance intended to protect City whistleblowers from retaliation, and other Oakland laws regarding campaign finance, lobbying, transparency, or governmental ethics, as provided by ordinance or this Charter.
 - (iii) Related state laws including, but not limited to, the Political Reform Act, Ralph M. Brown Act, and Public Records Act, as they pertain to Oakland.
- (2) Report to the City Council concerning the effectiveness of all local laws regarding campaign finance, lobbying, transparency, and governmental ethics.
- (3) Issue oral advice and formal written opinions, in consultation with the City Attorney.
- (4) Within the time period for submission of such information for the timely completion of the City's regular budget process, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.
- (5) Act as the filing officer and otherwise receive and retain documents whenever the City Clerk would otherwise be authorized to do so pursuant to Chapter 4 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), provided that this duty shall be transferred to the Commission during the 24 months following the effective date of this provision and the Commission shall be the sole filing officer for the campaign finance programs by January 1, 2017.
- (6) Educate and promote understanding regarding the requirements under the Commission's oversight and study any significant non-compliance problems or trends with

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Oakland's campaign finance, lobbying, transparency, and governmental ethics laws and identify possible solutions for increasing compliance.

(7) Review and make recommendations regarding all City systems used for public disclosure of information required by any law within the authority of the Commission.

(8) Perform such other functions and duties as may be prescribed by laws of this Charter or City ordinance.

(c) Councilmember Salary Increases. The Public Ethics Commission shall set Council compensation as provided for in Charter Section 202.

(d) Appointment, Vacancies, Terms. The Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents. Commissioners shall serve without compensation.

The Commission shall be appointed as follows in subsection (1) and (2).

(1) Appointments by Mayor, City Attorney and City Auditor. The Mayor shall appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

The City Attorney shall appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters.

The City Auditor shall appoint one member who has a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting. The Mayor, City Attorney, and City Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official.

Upon the effective date of this section, the three members appointed by the Mayor prior to 2015 shall continue to serve the remainder of their terms. Vacancies in the three positions appointed by the Mayor shall be filled in the following manner: the City Attorney shall appoint a member to fill the first vacancy; the City Auditor shall appoint a member to fill the second vacancy and the Mayor shall appoint the member to fill the third vacancy. Thereafter, the positions appointed by the Mayor, City Attorney and City Auditor shall be filled in the same manner and upon consideration of the same criteria as the initial appointments.

The appointments made by the Mayor, City Attorney, and City Auditor may be rejected by City Council Resolution within 45 days of receiving formal notice of the appointment. An appointment shall become effective once written notice is made by the appointing authority to the City Clerk. Upon receiving such written notice, the Clerk shall promptly provide formal notice to the City Council.

(2) Commission Appointments. The four members of the Commission who are not appointed by the Mayor, City Attorney or City Auditor shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of

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the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.

(3) Terms of Office. All categories of member shall be appointed to staggered terms. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, such member may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, such member may serve two consecutive full three-year terms.

(4) Quorum. Four members shall constitute a quorum.

(5) Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or is absent continuously from the City for a period of more than 30 days without permission from the Commission, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member.

Vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days of the occurrence of such vacancy may be filled by the City Council in the same manner as provided by Charter, Section 601.

(6) Removal. Members of the Commission may be removed by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular meetings except on account of illness or when absent by permission of the Commission, or violation of this Charter section, after written notice of the grounds on which removal is sought and an opportunity for a written response.

(e) Qualifications and Restrictions. Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections. No member of the Commission shall:

- (1) Have an employment or contractual relationship with the City during the member's tenure and for a period of one year after the date of separation.
- (2) Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for a period of one year after the date of separation.
- (3) Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, or participate in or contribute to an Oakland municipal campaign.

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(4) Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

(f) Enforcement.

(1) Authority. In furtherance of Charter Section 603(b)(1) and (5), the Public Ethics Commission is authorized to:

- (i) Conduct investigations;
- (ii) Conduct audits of compliance with disclosure requirements with the Commission;
- (iii) Conduct public hearings as provided by the Commission's complaint procedures or other law;
- (iv) Issue subpoenas to compel the production of books, papers, records and documents and take testimony on any matter pending before the Commission. The Commission may seek a contempt order as provided by the general law of the state for a person's failure or refusal to appear, testify, or to produce required books, papers, records and documents;
- (v) Impose penalties, remedies and fines, as provided for by ordinance. Ordinances enforced by the Public Ethics Commission shall not be subject to the \$1,000 limit on fines provided Sections 217 and 1208 of this Charter. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to the Alameda County Superior Court by filing a petition for writ of mandamus;
- (vi) Submit referrals to other enforcement authorities, including but not limited to the Alameda County District Attorney, California Fair Political Practices Commission, and California Attorney General;
- (vii) Seek remedial relief for violations and injunctive relief;
- (viii) By an affirmative vote of at least five members, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 218 and 1202 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;
- (ix) Reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 907 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;
- (x) Perform other functions as authorized by law.

(2) Final enforcement action. Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four members.

(3) Investigations. Preliminary review by Commission staff of allegations shall be confidential, to the extent permitted by law, until any of the following occurs:

- (i) Placement of the item on a Public Ethics Commission meeting agenda;
- (ii) Passage of one year since the complaint was filed;
- (iii) Action by the Executive Director closing the file without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or

(iv) Expiration of the Statute of Limitations.

(4) Penalty guidelines and Enforcement Discretion. The Public Ethics Commission shall develop a policy setting forth standards for imposing penalties and exercising enforcement discretion. Commission staff shall adhere to the policy when recommending penalties under each of the different penalty provisions that the Commission has the power to enforce.

(5) Per diem late filing fees. Regarding per diem fees that are authorized due to the late filing of disclosure reports, including campaign finance statements, lobbyist reports, and other ethics-related disclosures filed with the Commission by law, the following shall apply:

(i) Assessments. Any instance of late filing that triggers the assessment of a fee of \$1,000 or more by the Commission shall be placed on a Commission meeting agenda before issuance of the fee;

(ii) Waiver guidelines. The Commission shall establish waiver guidelines in accordance with state law, which the Commission, as the filing officer, shall follow in determining whether or not to grant a waiver. These guidelines shall be published on the Commission's website. The Commission shall prescribe criteria for appeal to the Commission of waiver decisions made by the Executive Director. At each regular Commission meeting, the Executive Director shall provide a written report, which shall be published online, regarding any waivers decisions made since the previous regular meeting;

(iii) Referral of final, uncollected fees to collections. Unpaid non-investigatory, per diem late filing fees for disclosure programs that are past due for more than 90 days shall be referred to a City delinquent revenue collection office.

(6) Private right of action. Oakland residents shall have a private right of action to file suits to enforce the Oakland Campaign Reform Act, Oakland Lobbyist Registration Act, Oakland Sunshine Ordinance, and any City governmental ethics ordinance when the City does not impose or stipulate to a penalty or file suit for a particular violation. Such private right of action shall be enabled for a given ordinance once criteria for such suits, including but not limited to a required notice period, actionable violations and remedies that may be sought, are prescribed by the ordinance.

(g) Staff Assistance & Budget.

(1) The City shall appropriate a sufficient budget for the Public Ethics Commission to fulfill the functions and duties as set forth above.

(2) Sufficient staffing shall not be less than the following minimum staffing requirement. The City shall meet a minimum staffing requirement for the Commission. The minimum staffing shall consist of the following full-time positions or their equivalent should classifications change: Executive Director; Enforcement Chief; Ethics Investigator; Ethics Analyst I; Ethics Analyst II; Administrative Assistant I. Effective July 1, 2023, the City shall also provide additional adequate staff necessary to properly administer the Democracy Dollars Program established by the Oakland Fair Elections Act, including, but not limited to, one full-time Democracy Dollars Program Manager and three full-time equivalent positions, to be determined as necessary by the Commission, all of whom shall report to the Executive Director of the Public Ethics Commission.

(3) The minimum staffing budget set-aside may be suspended or reduced, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution.

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(4) The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.

(5) The Enforcement Chief shall serve at the pleasure of the Executive Director. Other than the Executive Director and Enforcement Chief, staff shall be civil service in accordance with Article IX of the City Charter. Candidates for staff vacancies shall be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time, except that said selective certification shall not be subject to discretionary approval by the Personnel Director.

(6) All staff are subject to the restrictions in Charter Section 603(e), except that staff are not prohibited from employment with the City and the one-year post-service restriction shall apply only to the Executive Director.

(h) Amendment of Laws. Prior to enacting any amendments to laws that the Commission has the power to enforce, the City Council shall make a finding that the proposed changes further the goals and purposes of the ordinance or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to laws that the Commission has the power to enforce and proposed ballot measures that would amend such laws shall be submitted to the Commission for review and comment, prior to passage of the amendments or approval of the proposed measures for the ballot by the City Council.

(i) References to Other Laws in this Section. All references to other laws in this Section shall refer to these laws as they may be amended from time to time.

(Added by: Stats. November 2014.)

(Res. No. [89316](#), § 6, 7-11-2022; Res. No. [89280](#), 6-21-2022)

Chapter 2.24 - PUBLIC ETHICS COMMISSION

2.24.010 - Creation.

Oakland City Charter Section 603 establishes the Public Ethics Commission (Commission) and proscribes its role and function, Commissioner qualifications and appointment process, enforcement and investigative authority, and staff resources, among other provisions. ([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 1, 1997)

2.24.020 - Commission operations.

A. Implementation of City Charter enumerated role, functions, and duties. The Commission shall adopt policies, procedures, and regulations for the conduct of its business by a majority vote of the members present.

B. Process. A majority vote of the Commission is required for the adoption of any motion or resolution.

C. Transmittal. The Commission shall transmit to the City Council any rules, regulations, or procedures adopted by the Commission within seven (7) calendar days of adoption. A rule, regulation or procedure adopted by the Commission shall become effective sixty (60) days after the date of adoption by the Commission unless, before the expiration of the sixty (60) day period, two-thirds ($\frac{2}{3}$) of all the members of City Council vote to veto the rule, regulation, or procedure.

D. Policies and Procedures. Policies and procedures include, but are not limited to, operations policies to guide the Commission's general operations, and complaint procedures to establish the administrative process for the investigation and enforcement of potential violations of government ethics, transparency, and campaign finance laws or policies. ([Ord. No. 13628](#), § 2, 12-15-2020)

2.24.030 - Commission structure.

A. Role of the Commission. The Commission, as a whole, is responsible for establishing Commission policies and priorities, promoting government ethics and transparency, and serving as a quasi-judicial body that adjudicates enforcement matters brought to the Commission by staff.

B. Commission Staff. The Executive Director reports to the Commission Chair and the Commission and is responsible for establishing staff priorities in consultation with the Chair and consistent with policy direction provided by the Commission. The Executive Director leads and supervises Commission staff and has the authority to hire and remove employees within constraints set by the Civil Service Commission, the Department of Human Resources, and the Commission's budget.

([Ord. No. 13628](#), § 2, 12-15-2020)

2.24.040 - Election of chairperson and meetings.

A. Election of Chair and Vice-Chair. At the first regular meeting of each year, the members shall elect a chairperson and a vice-chairperson.

B. Meetings. The Commission shall hold regular meetings at an established time and place suitable for its purpose. Other meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notice of special meetings shall be provided the members, the Council, and the public press at least seventy-two (72) hours before the meeting is scheduled to convene.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 6, 1997)

2.24.050 - Staff assistance.

The City Manager, or designees thereof, shall provide the Commission with staff assistance as necessary to permit the Commission to fulfill the functions and duties as set forth in the City Charter and in ordinances within the Commission's jurisdiction.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 12101, 1998; Ord. 11961 § 8, 1997)

2.24.060 - Legal assistance.

The City Attorney is the Commission's legal advisor. The City Attorney shall provide the Commission with legal assistance, to the extent such assistance does not constitute a conflict. In the event of a conflict, the City Attorney shall retain outside counsel.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 9, 1997)

2.24.070 - Procedures for imposing administrative fines.

A. Purpose. This section establishes standard procedures for the imposition, enforcement, collection, and administrative review of fines and penalties for violation of any law or ordinance under the purview of the Commission. The procedures set forth in this section are adopted pursuant to Government Code Section 53069.4 and the City of Oakland's power to govern municipal affairs under Article 11 of the California Constitution. By adopting this section, the City does not intend to limit the ability of the City to use any other remedy, civil or criminal, that may be available in a particular case. The City may use the procedures set forth in this section as an alternative to, or in conjunction with, any other available remedy.

B. Complaint Procedures. The Commission shall adopt procedures to establish the administrative process for the investigation and enforcement of violations of the laws within the Commission's jurisdiction. These procedures shall dictate the process for receiving, initiating, and reviewing complaints, conducting investigations or audits, and resolving cases prior to an administrative hearing.

C. Administrative Hearing Process.

1. Selection of Hearing Panel or Examiner. If the Commission decides to schedule a hearing, the Commission may either sit as a hearing panel or delegate authority to one (1) or more members or to an independent hearing examiner.

2. Pre-Hearing Process and Submissions. The Commission must provide notice of the hearing to the responding party and may define reasonable time limits and other requirements for submission of any proposed subpoenas, resolution of any procedural or preliminary matters not related to the truth or falsity of the factual allegations, and submission of any written materials.

3. Conduct of Hearings. The Commission may define reasonable terms for the conduct of hearings, receipt and rules of evidence, presentation of testimony, and order of oral arguments. The Commission also may establish a process for hearing a matter in which the responding party refuses or otherwise fails to appear at a properly noticed hearing.

4. Action Upon Conclusion of Hearing. The Commission may define reasonable time limits and other requirements for preparation and submission of findings of fact and conclusions by the hearing panel or examiner and any procedure for requesting re-hearing.

The Commission's order following a hearing may determine that any violation of law occurred only if the weight of the evidence shows that it was more likely than not that a violation occurred.

The Commission's order and any findings of facts and conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions, and any appropriate fines. The Commission's decision following a hearing shall be final and shall constitute closure of the administrative process with respect to any complaint.

D. Payment of Administrative Fines. Any fines imposed by a final order of the Commission will be required to be paid by the due date identified in the order, but no sooner than thirty (30) days after the order is issued. Fines that remain unpaid after the due date will be subject to a late payment penalty of ten percent plus interest at a rate of one (1) percent per month on the outstanding balance.

E. Remedies for Non-Payment. The amount of any fine not paid within the time required under this Chapter, including the amount of any applicable late payment charges, constitutes a debt to the City. The City may file a civil action or pursue any other legal remedy to collect such money. In any civil action to obtain payment of the fine, and any late payment penalties, the City shall be entitled to obtain a judgment for the amount of the unpaid fines and penalty payments and, in addition, for the costs and attorneys' fees incurred by the City in bringing any civil action to enforce the provisions of this Section.

F. Right to Judicial Review. Any person aggrieved by the action of the hearing officer taken pursuant to this Chapter may obtain review of the administrative decision by filing a petition

Item 11 - Charter Review

for review in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

If a final order of a court of competent jurisdiction determines that the City has not properly imposed a fine pursuant to the provisions of this Chapter, and if the fine has been deposited with the City during the course of the legal proceeding, the City shall promptly refund the amount of the deposited fine, consistent with the court's determination, together with interest at the average rate earned on the City's portfolio for the period of time that the City held the fine amount.

([Ord. No. 13628](#), § 2, 12-15-2020)

2.24.100 - Protection against retaliation.

A. No officer or employee of the city shall use or threaten to use any official authority or influence to effect any action as a reprisal against a city officer or employee for acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

B. No officer or employee of the city shall use or threaten to use any official authority or influence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

([Ord. No. 13628](#), § 2, 12-15-2020; Ord. 11961 § 10, 1997)

Item 12A - Transparency Subcommittee

Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

Members: Francis Upton IV (Chair), Arvon Perteet, Alea Gage

January 8, 2024 Minutes

Attendees – Members: Commissioners Upton IV, Perteet, Gage

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Vision Statement** - the intent of this Subcommittee is to look at how government responds to and provides public records from a current perspective, where most government records are now on computers rather than paper. There is more data to be gathered before the Subcommittee can draft a Vision Statement; we will defer this goal to the next iteration of this subcommittee, likely starting in March 2024.
2. **Goldman Students** - we will ask to have the students find cases for this and then we review the cases before they go in depth for this. We will also coordinate with Chris Nardi (new law clerk) based on his knowledge, so maybe we can provide some additional resources for the students. After that we will meet with the students for the kick off.
3. **OPD presentation in January** - Each commissioner will ask whatever questions they want. It would be good to have the commissioners write down their questions so that we can review/revise our master questions for other departments.
4. **Other department presentations** - The Subcommittee will review its Department Questions after the OPD presentation before sending them out to the next Departments.
5. **OCA** - we would like to talk with the Open Government Coordinator (Mark Forte) to understand his role.

Action Items

1. Getting information from Chris Nardi about people that the Goldman students might want to contact (Nicolas)
2. Coordinating the process with the Goldman students and the subcommittee (Nicolas).
3. Requesting that Mark Forte attend a meeting of the subcommittee (perhaps in February) (Nicolas).

Item 12A - Transparency Subcommittee

Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

Members: Francis Upton IV (Chair), Alea Gage

January 22, 2024 Minutes

Attendees – Members: Commissioners Upton IV, Gage

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Revised Standard Questions** - we started on this, working from the OPD questions. We will complete this offline over the next week so that a letter can be sent to OFD soon.
2. **Goldman Students Launch Tasks** - Nicolas will draft something (today) giving them information to start their investigation. More discussion will be had at the meeting on 30 Jan.
3. **Schedule Chris Nardi** - Chris will be asked to attend the Goldman Students meeting on 30 Jan.
4. **Schedule Mark Forte** - he will be invited to the 26 Feb subcommittee meeting.
5. **OPD items follow up** - did not get time to discuss this.

Action Items

1. See above

Item 12A - Transparency Subcommittee

Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

Members: Francis Upton IV (Chair), Alea Gage

January 25, 2024 Minutes

Attendees – Members: Commissioners Upton IV, Gage

Attendees – Staff: Director Nicolas Heidorn

Attendees – Guest: Chris Nardi

Discussion

Special meeting with Chris Nardi

1. Francis/Nicolas Introduction: talk about the what the Goldman students are doing. Looking for examples of taking a new or transformative response to records access.
2. Chris - SF and SJ likely doing well with PRA (according to discussions with the officials). SF Sunshine act is dealing with more advanced issues, like to what extent should metadata be provided? SJ appeals mechanism is not used very frequently which could be a signal that people are getting what they want.
3. Make sure we compare with jurisdictions of similar sizes.
4. Personal experience with Berkeley has been good.
5. LA has a data portal (possibly similar to the Oakland one). He worked with parking spot data (updated every 15 minutes).
6. FOIA has proactive disclosure requirements; state and cities typically don't have this requirement. The FOIA requirement is that the records must be available by self-service if they have been requested frequently.
7. Oakland - building permits are available self service.
8. Thinks municipalities contract for the police reports.
9. Alea - we should look for self-service for public safety.
10. eDiscovery tools that work with Office 365 might be useful - Chris' experience is that email requests took a long time, so maybe we are not using this technology.
11. NextRequest has automatic redaction but Oakland is likely not using this.
12. Organizations to look at are: First Amendment Coalition, Reporters Committee for Freedom of the Press, EFF.
13. Francis - maybe point Goldman students to the above organizations.
14. Alea - perhaps the students can review tools that are available for PRA.
15. Francis - distinguish between high volume requests vs. things like overall transparency for the GPP students.
16. Come up with a list of different approaches to the investigation for the GPP students and the students can do some initial investigation to determine which is the best path.

Action Items (all Nicolas)

Item 12A - Transparency Subcommittee

1. Look at the previous Goldman presentation that identified San Diego as being good
2. Make a list of organizations for the students (see above)
3. Provide Chris Nardi's powerpoint
4. Invite Mark Forte for Monday to talk about what he thinks the student can look at
5. Schedule subcommittee meeting on Monday to prepare for the GPP students

Item 12A - Transparency Subcommittee

Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

Members: Francis Upton IV (Chair), Alea Gage

February 1, 2024 Minutes

Attendees – Members: Commissioners Upton

Attendees – Staff: Director Nicolas Heidorn

Attendees – Guest: Mark Forte, Lindsey Chow (Deputy City Attorney)

Discussion

The Subcommittee met with Mark Forte and Lindsey Chow to understand the City Attorney's role in responding to records requests and administering the NextRequest system.

Action Items

None.

Item 12A - Transparency Subcommittee

Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

Members: Francis Upton IV (Chair), Alea Gage

February 26 , 2024 Minutes

Attendees – Members: Commissioners Upton IV, Gage

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. Follow up about OPD presentation:
 - a. Sequencing of work for new records system
 - b. Short term system for self service with existing data for frequently access records
2. Review and Revise Termination Statement
3. Follow on work - “Transparency by default”
 - a. New subcommittee could focus on taxonomy and measurements for this to help find the biggest opportunities. For example, contract performance could be a big opportunity.
 - b. Law could be changed to require a department's evaluation about how they are transparent by default (as appropriate) periodically.
4. Progress with Goldman Students
 - a. They are enthusiastically working on the project (our proposal was the first choice for each member of the research team.
 - b. We have status meetings every two weeks.
 - c. Final delivery in March
 - d. It's possible they might not find significant innovative transparency initiatives, and if not, will search for success stories in traditional PRA

Action Items

1. Write questions about discussion item 1 to Nicolas (Francis) to email to OPD.

Item 12A - Transparency Subcommittee

Chair's Termination Statement:

Transparency and Public Records Subcommittee

(ad hoc, created March 8, 2023)

Members: Francis Upton IV (Chair) and Alea Gage. (Former member: Arvon Perteet.)

A) What was the specific goal of the committee?

The original goal of the subcommittee is to identify a long-term vision statement for government transparency in Oakland and short-term next steps to make progress towards that goal. This evolved to be focused more on 1) proposing a research project and beginning the partnership with a team of graduate students from UC Berkeley's Goldman School of Public Policy (GSPP) and 2) coordinating presentations from the three City departments that receive the most public records requests to gather data on current practices and challenges.

B) What was the expected deliverable and in what time period?

The subcommittee was going to draft a vision statement (or statements) to assert the PEC's view of and aspirations for transparency within Oakland city government and bring it back to the PEC for consideration. The subcommittee was going to prepare near-term options for how to make progress towards that goal and present those to the PEC.

We concluded it was premature to produce a long-term vision statement, and so adjusted the deliverables to be in line with what we produced below.

C) What did the Subcommittee accomplish?

1. Prepared a list of standard questions for any department related to transparency and public records access.
2. Planned that OPD, OFD, and the Planning Department present about public records activity once a quarter for 2024.
3. Prepared specific questions for OPD and facilitated their presentation to the PEC; asked a number of questions of the presenter and identified some items for further follow-up.
4. Formulated questions for OFD and invited them to present to the PEC.
5. Prepared a research proposal for the GSPP which was accepted; started working closely with researchers as the project began.
6. Interviewed PEC Law Clerk Chris Nardi to get insight into his previous work on Oakland's public records access.
7. Interviewed Mark Forte and Lindsey Chow (CAO) for information about how the CAO works with records requests and NextRequest administration.

D) Are there any recommended next steps coming out of the Subcommittee's work?

1. Set up a meeting with the Planning Department to present its work in responding to records requests.
2. Synthesize the data obtained by OPD, OFD, and Planning Department presentations as well as the work of the GSPP students for recommendations for further action.

Item 12A - Transparency Subcommittee

3. Consider producing a long-term vision statement based on learnings from above.
4. Consider changes to the Sunshine Act.
5. Consider any other deliverables (i.e. a report and/or an action plan/set of recommendations) to disseminate and implement improvements to further transparency and/or the City's practices related to public records.
6. Consider focusing on "Transparency by Default". Defining what this might look like and how to encourage short and long term actions to get the most value for our residents.

E) Are there any lessons learned or other comments to memorialize about the Subcommittee's work or process?

1. Records - Subcommittees should do a good job in keeping records/documents in a place where subcommittee members and PEC staff can get to them; this includes keeping good meeting minutes.
2. Pivot - We realized that we would be better served by deferring the goal of a long-term vision statement and focus more on gathering data first, so we pivoted to that.
3. Collaboration - We approached departments seeking to understand their process and challenges and with a goal of being helpful, rather than confrontational about their process, which we feel led to more useful information and encouraged participation.
4. Build on Previous Work - we determined which three departments to invite to present based on a 2021 PEC report. The 2021 report also allows a first point in time for department performance, which provides a baseline understanding for us to take into the presentations and the process of generating questions for departments.

CITY OF OAKLAND

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Public Ethics Commission

(510) 238-3593

(510) 238-3315 Fax

(510) 238-325 TDD



February 6, 2023

Damon Covington
Chief
Oakland Fire Department
150 Frank H. Ogawa Plaza,
Oakland, CA 94612

RE: Requested appearance at the Public Ethics Commission’s April 10, 2024 meeting regarding public records requests made to the Oakland Fire Department

Dear Chief Covington:

On behalf of the Public Ethics Commission (PEC or Commission), we would like to invite you or a designee from the Oakland Fire Department (OFD) to present at the Commission’s April 10 meeting to provide information on the Department’s process, successes, and challenges in responding to public records requests. The Commission will meet on April 10, 2024, at 6:30 p.m. in Hearing Room 1 at City Hall.

As you likely know, the Public Ethics Commission oversees compliance with the Oakland Sunshine Ordinance and its state equivalent, the California Public Records Act. The Sunshine Ordinance, as a supplement to state law, also authorizes the PEC to mediate between requesters seeking public records and City employees responding to their requests. In addition, under the City Charter, the PEC is required to periodically study the laws within its purview to make administrative or policy change recommendations to the City Council (City Charter Section 603(b)(2) & (7)).

As part of this responsibility, the Commission is currently engaged in a study of the City’s process for responding to records requests. In 2024, the Commission will be inviting the three departments with the largest volume of records requests to present before the Commission on their process, beginning with the Police Department, which presented at our January meeting.

As one of the other departments with the highest volume of requests, we would love to learn more about OFD’s experiences. Our goals are to learn more about OFD’s capacity and challenges, discover any commonalities between City departments, and recommend changes to improve performance and capacity with regard to public records requests. We hope to partner with you to help identify any resources you need to address challenges and potentially find efficiencies that could be implemented to benefit OFD and the public.

To this end, the Commission would appreciate hearing from you regarding the following questions:

Item 12A - Transparency Subcommittee

1. How many records requests are submitted to your department each week/month/year?
2. What percentage of requests receive a response within 10 days providing a determination of whether there are responsive records?
3. Does the department categorize the requests that are received for data and reporting purposes? If so, please list the categories your department uses and the number of requests received for each category. Are any of these categories easier or harder to respond to?
4. What is the department's existing process for responding to public records requests? How do requests typically come to your department and who handles the initial contact, ongoing communications and response to the requester?
5. What are the biggest challenges your department faces in responding to records requests?
6. Do you have any staff dedicated to responding to records requests? How many vacancies exist among total funded positions that respond to records requests? Are your total funded positions adequate to respond to records requests? If not, what positions and how many would be sufficient?
7. Does your agency provide, or have you considered providing, a self-service means of handling routine requests, i.e. having some portion of the website where a request can be made and fulfilled without human intervention?
8. What process or technology changes, if any, have you made to improve response to records requests, including but not limited to self-service access to records?
9. What training and support do you provide to employees with responsibilities in the department's records retention and public records response process? How is the performance of these employees measured with regard to public records retention and response? (Please note we are only requesting to know how performance is measured in general, and not any particular employee's performance.)
10. What is the department's experience using the NextRequest platform to manage and respond to public records requests? Is it working? How can it be improved?
11. What additional information would you like to share with the Commission on this issue?

Thank you in advance for your cooperation with the Commission's review pursuant to its authority under the City Charter. Could you please confirm by February 21 whether you or a Department designee (and if so who) will attend the PEC's April 10 meeting? To facilitate discussion, it would be helpful if OFD could provide written responses to the questions above by March 18, 2024, so that they may be included with the agenda for that meeting.

Please feel free to reach out if you would like to discuss these questions, or the context for the Commission's inquiry. You may contact me directly at (510) 604-1002 or nheidorn@oaklandca.gov.

Sincerely,

/s/ *Nicolas Heidorn*

Nicolas Heidorn

Executive Director

Oakland Public Ethics Commission

Item 12B - Outreach Subcommittee

PEC OUTREACH EVENTS 2024

Calendar of Potential Outreach Opportunities

Staff Suggested Paid Outreach Events

| Quarter | Event | Date | Cost |
|---------|-------------------------------------|---------------------|----------------|
| 1 | Chinatown Lunar New Year Festival | January 27-28, 2024 | \$600 (2 days) |
| 2 | Friday Nights at the Oakland Museum | Returns April 2024 | TBD |
| 3 | Art and Soul Festival | September 2024 | \$350 |
| 4 | Oaktoberfest | October 2024 | \$270 |

Suggested Free Outreach Events

| Event | Frequency |
|---|---------------------------------|
| Oakland Roots & Soul Games | Seasonal (Summer/Fall) |
| Merchants Associations events - Rockridge, Temescal, Laurel, Jack London | Seasonal |
| Rotary Club (and other such clubs) meetings | Monthly |
| High School Government Classes | Variable |
| Office Hours for Council Members, School Board, City Auditor & Police Inspector General | Variable |
| National Night Out | Annual, First Tuesday in August |
| Oakland Love Life Celebration | Annual |
| Farmers Markets | Weekly |
| League of Women Voters Meeting | Monthly |
| Mills College Public Policy Graduate Students Meetings | |
| Goldman School Public Policy - Info Forums | Quarterly |
| Open Oakland - Open Data Day | Annual |
| Night Out for Safety and Liberation | Annual |
| Acts Full Gospel Church | Weekly |
| Allen Temple Baptist Church | Weekly |
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Item 12C - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill, Karun Tilak

February 9, 2024 Minutes

Attendees – Members: Commissioners Micik, Hill, Tilak

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Go over main goals in reviewing/revising the Charter.** Commissioners discussed what guiding principles for reviewing the Charter. While not exclusive, Commissioners identified the following three primary principles:
 - a. **Strengthen PEC's Independence.** The PEC plays a unique, important, and sensitive role in maintaining the integrity of Oakland's government and political process. It is vital that the PEC be perceived to be and actually be impartial and not beholden to any elected official or political faction.
 - b. **Strengthen PEC Staffing.** For the PEC to fulfill its functions, it must be adequately staffed. Traditionally, the PEC's staff has almost entirely grown by ballot measure. Minimum staffing/budget helps to ensure the PEC's independence when/if investigating/prosecuting incumbents.
 - c. **Align the Charter with the PEC's New Mission of Building a More Inclusive Democracy.** The PEC's current mission is focused primarily on the Commission being an enforcement agency. However, the PEC's role has expanded with the passage of Measure W to encompass supporting a more inclusive, representative, and accountable democracy. The Charter should reflect that mission.
2. **City Charter Review.** Commissioners and staff went through each provision of Charter Section 603 and discussed possible changes.

Item 12C - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill, Karun Tilak

February 16, 2024 Minutes

Attendees – Members: Commissioners Micik, Hill, Tilak

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Review of Charter Change proposals:** Commissioners discussed several potential changes to the charter relating to the PEC's structure, duties, and staffing, including: Executive Director selection process, Commissioner eligibility qualifications, Commissioner during and post-service restrictions, Commission legal capacity, and Commission staffing and budget.

Item 12C - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill, Karun Tilak

February 21, 2024 Minutes

Attendees – Members: Commissioners Micik, Hill, Tilak

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Review of Charter Change proposals:** Commissioners discussed several potential changes to the charter relating to the PEC's structure, duties, and staffing, including: PEC minimum staffing and budgeting, Commissioner vacancies, Commission mission, Commission regulatory process, Commission duties, Commissioner qualifications, and the standard the PEC should use in adjusting the compensation for elected officials.

Item 14 - ED Salary Adjustment



Ryan Micik, Chair
Francis Upton IV, Vice-Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: February 28, 2024
RE: Process for Adjusting Executive Director Salary

Overview

Every year, coinciding with its evaluation of the performance of the Executive Director, the Commission must decide whether to authorize a performance-based salary increase and/or management leave for the Executive Director. This memorandum provides background information on this process.

Background

On November 4, 2014, Oakland voters approved ballot measure CC, which strengthened the Public Ethics Commission (PEC or Commission) by creating a new City Charter section 603 to expand the Commission's authority, structure, staffing, and independence. With the passage of measure CC, the Commission acquired the autonomous authority to evaluate the Executive Director's performance, establish salary within an existing range, and choose to terminate the Executive Director, who serves solely at the pleasure of the Commission rather than the City Administrator, as was previously the case.

The new City Charter section 603(g)(3) was drafted with the intent to provide the Public Ethics Commission with more independence from City officials by granting the Commission with the sole authority over the Executive Director's performance and employment. The purpose of this change was to ensure that the Commission's operations are separate and distinct from City officials so that the Commission and its staff can independently oversee compliance by City officials with campaign finance, ethics and transparency laws.

City Charter Section 603(g)(3), which became effective on January 1, 2015, reads as follows:

The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.

Article III, Section 2 of the Commission's Operations Policies provides as follows:

Item 14 - ED Salary Adjustment

The Executive Director reports to the Chair and to the Commission and is responsible for establishing staff priorities in consultation with the Chair and consistent with policy direction provided by the Commission.

The Chair or designee must prepare a periodic, written performance review of the Executive Director subject to the review and approval by the Commission in closed session. At any time, at the request of one or more commissioners, the Chair may call and notice a closed session of the Commission to discuss the performance of the Executive Director.

In conducting the performance review of the incumbent Executive Director, Commissioners meet in a publicly noticed, closed session along with the Commission's attorney and any other invited attendee, such as the Director of the Department of Human Resources Management or a Deputy City Attorney with labor law experience. In past years, the Chair would typically consolidate Commissioner remarks at that meeting and present a written review to the Executive Director following the closed session discussion.

In addition to the performance review, the Commission has the responsibility to annually consider merit salary increases and whether to authorize additional management leave, which is available to all department heads and management-level staff. While likely informed by the closed session performance review, any decision to increase the Executive Director's salary or to award them management leave must be discussed and voted on in open session.

Annual Salary Adjustment

To provide context and background on the process and criteria for approving salary increases and management leave, the Department of Human Resources Management (DHRM) has previously provided the following information to Commissioners:

“City department heads, including the PEC Executive Director, are considered unrepresented, at-will employees who are exempt from Civil Service rules. However, for rules and procedures, the terms and conditions of the union agreement with the Confidential Management Employees Association (CMEA), are applicable to the City's unrepresented classifications. This means that, where the CMEA agreement provides rights or a description of protocol or policy, those provisions would apply to employment decisions related to the Executive Director position.”

For salary increases below the mid-point of the salary range for the position, the current CMEA agreement provides as follows:

“5.4.4. Salary Range Advancement Up To The Mid-Point

Advancement within the salary schedules specified for a represented employee's classification assigned to the salary range plan shall be on the basis on one (1) year's satisfactory service as evidenced by a Performance Appraisal. Advancement of five percent (5.0%) per year of satisfactory performance shall be made up to the mid-point of the salary range, effective at the beginning of the pay period in which the anniversary date of appointment in the classification falls. However, the appointing authority may approve an advancement at a greater percentage at a time increment of less than one year if there has been unusual

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difficulty in retaining competent employees. Subsequent increases shall resume on the incumbent's anniversary date.”

“5.4.6 Definitions

For purposes of the salary advancement provisions of Section 5.4, a represented employee shall be deemed to have performed satisfactory service if the Performance Appraisal for the period includes an overall rating of “fully effective” or “exceeds expectations.””¹

Under this policy, the Commission has the authority to increase the Executive Director's salary by generally 5% for satisfactory performance, but staying within the Council-approved salary range for each position. Salary adjustments go into effect in the pay period beginning with the Executive Director's work anniversary (May 13).

Attached is the job description for the Executive Director position, which includes the position's salary range. The annual salary range for this position is \$153,151.92 - \$229,727.04. Director Heidorn's current annual salary is \$191,213.76, which is below the mid-point in the salary range.

Authorization of Management Leave

The Department of Human Resources Management (DHRM) has previously advised the Commission that management leave for the Executive Director is governed by section 9.12 of the CMEA agreement, which is excerpted below:

9.12(a) Management Leave re

Represented employees shall be awarded five (5) days of Management Leave July 1st of each year.

Additionally, U31 employees who work irregular work hours or who demonstrate superior performance during the eligibility period of July 1 through June 30 of each fiscal year may also be awarded an additional zero (0) to five (5) days of management leave at the recommendation of the department/agency head and with final approval of Administrator.²

Under this policy, the Commission has the authority to award up to 10 days of Management Leave to the Executive Director, which will be awarded in the new fiscal year (beginning July 1, 2024).

Salary and Management Leave Questions

Commissioners should feel free to reach out directly to the Human Resources Management's Employee Relations Manager Mark Love (MLove@oaklandca.gov) or Deputy City Attorney Selia Warren (SWarren@oaklandcityattorney.org) with any questions regarding the salary-setting or management leave award process, or to verify the information in this memo.

Possible Action

¹ CMEA Agreement effective July 1, 2022 to June 30, 2025. The full CMEA Agreement can be accessed at <https://www.oaklandca.gov/documents/confidential-management-employees-association-cmea>.

² Ibid.

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Based on the Commission's performance evaluation of the Executive Director, the Commission authorizes _____ days (max: 10 days) of management leave for the Executive Director.

In addition, the Commission **authorizes/does not authorize** (select one) an annual increase of _____ percent (generally 5%) for the Executive Director.

Attachments: ED Job Description



CITY OF OAKLAND

CITY OF OAKLAND
Established Date: Jul 21, 2015
Revision Date: Aug 4, 2015

Executive Director, Public Ethics Comm

Class Code:
EM261

Bargaining Unit: UK1 - Executive Management
Employees, Unrepresented

SALARY RANGE

\$78.54 - \$117.81 Hourly
\$12,762.66 - \$19,143.92 Monthly
\$153,151.92 - \$229,727.04 Annually

DEFINITION:

Under general direction of the Public Ethics Commission (PEC), plans, organizes, and directs the activities of the PEC staff; implements PEC directives and manages the daily operations of the PEC; develops policies and procedures; supervises, trains, and evaluates staff; represents the PEC in meetings before elected officials, City staff, the public and other city and state bodies; and performs other duties as assigned.

DISTINGUISHING CHARACTERISTICS:

This executive management level position is responsible for overseeing the entire operations of the PEC. Pursuant to the Oakland Charter 902(b) and Oakland Municipal Code, this position is exempt from the regulations of the Civil Service Board. This classification is distinguished from the Enforcement Chief, Public Ethics Commission, which is responsible for overseeing major functions of the PEC's enforcement program including audits and investigations.

The incumbent receives general direction from the Public Ethics Commission, and exercises supervision over the Enforcement Chief, Public Ethics Commission, and all other subordinate staff including Ethics Investigators and Ethics Analysts and other professional, technical and clerical staff.

EXAMPLES OF DUTIES:

Duties may include, but are not limited to, the following:

- Provide highly responsible and complex executive level direction to the execution of the mission of the Public Ethics Commission.

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- Develop and implement policies, programs, and activities related to the administration and enforcement of the laws within the PEC's jurisdiction, including the following: Oakland Campaign Finance Reform Act, Limited Public Financing Act, Government Ethics Act, Sunshine Ordinance, and Lobbyist Registration Act.
- Oversee all PEC operations, including the filing of disclosure statements required by state and local laws, the preparation of advice and opinions regarding laws within the PEC's jurisdiction, investigations, audits and enforcement of those laws, and the development of educational programs and materials.
- Advise Commission members regarding laws, policies, and procedures, and review and recommend legislative changes to the laws under the PEC's jurisdiction.
- Prepare budget reports and requests, maintain fiscal controls, manage the PEC's budget and advocate for budget needs.
- Prepare or review reports to the City Administrator, City Council or other departments or commissions; work closely with Council and other public and private groups to coordinate plans or communicate about proposed projects.
- Supervise, train, develop and evaluate subordinate staff; inspire and lead staff to achieve the PEC's objectives.
- Plan and manage public hearings and represent the PEC before other local, state, and community organizations.
- Establish and maintain collaborative relationships with Commissioners, public officials, City staff, other departments and organizations, media, and the general public in the performance of assigned duties.
- Receive and direct all external communications on behalf of the PEC, including communications with the media, public officials, other government agencies, and the public.

MINIMUM QUALIFICATIONS:

The following qualifications are guidelines, as the appointing authority has broad discretion in filling positions in this classification.

Education:

A Bachelor's Degree from an accredited college or university in public or business administration, public policy, political science, law or a related field. Possession of a Juris Doctor or Master's degree is highly desirable.

Experience:

Five years (5) of progressively responsible professional experience in public administration, public policy, complaint investigation, litigation, legal advisory support or related area including two years in a supervisory or management capacity. Experience with campaign finance, lobbyist, transparency or ethics laws and regulations is highly desirable.

KNOWLEDGE AND ABILITIES:

Knowledge of:

- Laws, ordinances, and acts pertaining to the conduct of public servants, candidates, lobbyists, and other PEC clients; California Political Reform Act; Oakland Campaign Reform Act; Oakland Sunshine Ordinance; Oakland Government Ethics Act; related federal, state, and local codes; and the City Charter.

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- Principles, practices and techniques of conducting an investigation, including performing interviews, research and data analysis, report writing, and developing objective recommendations.
- Public and community relations and the development and implementation of education, outreach, and engagement programs.
- Strategic planning to achieve organizational goals and objectives.
- Budget development and administration.
- Administrative principles and methods including program and policy development and implementation and employee supervision.
- Best practices, policies, legislation, and innovations in campaign finance, government ethics or transparency laws and systems.
- Computer systems and applications.

Ability to:

- Conduct strategic planning and goal setting, prioritize activities, innovate systems, manage change and measure results of an organization.
- Interpret rules, laws and regulations and terminology pertaining to campaign finance, transparency, and ethics laws.
- Communicate effectively orally and in writing; make presentations to both large and small groups; prepare thorough written documents.
- Exercise judgment, initiative, thoroughness, tact, courtesy and discretion in dealing with other departments, City officials, outside agencies and the public.
- Serve with integrity, avoiding the appearance of bias or favoritism toward any party; clearly identify actual or potential conflicts of interest that might affect the fair performance of one's duties.
- Inspire, supervise, train, develop and evaluate assigned professional, technical and clerical staff.
- Administer the budget.
- Use a personal computer and software applications.
- Establish and maintain effective work relationships with those contacted in the performance of required duties.

LICENSE OR CERTIFICATE / OTHER REQUIREMENTS:

Individuals who are appointed to this position will be required to maintain a valid California Driver's License throughout the tenure of employment OR demonstrate the ability to travel to various locations in a timely manner as required in the performance of duties.

OTHER REQUIREMENTS

None required.

CLASS HISTORY:

Revised: 06/16/2022; CSB Reso#: 45135

Established: 07/16/2015; CSB Reso#: 44772

Exemption: 902(b); Reso#: 13321