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APPROVED AS TO FORM AND LEGALITY

Barbara J. Parker
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 90347 C.M.S.

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO CHOOSE CONFLICT COUNSEL IF THE CITY ATTORNEY DETERMINES A CONFLICT OF INTEREST EXISTS IN THE CITY ATTORNEY'S REPRESENTATION OF THE COMMISSION;

- (7) REQUIRE THE CITY COUNCIL OR A COUNCIL COMMITTEE TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;**
- (8) AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY EVERY TWO YEARS;**
- (9) AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY IN WHICH THE CUMULATIVE VALUE EXCEEDS FIFTY DOLLARS (\$50) IN A CALENDAR YEAR; AND**

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION

WHEREAS, in 2014, Oakland voters passed Measure CC, with 73.9% of voter support, adding Section 603 to the City Charter to significantly strengthen the independence, authority, and staffing of the Public Ethics Commission (Commission); and

WHEREAS, the Commission's workload and responsibilities have increased significantly since the passage of Measure CC; and

WHEREAS, 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 in other jurisdictions for ensuring ethics commission independence; and

WHEREAS, on April 10, 2024, the Commission adopted a set of recommendations to strengthen its independence, modernize its governance procedures to align with best practices in other jurisdictions, and enhance its staffing and administrative capacity to meet current program needs; and

WHEREAS, there have been no significant revisions to the Commission's governance structure since 2014; and

WHEREAS, in 2022 Oakland voters passed Measure W, the Fair Elections Act, with 73.9% voter support, which commits the Commission to implementing the Democracy Dollars public campaign financing program to make Oakland elections more equitable, accessible, and fair ; and

WHEREAS, the Commission's enforcement caseload now vastly outpaces staff capacity, forcing over half its cases to be put on indefinite hold, leading to diminished enforcement and deterrence, which is contrary to the goals and purpose of the Commission; and

WHEREAS, the Commission requires an adequate staffing level to meet its commitment to voters to implement the Fair Elections Act, enforce ethics laws, and keep up with its other core functions; and

WHEREAS, an effective, autonomous, and adequately funded watchdog agency is critical to increasing the public's trust in the governance of the City of Oakland; and

WHEREAS, the City Council finds that amendments to the Lobbyist Registration Act further the purposes of that ordinance, by prohibiting gifts exceeding a certain value to elected officials, candidates, and their immediate family which may create a risk or the appearance of corruption; now therefore be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council hereby proposes to amend Charter section 603, 401(1), 403((3) and Oakland Municipal Code Chapter 2.24 AND 3.20 to add, delete, or modify sections as set forth below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by ~~strike-through~~ type; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed).

The people of the City of Oakland do ordain as follows:

Section 1. Amendments of Section 603 of the Charter of the City of Oakland. Section 603, *Public Ethics Commission*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored:

SECTION 603 – PUBLIC ETHICS COMMISSION

(a) ~~Creation, and Role~~ Purpose and Responsibilities.

(1) There is hereby established a Public Ethics Commission as an autonomous department of the City whose purpose shall be to promote more inclusive, representative, and accountable democracy in Oakland and to promote fairness, openness, honesty and integrity in City government.

~~which~~ (2) The Commission 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, lobbyists, candidates, campaign committees, 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, including programs to promote more inclusive, representative, and accountable democracy in Oakland.

Such laws, regulations, policies, and programs shall include those relating to campaign finance, lobbying, transparency, and governmental ethics, as they pertain to Oakland.

(3) The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing.

(4) 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 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) Administer and adopt policies to implement the Democracy Dollars Program or any other campaign public financing program.

~~(98)~~ Perform such other functions and duties as may be prescribed by laws of this Charter or City ordinance.

(c) ~~Councilmember-Elected Official Salary Increases.~~ The Public Ethics Commission shall set the salary for the City Councilmembers, the City Attorney, and the City Auditor as provided for in Charter Sections 202, 401(1), and 403(1) ~~Council compensation as provided for in Charter Section 202.~~

(d) Appointment, Qualifications, 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) (i) 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 and the Executive Director of the Commission.

~~(2) (ii) 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 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.~~

(2) Commissioner Qualifications.

(i) Each member of the Commission shall be a resident of Oakland and registered to vote in a City or Oakland Unified School District election.

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

(iii) A person is ineligible to be appointed to the Commission if that person, in the two (2) years preceding their appointment, has been any of the following:

(A) A City or Oakland Unified School District elected official;

(B) A spouse, registered domestic partner, parent, sibling, or child of a City or Oakland Unified School District elected official;

(C) An employee of a City or Oakland Unified School District elected official;

(D) A candidate for a City or Oakland Unified School District elected office;

(E) An employee of, or paid consultant to, a candidate running for a City or Oakland Unified School District elected office, or a campaign committee controlled by a City or Oakland Unified School District elected official;

(F) An officer or paid employee of a political party;

(G) A person who has contributed, in the aggregate, more than two times the individual contribution limits (excluding any contributions attributable to public campaign funds) to one or more candidates for a City or Oakland Unified School District elected office, to a campaign committee controlled by a City or Oakland Unified School District elected official, or to a campaign committee that supported or opposed a candidate for a City or Oakland Unified School District elected office;

(H) A registered Oakland lobbyist, or person who is required to register as an Oakland lobbyist.

Notwithstanding the requirements of this Paragraph, a Commissioner appointed prior to January 1, 2025, shall be subject only to the qualifications in effect at the time of the Commissioner's appointment.

(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 (3) 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. In the event a member's replacement has not been appointed by the conclusion of the member's term, that member may continue to serve as a member of the Commission during the following term in a holdover capacity for a period not to exceed one year until a new member is appointed to serve the remainder of such following term.

(4) Quorum and Voting. Four (4) members shall constitute a quorum. Provided that a quorum exists, the Commission may take action by majority vote of the members present at a meeting, except as otherwise required in this Section or another law.

(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 is absent from three (3) consecutive regular Commission meetings without permission from the Chair of the Commission, is convicted of a felony involving moral turpitude, 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 (4) 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 12090 days of the occurrence of such vacancy may be filled by the Commission City Council in the same manner as provided by Charter, Section 601 following a public recruitment and application process and by the affirmative vote of at least four (4) members of the Commission. The Commission's appointee shall possess the same background qualifications that would otherwise be required of an appointee of the Mayor, City Attorney, or City Auditor as set forth in (d)(1)(i). For purposes of this paragraph, a seat filled by a member acting in a holdover capacity will be considered vacant as of the expiration of the holdover's prior term of office.~~

~~(6) Removal. Members of the Commission may be removed, after a hearing, by either the City Council by the affirmative vote of at least six (6) members of the Council or by the Commission by the affirmative vote of at least five (5) members of the Commission, by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony involving moral turpitude, 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 substantial violation of this Charter Ssection., Prior to the hearing, the member at risk of removal shall be provided with after written notice of the grounds on which removal is sought and an opportunity for a written response. The City Council or the Commission may initiate removal proceedings and shall provide such written notice to the member.~~

~~(e) **Qualifications and During and Post-Service 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) Have an employment or contractual relationship with an elected official of the City or Oakland Unified School District, or receive a gift or other compensation from such officials, during the member's tenure.~~

~~(3) 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.~~

~~(43) Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, during the member's tenure or participate in or contribute to an Oakland municipal campaign.~~

~~(54) Endorse, support, oppose, contribute to, or volunteer or work on behalf of any candidate or ballot measure in an City or Oakland Unified School District election during the member's tenure, except for a ballot measure that expressly pertains to the activities or authority of the Commission or to the laws under the jurisdiction of the Commission. The Commission may adopt rules to implement this exception.~~

~~(6) Serve as an officer or employee of a political party during the member's tenure.~~

Notwithstanding the requirements of this Subsection, a Commissioner appointed prior to January 1, 2025, shall be subject only to the during and post-service restrictions in effect at the time of the Commissioner's appointment.

(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 limits on fines provided by 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 (5) 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 (4) members.

(3) ~~Investigations. Preliminary review by Commission staff of allegations~~ Confidentiality. Records and information obtained by the Commission during the preliminary review and investigation of a complaint shall be confidential and exempt from public disclosure, to the extent permitted by law, until any of the following occurs:

~~(i) Placement of the item on a Public Ethics Commission meeting agenda~~ Final enforcement action by the Commission;

~~(ii) Passage of one year since the complaint was filed;~~

~~(iii) Action by the Executive Director closing the file~~ matter without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or

~~(iiiiv) Expiration of the Statute of Limitations.~~

Nothing in this section limits the ability of the Commission to disclose such records or information when charging, prosecuting, closing, or dismissing an investigation or complaint into alleged violations of the laws under its jurisdiction. This section does not prevent the Commission from applying any other exemption from disclosure that may be available under City or state public records disclosure laws. To the extent permitted by law, disclosure of records or information in the course of making a referral to other enforcement authorities shall not constitute a waiver of the confidentiality protections under this section.

(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:

(i) Executive Director;

(ii) Enforcement Chief;

(iii) Ethics Investigator and effective July 1, 2026, one additional Ethics Investigator;

(iv) Any Three (3) of the following: Ethics Analyst I, Ethics Analyst II, Administrative Analyst I, or Administrative Assistant I.

(vi) 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 (3) 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. A reduction may occur only as part of a general reduction in expenditures across multiple departments.

(4) The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four (4) 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 may be a licensed California attorney and shall serve at the pleasure of the Executive Director.

(6) 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.

(7) 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 restrictions shall apply only to the Executive Director.

(h) Amendment of Laws. Prior to adopting, or enacting any amendments to, laws that the Commission has the power to enforce or administer, the City Council shall make a finding that the proposed changes further the goals and purposes of the ordinance law or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to such laws that the Commission has the power to enforce and proposed ballot measures that would adopt or 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) Legal Services. If the City Attorney determines a conflict of interest exists in the City Attorney's representation of the Commission regarding a particular matter, the Executive Director shall have sole discretion to select conflict counsel for that matter.

(j) Consideration of Commission Proposals. The Commission may propose amendments to any law it enforces or administers which, upon being submitted to the Chair of the Rules Committee, shall be considered by the City Council or a standing committee of the City Council within 180 days.

(k) 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.

SECTION 2. Amendments of Section 401(1) of the Charter of the City of Oakland. Section 401(1), *City Attorney*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored:

Section 401(1). City Attorney. The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set ~~annually~~ every two years by the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

SECTION 3. Amendments of Section 403(1) of the Charter of the City of Oakland. Section 403(1), *City Auditor*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored:

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible for the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the City Auditor shall be set ~~annually~~ every two years by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

SECTION 4. Repeal and Reenactment of Oakland Municipal Code, Section 3.20.180.

Oakland Municipal Code, Section 3.20.180, *Restrictions on payments and expenses benefitting local public officials, candidates for local office, designated employees and immediate families*, is hereby repealed and reenacted as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored.

3.20.180 - Restrictions on payments and expenses benefiting local public officials, candidates for local office, designated employees and immediate families.

A. ~~No local governmental lobbyist or a local governmental lobbyist's registered client~~ shall make any payment or incur any expense that directly benefits an elected City officeholder, candidate for elected City office, a designated employee, or a member of the immediate family of one (1) of these individuals, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.

B. No local governmental lobbyist shall make any payment or incur any expense that directly benefits a designated employee, or a member of the immediate family of a designated employee, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.

C. No local governmental lobbyist shall make any payment or incur any expense that directly benefits an elected City officeholder, candidate for elected City office, or a member of the immediate family of one (1) of these individuals in which the cumulative value of such payments or expenses exceeds fifty dollars (\$50.00) during any calendar year.

D. The payments and expenses specified in subsections (A) through (C) include gifts, honoraria and any other form of compensation but- do not include (1) campaign contributions; (2) payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal. Code of Regs. No. 18944. 1 (a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this Section.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Measure shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by

the City Council, except the amendments to the Lobbyist Registration Act shall go into effect on January 1, 2025.

and be it

FURTHER RESOLVED: That each ballot used at the November 5, 2024 election shall have printed therein, in addition to any other matter required by law the following:

CHARTER AMENDMENT TO SECTIONS 603, 401 AND 403 OF THE CITY CHARTER AND AMENDMENT TO OAKLAND MUNICIPAL CODE, CHAPTERS 2.24 AND 3.20

MEASURE ____

Shall a measure amending the City Charter and Oakland Municipal Code to, among other things, revise qualifications and restrictions for service and removal procedures, specify the vote threshold for action and increase minimum staffing requirements for the Public Ethics Commission; allow the Commission to set City Attorney and City Auditor salaries biannually rather than annually; and amend the Lobbyist Registration Act to restrict payments and expenses incurred by local government lobbyists, be adopted?	Yes	
	No	

;and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the Clerk of the City of Oakland (“City Clerk”), at least 88 days prior to the November 5, 2024 General Municipal Election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

FURTHER RESOLVED: That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter and Oakland Municipal Code amendments, and said date shall be posted by Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice, publication and printing of notices as to said proposed Charter and Oakland Municipal Code amendments in the manner provided for by law; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2024 General Municipal Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 5, 2024 General Municipal Election, consistent with applicable law.

IN COUNCIL, OAKLAND, CALIFORNIA,


PASSED BY THE FOLLOWING VOTE: JUL 9 2024

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, ~~REID~~,
AND PRESIDENT FORTUNATO BAS - 5 Ayes

NOES - 2 Gallo / Jenkins

ABSENT - 0

ABSTENTION - 0
Excused - Reid

ATTEST: 
ASHA REED
Acting City Clerk and Clerk of
the Council of the City of
Oakland, California

2024 JUL 29 PM 3: 30

CITY ATTORNEY'S TITLE AND SUMMARY

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Title:

Proposed amendment to the City Charter relating to the Public Ethics Commission (Commission) to change the qualifications for members of the Commission, restrictions on their activities during service, and procedures for their appointment and removal, specify the vote thresholds for the Commission's actions, and increase minimum staffing requirements; require the Commission to set the salaries of the City Attorney and City Auditor every two years; and proposed amendment to the Lobbyist Registration Act to restrict lobbyists' payments to elected officials and their families.

Summary:

This measure would amend the Charter to make these changes to the Public Ethics Commission (Commission):

- prohibit a person from serving on the Commission if within two years of appointment, the person was:
 - an elected official of the City or the Oakland Unified School District (local elected official) or an employee of that official;
 - a candidate for City or Oakland Unified School District office (local elective office) or an employee or consultant for that candidate;
 - a spouse or close family member of a local elected official;
 - an officer or employee of a political party;
 - a registered lobbyist; or
 - someone who made campaign contributions to candidates for local elective office that total more than two times the local contribution limit, currently \$600;
- prohibit Commissioners from being employees or contractors of local elected officials, from receiving gifts or compensation from such officials, and from serving as an officer or employee of a political party;
- authorize Commissioners to support local ballot measures that relate to the Commission;
- require that Commissioners vacate their seat after unexcused absences at three consecutive meetings;
- allow the Commission to appoint someone to fill a vacant seat on the Commission if the elected official with authority to appoint a Commissioner does not do so within 120 days of a vacancy;
- allow the City Council (Council) or the Commission to remove a Commissioner after providing the member written notice and a hearing;
- allow a Commissioner to serve for up to one year after the end of their term if no person has been appointed to the seat;

- authorize the Commission to act by a majority vote of members present at a meeting, provided at least four members are present;
- add one investigator to the Commission's staff and limit the Council's ability to reduce staffing;
- authorize the Commission's Executive Director to select outside legal counsel if the City Attorney determines a conflict of interest prohibits the City Attorney from advising the Commission; and
- require the Council to consider within 180 days Commission proposals regarding amendments to laws the Commission enforces or administers.

This measure would require the Commission to set the salary of the City Attorney and the City Auditor every two years instead of annually.

The measure would amend the Lobbyist Registration Act to prohibit lobbyists from making payments directly benefitting an elected City official, candidate, or their immediate family, such as gifts or compensation, if the cumulative value exceeds \$50 in a calendar year.

/s/ David Chiu
San Francisco City Attorney

2024 JUL 29 PM 3: 31

CITY ATTORNEY'S IMPARTIAL LEGAL ANALYSIS

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OAKLAND

Public Ethics Commission

The Public Ethics Commission is a City department that administers the City's government ethics laws, overseen by a seven-member body (Commission). The Mayor, City Attorney, and City Auditor each appoint one member; the Commission appoints four members.

The measure would amend the Charter to make these changes to the Commission:

Eligibility to Serve

This measure would change the qualifications and impose additional restrictions on Commissioners' activities as follows:

- prohibit a person from serving if within two years of appointment, the person was a: City or Oakland Unified School District elected official (local elected official) or employee of that official; candidate for City or Oakland Unified School District office (local elective office) or employee or consultant for that candidate; spouse or close family member of a local elected official; officer or employee of a political party; registered lobbyist; or if the person made campaign contributions to candidates for local elective office totaling more than two times the local contribution limit, currently \$600; and
- Commissioners could not be employees or contractors of local elected officials or receive gifts or compensation from those officials, nor serve as an officer or employee of a political party.

Vacancies, Removal, and Service After Expired Term

Currently, the elected official who appointed a Commissioner (appointing authority) may remove the Commissioner upon City Council (Council) approval, including for unexcused absences at three consecutive meetings. The appointing authority appoints someone to the vacant seat. This measure would:

- allow the Council or the Commission to remove a Commissioner;
- require that Commissioners vacate their seat after unexcused absences from three consecutive meetings;
- allow the Commission to fill a vacant seat not filled by the appointing authority within 120 days; and
- allow a Commissioner to serve for up to one year after their term expires.

Vote Threshold

Four Commissioners must be present for the Commission to meet, and the Commission generally acts by a vote of at least four Commissioners.

Under the measure, the Commission could act by a majority of Commissioners present, provided at least four members are present.

Minimum Staffing and Budget

This measure would add one investigator to the Commission's staff and limit the City's ability to reduce Commission staffing.

Legal Services

The City Attorney selects outside counsel if a conflict prohibits the City Attorney from advising the Commission. The measure would instead authorize the Commission's Executive Director to select outside counsel.

Commission Legislative Proposals

The Commission may submit proposals to amend local ethics laws to the Council. The measure would require the Council to consider such proposals within 180 days.

City Attorney and City Auditor Salaries

The Commission annually sets the salaries of the City Attorney and City Auditor. The measure would require the Commission to set these salaries every two years.

Lobbyist Registration Act

The measure would amend the Lobbyist Registration Act to prohibit lobbyists from making payments such as gifts or compensation benefitting an elected City official, candidate, or their immediate family, if the cumulative value exceeds \$50 in a calendar year.

/s/ David Chiu
San Francisco City Attorney

2024 JUL 30 PM 1:51

**SACRAMENTO CITY AUDITOR'S IMPARTIAL FINANCIAL ANALYSIS OF THE BALLOT MEASURE TO
MODERNIZE AND STRENGTHEN THE PUBLIC ETHICS COMMISSION**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

If passed by more than fifty percent of the voters, the Measure would amend several areas of the City Charter and City Code. Revisions with a potential financial impact include: the addition of one Ethics Investigator position and revisions in the composition of specific classifications in the Public Ethics Commission's (Commission) staffing; the requirement for the City Council or Council committee to consider all proposals from the Commission regarding amendments to any law the Commission enforces or administers; and the amendment of the Lobbyist Registration Act to restrict local governmental lobbyists from making any payment or incurring any expense that directly benefits an elected City officeholder, candidate or member of their immediate family in which the cumulative value exceeds fifty dollars in a calendar year.

Financial Impact

This Measure is estimated to cost the City up to an additional \$328,430 annually. Staff salaries and benefit rates may increase over time.

The Measure amends Charter Section 603 (g)(2)(iii) by adding one additional Ethics Investigator in the Commission, increasing minimum staffing levels to 11 full-time employees, effective July 1, 2026. The annual cost of the additional Ethics Investigator for salary and benefits is estimated at \$241,784. Note: the minimum staffing budget may be reduced for one or two years if the City Council finds the City is experiencing an extreme financial crisis, as defined by City Council resolution. We used the negotiated rates effective March 1, 2025, to calculate the financial impact of prospective changes related to Charter Section 603(g)(2)(iii).

The Measure further amends Charter Section 603 (g)(2)(iv) by augmenting the composition of specific classifications in the staffing of the Commission. The current staffing classifications for the Office include one Ethics Analyst I, one Ethics Analyst II, and one Administrative Assistant I. The Measure allows for more flexibility of staffing by adding the classification Administrative Analyst I. The Measure will allow the staffing to be any three of the following: Ethics Analyst I, Ethics Analyst II, Administrative Analyst I, or Administrative Assistant I. The estimated financial impact of this change can range from an annual savings of \$89,584 to an increased annual cost of \$86,646 depending on how the three positions are staffed. We used the negotiated rates effective July 6, 2024, to calculate the financial impact of prospective changes related to Charter Section 603 (g)(2)(iv).

We estimate the new requirement that all Commission proposals be considered by City Council to be negligible as, according to the Commission's Executive Director, most proposals are currently already considered by the City Council.

Additionally, we estimate that the costs related to a potential increase in the number of complaints from lowering the reportable contribution amount from lobbyists from \$240 to \$50, would not be material to this analysis.

Our independent analysis represents the best information available at the time of this impartial analysis.
Actual costs may vary from these estimates.

Farishta Ahrary
Interim Sacramento City Auditor

ARGUMENT IN FAVOR OF MEASURE OO (Public Ethics Commission)

Public officials must be held accountable. The Oakland Public Ethics Commission (PEC) is our local agency that takes the lead on government ethics and accountability. It must have the authority, capacity, and independence to do its job. Voting Yes on Measure OO will give our PEC updated tools and structure to investigate and enforce Oakland's campaign finance and governmental ethics laws.

Ten years ago, Oakland voters adopted a landmark charter measure which strengthened the PEC, providing it with minimum staffing, expanded authority, and greater independence. There have not been any significant revisions to the PEC's governance structure since that time. Now, Measure OO will update the PEC's governance to incorporate best practices proven to be effective in other jurisdictions. It will also align the PEC's structure and staffing to better accomplish its core responsibilities. The PEC has stated that these reforms will help modernize it and help re-establish Oakland as a leader in ethical and accountable government.

This good government measure will enhance Oaklanders' trust in government by: Strengthening the City's anti-corruption rules with new rules limiting gifts from lobbyists; updating governance rules like those addressing conflicts of interest; supporting the PEC as a vigorous, independent entity; and moving Oakland toward the more inclusive democracy that voters demanded just two years ago with the passage of Democracy Dollars financing.

We know that good government requires strong and effective oversight. We can promote the accountability and transparency we want if we strengthen local ethics laws, safeguard the Commission's independence from outside influence, modernize its governance, and enhance its investigative capacity to meet growing responsibilities. Please join us in voting YES on Measure OO.

Victor Ochoa

Past Chair, Oakland Public Ethics Commission

Ernestine Nettles

President, League of Women Voters of Oakland

Krisida Nishioka

Former Oakland Public Ethics Commissioner

Ricky Govan

Oakland Rising Director of Communications

Carrie Crespo-Dixon

President, Make Oakland Better Now

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2024 AUG 15 PM 3:38

Rebuttal to Argument in Favor of Measure OO

Vote NO on Measure OO

Here's Why

Measure OO, a ballot Measure sponsored by the City Council to Amend the Public Ethics Commission, which contains illusive language, masking the real purpose of Measure OO, seeking voter approval of the ill-conceived pilot project Democracy Dollars.

The PEC has failed to execute its stated mission of *Accountability, Transparency and Ethical conduct amongst our elected officials.*

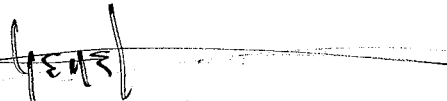
Nice Words, however, lack of action tell a different story:

1) The legal status of Former Mayor Libby Schaff's OAKLAND PROMISE, the organization responsible for the November 8, 2018 ballot measure known as Measure AA [The Children's Initiative of 2018]. That failed to receive voter approval. The City Council changed the election results, indicating; *Measure AA* won voter approval. Further, despite the fact, the former California Attorney General, Xavier Becerra in a response to a public records request, September 17, 2019, stating **OAKLAND PROMISE is not a 501(c)3, non-profit, tax-exempt, public corporation PEC failed to investigate, costing the residential property owner – \$30,000,000.00 annual parcel tax, for thirty years.**

2) Similarly, the PEC failed to investigate the City Auditors Report of OAKLAND PROMISE illegal occupancy in city hall costing an expenditure of \$4,000,000.00 from the City's General Fund account. PEC failed to investigate.

3) The PEC failed to investigate the City Council sponsored Ballot Measure X appearing on the November 5, 2022 General Election Ballot which violated the California State Constitution Again the PEC failed to investigate

VOTE NO ON MEASURE OO


Gene Hazzard
Public Advocate/Registered Voter

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2024 AUG 19 PM 3:02

ARGUMENT AGAINST AMENDING THE PUBLIC ETHICS COMMISSION

November 5, 2024, the City Council sponsored ballot measure Resolution 90347 is another effort to mislead the voter by illusive and vague language of a ballot measure. Amending the Public Ethics Commission [PEC] is supposed to create and promote efficiency and effectiveness in City Government through *Transparency*. The PEC has failed to implement it's own stated objectives with the various provisions of related stated laws including, the Political Reform Act, the Ralph Brown Act and the Public Records as they pertain to Oakland; and the reporting requirements of all local laws regarding campaign financing, lobbying *transparency* of government ethics.

In the past the PEC has failed to investigate both the November 5, 2018 General Election ballot measure known as *Measure AA* resulting in a \$30,000,000.00 dollar annual residential parcel tax, *lasting thirty years; and* the November 8, 2022 General Election ballot measure known as *Measure[X]* , again a City Council sponsored ballot measure which violated *The Single Subject Rule* of the California State Constitution Article IV section 9.

Currently, the proposed Amendment to the Public Ethics Commission is a camouflage, containing other provisions in the Amendment; the ostensible purpose however to this Amendment is to get voter approval for this ill-conceived *Democracy Dollars* pilot project. Neither is the cost amount stated, nor is there any reference made to the funding source. It's been suggested that the funding source will come from the City's General Fund; the City already is experiencing \$177,000,000 million dollar deficit for 2024-2025 fiscal year.

The stated *function and duties* of the Public Ethics Commission is "foster and enforce compliance with the law. This proposed City Council sponsored measure is another veiled attempt to mislead the voter.

This proposed Measure Amendment to the Public Ethics Commission lacks *Transparency*.

This measure does not deserve support! VOTE NO!

Gene Hazzard, a registered voter in the City of Oakland



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OAKLAND

2024 AUG -7 PM 4:44

REBUTTAL To ARGUMENT AGAINST MEASURE OO (PEC)

The Oakland Public Ethics Commission (PEC) is an independent city agency. The PEC's commissioners are Oakland residents whose mission is to promote transparency, fairness and honesty in city government. The PEC's duties include ensuring compliance with the City of Oakland's government ethics, campaign finance, transparency, and lobbyist regulation laws. Public trust in government rests on confidence that the PEC has the capacity to investigate and enforce these laws. Measure OO supports and bolsters the PEC's efforts for the public good. Importantly, Measure OO will help increase the PEC's capacity to investigate violations of campaign finance and governmental ethics laws. The provisions in Measure OO will help our PEC foster adherence to our local governmental ethics, sunshine and campaign finance laws. That's why current ethics commissioners recommended these ballot measure provisions to the City Council, and why former ethics commissioners support it.

Good government requires transparency and real oversight. We must have accountability that works. Measure OO will help. This measure strengthens local governmental ethics laws, protects the PEC's independence from undue influence, modernizes its governance structure, and increases its investigative capacity. Please join us in voting YES on Measure OO.

Ernestine Nettles (310-702-2020 Nettleslwvo@gmail.com)
President, League of Women Voters of Oakland

Evelyn Torres (925 238 6737 Evelyn@oaklandrising.org)
Executive Director Oakland Rising

Krisida Nishioka (510-530-5325 wsnishioka@gmail.com)
Former Oakland Public Ethics Commissioner

Carrie Crespo-Dixon (917-251-5557 carrie@makeoaklandbetternow.org)
President, Make Oakland Better Now

Victor Ochoa (510-261-4528 vro@vochoalaw.com)
Past Chair, Oakland Public Ethics Commission

2024 AUG 22 AM 10:50
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Gail Wallace
League of Women Voters