

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Teleconference
Wednesday, January 12, 2022
6:30 p.m.



PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

NOTE: Pursuant to California Government Code section 54953(e), Public Ethics Commission members and staff will participate via phone/video conference, and no physical teleconference locations are required. The following options for public viewing and participation 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:** Click on the link below to join the webinar: <https://us02web.zoom.us/j/88171471481?pwd=ODIQVFFUeVRsZUtHdFU3YU5XcHVadz09>
Password: 674732
 - To comment by online video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” is available at: <https://support.zoom.us/hc/en-us/articles/205566129> - Raise-Hand-In-Webinar.
- **Telephone:** Dial (for higher quality, dial a number based on your current location):
US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592
Webinar ID: 881 7147 1481
International numbers available: <https://us02web.zoom.us/j/88171471481>
 - To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing *9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663> - Joining-a-meeting-by-phone.

Members of the public may submit written comments to ethicscommission@oaklandca.gov. If you have any questions about how to participate in the meeting, please email ethicscommission@oaklandca.gov before or during the meeting.

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Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Jessica Leavitt, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

PRELIMINARY ACTION ITEMS

- 4. Virtual meetings by the Public Ethics Commission.** The Commission will review and take possible action to approve Resolution 22-01, establishing certain determinations to justify the ongoing need for virtual meetings following the California State Legislature's adoption and Governor's approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021). ([Resolution](#))

ACTION ITEMS

- 5. Approval of Commission Meeting Draft Minutes.**
 - December 6, 2021 Regular Meeting Minutes ([Meeting Minutes](#))
- 6. Election of Officers (Chair and Vice-Chair) of the Commission.** Commissioners will have an opportunity to nominate any Commissioner to serve as Chair and Vice Chair for 2022. If more than one Commissioner is nominated for an office, each nominee may speak regarding their qualifications and interest in serving and may answer questions of Commissioners or the public (Public Ethics Commission Operations Policies, Article IV). The Commission may discuss the nominations and, when the vote is called, each Commissioner may cast a single vote for each office. ([PEC Operations Policies](#))

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7. **In the Matter of Jason Overman (Case No. 18-14).** On May 9, 2018, the Commission received a complaint alleging that Respondent, Jason Overman, violated the contractor contribution ban of the Oakland Campaign Reform Act by making campaign contribution(s) to City of Oakland elected officials, candidates, or their controlled committees. The PEC investigation confirmed that the Respondent, a City contractor, made an \$800 contribution to the Abel Guillen 2014 Office Holder Account committee on April 28, 2017, and an \$800 contribution to Schaaf 2018 Office Holder Committee on June 30, 2017, during the period of time in which he was prohibited from making any contributions. Staff recommends the Commission approve a stipulation imposing the following penalties: \$500 on Count 1, and \$500 on Count 2, plus \$1,600 as the amount of the unlawful contributions, for a total penalty of \$2,600. ([Stipulation and Case Summary](#))
8. **Proposed Amendments to the Limited Public Financing Act (OMC Chapter 3.13).** Commission staff presents draft amendments to the Limited Public Financing Act to implement statutory amendment recommendations made by the City Auditor in her audits of the 2018 and 2020 implementation of the program. Amendments include changing the time period in which City disbursement checks must be deposited (from 3 business days to 30 calendar days) and deleting the provision that mandates the City Auditor to audit all participating candidates every election and instead provide the ability for discretionary audits, consistent with the City Auditor's existing discretionary authority under the City Charter. ([Staff Memorandum; Draft Proposed Amendments to the Limited Public Financing Act](#))

DISCUSSION ITEMS

9. **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. **Enforcement Subcommittee** (*ad hoc*, created on November 1, 2021) – Arvon Perteet (Chair), Ryan Micik, Jerett Yan

INFORMATION ITEMS

10. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides an overview of education, outreach, disclosure and data illumination activities for the 2021 year, as well

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as an update on activities for this past month. ([Disclosure Report](#))

11. **Enforcement Program.** Enforcement Chief Kellie Johnson provides a year-end summary of the Commission’s enforcement work, as well as a monthly update since the last regular Commission meeting. ([Enforcement Report](#); [18-05 Dismissal Letter](#); [17-22 Dismissal Letter](#))
12. **Executive Director’s Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities for the 2021 year, as well as a monthly update since the Commission’s last meeting. ([Executive Director’s Report](#); [M2019-15a Mediation Summary](#); [M2019-15b Mediation Summary](#); [M2019-15c Mediation Summary](#); [M2020-17 Mediation Summary](#); [M2021-11 Mediation Summary](#))
13. **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.

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 Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.

12/30/21

Approved for Distribution

Date



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Gracias.

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CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 22-01
[Proposed renewal 1-12-22]



Resolution Summary:

ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE PUBLIC ETHICS COMMISSION AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(E), A PROVISION OF AB 361.

By action of the Oakland Public Ethics Commission:

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

WHEREAS, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. See <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. See <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

WHEREAS, persons without symptoms may be able to spread the COVID-19 virus. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 22-01
[Proposed renewal 1-12-22]



WHEREAS, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

WHEREAS, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh/outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

WHEREAS, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

WHEREAS, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households;

Now therefore be it:

RESOLVED: that the Public Ethics Commission finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and

RESOLVED: that, based on these determinations and consistent with federal, state and local health guidance, the Public Ethics Commission determines that conducting in-person meetings would pose imminent risks to the health of attendees; and

RESOLVED: that the Public Ethics Commission firmly believes that the community's health and safety and the community's right to participate in local government, are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and

RESOLVED: that the Public Ethics Commission and its committees will meet by teleconference this month and will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Public Ethics Commission finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

RESOLUTION NO. 22-01
[Proposed renewal 1-12-22]



CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for renewal at a duly noticed meeting of the City of Oakland Public Ethics Commission held on January 12, 2022, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of ____ to ____.

I hereby certify that the foregoing is true and correct.

Whitney Barazoto, Executive Director
Oakland Public Ethics Commission

Date

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6:30 p.m.



DRAFT

Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Jessica Leavitt, Ryan Micik, Arvon Perteet, and Joseph Tuman

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION MEETING AGENDA

1. Roll Call and Determination of Quorum.

The meeting was held via teleconference.

The meeting was called to order at 6:31 p.m.

Members present: MacDonald, Yan, Klein, Leavitt, Micik, Perteet and Tuman.

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Trish Shafie.

2. Staff and Commission Announcements.

There were no announcements.

3. Open Forum.

There was one public speaker.

PRELIMINARY ACTION ITEMS

4. Virtual meetings by the Public Ethics Commission.

The Commission reviewed and took action to renew Resolution 20-21, approved at the November 1, 2021, Special Meeting, establishing certain determinations to justify the ongoing need for virtual meetings following the California State Legislature's adoption

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DRAFT

and Governor's approval of AB 361 on September 16, 2021 (Chapter 165; Statutes of 2021).

MacDonald moved, and Tuman seconded to renew RESOLUTION NO. 21-01.

Ayes: MacDonald, Yan, Klein, Leavitt, Micik, Perteet and Tuman.

Noes: None

Vote: Passed 7-0

GUEST PRESENTATION

5. Audit of the Limited Public Financing Act Program – November 2020 Election.

City Auditor Courtney Ruby presented her findings from the City Auditor's Office audit of the Public Ethics Commission's implementation of the Limited Public Financing Act Program (LPF). Their recommendation is to update the LPF ordinance to no longer require the City Auditor to conduct a mandatory audit of the program.

There were no public speakers.

ACTION ITEMS

6. Approval of Commission Meeting Draft Minutes.

- a. November 1, 2021 Special Meeting Minutes
- b. November 1, 2021 Regular Meeting Minutes

There were no public speakers.

Tuman moved, and Micik seconded to adopt the November 1, 2021 Special Meeting Minutes

Ayes: MacDonald, Yan, Klein, Leavitt, Micik, Perteet and Tuman.

Noes: None

Vote: Passed 7-0

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Tuman moved, and Micik seconded to adopt the November 1, 2021 Regular Meeting Minutes

Ayes: MacDonald, Yan, Klein, Leavitt, Micik, Perteet and Tuman.

Noes: None

Vote: Passed 7-0

7. New Commissioner Selection.

The Commission received 4 applications for the PEC- appointed vacancy. Its Recruitment subcommittee had conducted interviews and selected three finalists to appear before the full Commission for a public interview. Each finalist was given four minutes to introduce themselves to the Commission, followed by questions from Commissioners.

After all finalists presented and answered questions, the Commission voted to select one new member to begin their three-year term on January 22, 2022.

There were no public speakers

Commissioners voted and selected Charlotte Hill to fill the vacancy.

MacDonald moved, and Yan seconded to accept Charlotte Hill as the new commissioner.

Ayes: MacDonald, Yan, Klein, Leavitt, Micik, Perteet and Tuman.

Noes: None

Vote: Passed 7-0

8. Public Ethics Commission Regular Meeting Schedule 2022.

The Commission reviewed and approved the schedule of regular Commission meetings in 2022.

There were no public speakers

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MacDonald moved, and Micik seconded to accept the meeting schedule for 2022.

Ayes: MacDonald, Yan, Klein, Leavitt, Micik, Perteet and Tuman.

Noes: None

Vote: Passed 7-0

9. *In the Matter of Annie Campbell Washington for Oakland City Council 2018 (PEC Case No. 19-06).*

Leavitt recused herself from this matter, stating that she had previously worked on this campaign, and turned off her video camera.

On May 9, 2019, the Commission's filing officer for campaign statements referred former City Council Member Annie Campbell Washington and her Annie Campbell Washington for Oakland City Council 2018 committee to the PEC Enforcement Unit for failing to file a semi-annual campaign statement for the period of July 1, 2018 through December 31, 2018.

Kellie Johnson, Enforcement Chief, recommended the Commission approve a stipulation imposing a penalty of \$1,000 on Count 1, and \$1,171 in late fees assessed by the filing officer, for a total of \$2,171.

There were no public speakers

Perteet moved, and Micik seconded to accept the staff recommendation.

Ayes: MacDonald, Yan, Klein, Micik, Perteet and Tuman.

Noes: None

Vote: Passed 6-0

DISCUSSION ITEMS

10. Reports on Subcommittees and Commissioner Assignments.

- a. **Enforcement Subcommittee** (*ad hoc*, created on November 1, 2021) – Arvon

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DRAFT

Perteet (Chair), Ryan Micik, Jerett Yan

Perteet shared that the first meeting will be held December 8, 2021.

- b. **Commissioner Recruitment Subcommittee** (*ad hoc*, created on November 1, 2021) – Michael MacDonald (Chair), Avi Klein, Jessica Leavitt

MacDonald dissolved the committee.

There were no public speakers.

INFORMATION ITEMS

11. Disclosure and Engagement.

Suzanne Doran, Lead Analyst, provided a report of recent education, outreach, disclosure and data illumination activities.

There were no public speakers.

12. Enforcement Program.

Ms. Johnson reported on the Commission's enforcement work since the last regular Commission meeting.

There were no public speakers.

13. Executive Director's Report.

Whitney Barazoto, Executive Director, reported on overall projects, priorities, and significant activities since the Commission's last meeting.

There were no public speakers.

14. Future Meeting Business.

Chair MacDonald noted that this is a new item added to the agenda to allow for potential discussion of future agenda items.

There were no public speakers.

Item 5 - Meeting Minutes

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DRAFT

The meeting adjourned at 8:23 p.m.



CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

OPERATIONS POLICIES
Effective January 1, 2016

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Item 6 - PEC Operations Policies

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ARTICLE I - MISSION STATEMENT

The Public Ethics Commission (Commission) ensures compliance with the City of Oakland's government ethics, campaign finance, transparency, and lobbyist registration laws that aim to promote fairness, openness, honesty, and integrity in city government. To fulfill its mission, the Commission conducts the following activities:

- A. **Lead/Collaborate** – Lead by example and facilitate city policy, management, and technological changes to further the Commission's mission.
- B. **Educate/Engage** – Provide education, advice, technical assistance, and formal legal opinions to promote awareness and understanding of the city's campaign finance, ethics, and transparency laws.
- C. **Disclose/Illuminate** – Facilitate accurate, effective, and accessible disclosure of government integrity data, such as campaign finance reporting, conflicts of interest/gifts reports, and lobbyist activities, all of which help the public and PEC staff monitor filings, view information, and detect inconsistencies or noncompliance.
- D. **Detect/Deter** – Conduct investigations and audits to monitor compliance with the laws within the Commission's jurisdiction.
- E. **Prosecute** – Enforce violations of the laws within the Commission's jurisdiction through administrative or civil remedies.

ARTICLE II - JURISDICTION, APPLICABLE LAW

The Commission was created by City Charter in 1996 (Section 202), which was amended in November 2014 (Section 202, 603) to strengthen the Commission's authority, independence and staffing. The Commission oversees compliance with the following laws:

- A. The City of Oakland Government Ethics Act (O.M.C. chapter 2.25);
- B. The City of Oakland Campaign Reform Act (O.M.C. chapter 3.12);
- C. Limited Public Financing Act of the City of Oakland (O.M.C. chapter 3.13);
- D. Oakland Sunshine Ordinance (O.M.C. chapter 2.20);
- E. The City of Oakland Lobbyist Registration Act (O.M.C. chapter 3.20); and
- F. Oakland False Endorsement in Campaign Literature act (O.M.C. chapter 3.14).

The Commission must comply with all applicable laws, including but not limited to:

- A. Oakland City Charter, including but not limited to Sections 202 and 603;
- B. Public Ethics Commission Operations Ordinance (O.M.C. chapter 2.24);
- C. Oakland Sunshine Ordinance, the California Ralph M. Brown Act (Gov. Code sections 54950, *et seq.*) and the California Public Records Act (Gov. Code sections 6250, *et seq.*);
- D. The City of Oakland Government Ethics Act (O.M.C. chapter 2.25); and
- E. These Operations Policies and other policies adopted by the Commission.

ARTICLE III - COMMISSION STRUCTURE AND SUPPORT

Section 1: Commission

The Public Ethics Commission is a seven-member board of Oakland residents responsible for establishing Commission policies and priorities, promoting government transparency, and serving as a quasi-judicial body that adjudicates enforcement matters brought to the Commission by staff.

Acceptance of the Oath of Public Office constitutes a commissioner's sworn responsibility to the public trust. Commissioners must collectively and individually respect and honor their appointed role and strive to maintain public confidence in the Commission's role in the government of the city of Oakland.

Section 2: Executive Director

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.

Section 3: Commission Staff

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 Personnel Department, and the Commission's budget.

Section 4: Legal Advisor

The City Attorney is the Commission's legal advisor. Any commissioner may consult informally with an attorney assigned to the Commission on any matter related to Commission business. However, a request from a commissioner for assistance requiring significant legal research, a substantial amount of time and attention, or a written response must be authorized by the Executive Director, the Chair, or by a majority vote of the Commission or one of its Committees.

Section 5: Commission Spokesperson

The spokesperson for the Commission is the Executive Director or designee, the Chair, or the Vice Chair if the Chair is unavailable.

ARTICLE IV – OFFICERS

Item 6 - PEC Operations Policies

Section 1: Election of Officers

The officers of the Commission are the Chair and Vice Chair. At the first regular meeting of each year, commissioners must elect a Chair and Vice Chair. At the meeting, a commissioner may nominate any commissioner to serve in the office of Chair or Vice Chair. If more than one commissioner is nominated for an office, each nominee may speak regarding their qualifications and willingness to serve and answer questions of commissioners or the public. The Commission may discuss the nominations and, when the vote is called, each commissioner may cast a single vote for each office.

Section 2: Chair

The Chair presides at all meetings of the Commission and is an ex-officio member of all standing committees. The Chair is accountable to the Commission as a whole in setting policy.

Section 3: Vice Chair

The Vice Chair performs the duties and responsibilities that may be delegated by the Chair. In the absence or disability of the Chair, the Vice Chair will perform the duties and responsibilities of the Chair.

ARTICLE V - COMMITTEES

Section 1: Standing and Ad Hoc Committees

It is the policy of the Commission to appoint individual commissioners to perform specific tasks or functions by serving on standing or ad hoc committees. Thus, as necessary, the Chair may create a standing or ad hoc committee, identify its purpose, appoint commissioners as members, and designate a Committee Chair.

Terms of ad hoc committees may not exceed one year. Membership on ad hoc committees may not exceed three commissioners.

Commission staff will post a list of the Commission's current committees and committee membership on the Commission's website.

Section 2: Committee Meetings

Committee meetings may be called by the Chair, the committee's chair, or by majority vote of members of the committee.

Meetings of standing committees follow the same procedures provided under Article VI, sections 3 through 7 of these Operations Policies.

Section 3: Committee Quorum

A majority of the members of a committee constitutes a quorum.

ARTICLE VI - COMMISSION MEETINGS

Section 1: Meetings: Time, Public Location, Notice

The Commission must hold regular meetings at an established time and place suitable for its purposes, and consistent with the requirements of the Brown Act and Sunshine Ordinance. Generally, regular Commission meetings are held on the first Monday of each month at 6:30 p.m., or as otherwise set forth in the published calendar and posted on the Commission's website with the proper notice. Regular meetings are held in Oakland City Hall, One Frank Ogawa Plaza in the city of Oakland, California.

Meetings scheduled for a time or place other than for regular meetings are designated as special meetings.

Written notice of regular meetings and special meetings must be provided at least 10 days or 72 hours in advance, respectively, in the manner required by Charter section 1205, the Oakland Sunshine Ordinance, and the Brown Act.

Section 2: Quorum

At all meetings of the full Commission, the presence of four (4) commissioners constitutes a quorum. (Charter section 603(d)(4).) No action can be taken on an agenda item unless at least four (4) commissioners are present. If ever during a meeting there is less than a quorum present, a motion to adjourn is appropriate; absent objection, debate can be continued, but no vote taken, except to adjourn. When a quorum exists, official action requires a majority vote of those commissioners present when the vote is called, unless otherwise provided by the Charter (e.g., for certain enforcement matters and for removal of the Executive Director).

Section 3: Public Engagement

The Commission values and encourages public input and, regarding public participation in Commission proceedings, will liberally construe the public's rights under the Brown Act and Sunshine Ordinance. The Commission proactively develops and promotes new channels for public participation in local government beyond the minimum legal requirements, for example, by utilizing new technology and social media tools to facilitate greater public access to government information and proceedings; conducting special meetings and hearings on relevant issues; collaborating with civic groups on issues and projects within the Commission's jurisdiction; and engaging in affirmative public outreach through non-traditional means.

Item 6 - PEC Operations Policies

All interested persons are encouraged to provide input or request information regarding Commission business by contacting Commission staff at (510) 238-3593 or ethicscommission@oaklandnet.com, or view information online at www.oaklandnet.com/pec.

At each regular Commission meeting, all interested persons may express their views regarding a matter within the jurisdiction of the Commission. This opportunity for comment, called “Open Forum,” will appear on each agenda. Ordinarily, each speaker may speak for up to three minutes, but the Chair, in his or her discretion, may limit or extend the time, provided such changes are reasonable in nature and uniformly applied. The Commission may also limit the time for public comment under Open Forum to a total of 15 minutes.

At regular and special Commission or Committee meetings, all interested persons must also be allowed to express their views on any agenda item upon the Commission’s review of the item. Before taking action on any agenda item, the Commission (or Committee) must provide the opportunity for public comment on that item. Each person wishing to speak on an agenda item is permitted to speak once, for a minimum of two minutes; however, the Chair, in his or her discretion, may limit or extend the time, provided such changes are reasonable in nature and uniformly applied.

The Commission urges the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since the public disclosure of such complaints or requests may undermine any subsequent investigation undertaken.

Section 4: Public Participation at Meetings

The agenda for each meeting must provide instructions for public participation. To encourage public participation, the Commission will employ the least formal, least restrictive procedures for public comment, so long as order is maintained.

In the event that the complexity of the issues, number of anticipated participants, or other factors suggest that greater formality is required to maintain order or protect the public’s right to participate, the Commission may utilize a more formal process (such as the “speaker card” procedure set forth in City Council Procedures Rule 12). In that case, the agenda will describe the process, including any special requirements, for public participation.

If during the course of a meeting it becomes apparent that the existing procedure for public comment is inadequate or inappropriate, the Chair may exercise his or her discretion to modify the procedure during the meeting. In that case, the Chair must state the reasons justifying the change in procedure, clearly explain how members of the public may provide comment as to each agenda item, and apply the modified process uniformly to all speakers.

Section 5: Chair

The Chair must maintain order in the chamber, has authority to refuse the floor to any person, and may limit or extend the time allocated to any speaker.

Item 6 - PEC Operations Policies

The Chair may rule a public speaker out of order if:

- A. the speaker is speaking beyond the allocated time limit;
- B. the speaker's remarks are not relevant to the agenda item or are repetitious; or,
- C. the manner, tone and content of the speaker's remarks are disruptive (disturb the peace and good order of the meeting), attack the character of individuals or are abusive (vulgar or obscene language).

The public has the right to criticize policies, procedures, programs, or services of the city, the Commission or of any other aspect of the city's or Commission's proposals or activities, or the acts or omissions of the Commission or its staff or other public employees. The Commission will not abridge or prohibit public criticism on the basis that the performance of one or more public employees is implicated. Nothing in this section confers any privilege or protection beyond that which is otherwise provided by law.

Section 6: Meeting Minutes

Commission staff will draft minutes after every regular and special Commission meeting, and every standing committee meeting, subject to approval by majority vote of the Commission or respective committee. The minutes must reflect meeting start and end time, commissioner attendance (including the absence of any commissioner for any votes taken), summary of each item, and vote (if applicable) for each item considered.

Section 7: Closed Sessions

Upon the determination by a legal advisor from the City Attorney's Office that a closed session is both authorized and appropriate under the circumstances, the Commission may call for a closed session. Appropriate notice must be given of all closed sessions.

Section 8: Recess

The Commission recesses for a period of one month each year. During this annual recess, the Chair may convene the Commission for special meetings, and the chair of a standing or ad hoc committee may convene a committee meeting.

ARTICLE VII - AGENDA REQUIREMENTS

Section 1: Agenda Preparation

Commission staff will work with the Commission Chair or standing Committee chair(s) to develop the agenda for all meetings. The agenda must be approved by the appropriate Chair and must contain a meaningful description of each item to be transacted or discussed at the Commission or committee meeting so that a person can reasonably determine if the item may affect his or her interests. The agenda also will provide instructions for public participation.

Section 2: Consent Calendar

A consent calendar is the portion of the printed agenda that lists routine matters that are expected to be non-controversial and on which there are no scheduled speakers. There will be no separate discussions on a consent calendar item unless, prior to its adoption, a request is made by a commissioner or the public, and accepted by the Commission, to remove the item from consent and consider it as a separate item.

ARTICLE VIII - VOTING

Section 1: Voting, Abstention, and Recusal

Each commissioner present at a Commission or committee meeting must vote on all matters put to a vote, unless the commissioner abstains or recuses him- or herself from a particular matter.

A commissioner wishing to abstain from a vote must state publicly the reason for abstention and move for Commission approval. If the motion passes, the abstaining commissioner must refrain from further discussion of the item and will not vote on the item.

A commissioner who has been advised by the City Attorney to recuse himself or herself from voting on an item due to a conflict of interest must recuse him or herself and leave the dais during discussion and voting on the item. A commissioner who recuses as to a particular item is not present for purposes of determining the existence of a quorum in Article VI, section 2, above.

Section 2: Voting by Proxy

Voting by proxy is prohibited.

ARTICLE IX - TREATMENT OF CONFIDENTIAL INFORMATION

In the course of their duties, commissioners may be exposed to privileged, confidential, or other information protected by law. While commissioners enjoy the full protection of the First Amendment and the public is entitled full access to public information, misuse of confidential information may have significant adverse consequences to the city, the Commission, city employees, or other individuals.

Section 1: Confidential Information

Generally, "Confidential Information," includes the following:

- A. Any information concerning a complaint that is still under preliminary review;
- B. Any communication or information provided to commissioners in preparation for, or during, a duly authorized closed session;

Item 6 - PEC Operations Policies

- C. Any communications by or from the City Attorney or any legal advisor to the Commission that reflect the legal advisor's work on behalf of the Commission, including the advisor's mental impressions, legal strategy, analysis, advice or conclusions;
- D. Non-public materials concerning pending or past litigation to which the Commission is/was a party;
- E. Information concerning Commission personnel matters, including but not limited to those concerning the hiring, performance, counseling, discipline or termination of any member or prospective member of Commission staff; or
- F. Other sensitive personal or financial information of third parties (including respondents to complaints) that would otherwise be protected by law.

Confidential Information does not include information generally available to the public or previously disclosed to members of the public, including at a Commission meeting. Nor does it include information that is required by law to be reported out of closed session.

The fact that Commission staff shares confidential information with another enforcement agency such as a District Attorney's Office, the California Fair Political Practices Commission, or the Federal Bureau of Investigation, does not render the information non-confidential.

Section 2: Prohibitions on Disclosure or Misuse of Confidential Information

Absent express authorization by the Executive Director, Chair, the Commission's legal advisor, or court order, a commissioner is prohibited from disclosing Confidential Information to any person who is not currently serving as a commissioner.

Commissioners are prohibited from using, directly or indirectly, Confidential Information for purposes other than the official business of the Commission.

If a commissioner has any doubt about a person's authorization to access Commission confidential information or is uncertain whether a particular use could constitute "misuse," the commissioner must, before disclosing or using the information, consult the Executive Director.

Section 3: Affirmative Duty to Safeguard Confidential Information

Commissioners must actively protect and safeguard Confidential Information through the use of physical and technical safeguards (e.g., strong passwords for access to electronically stored information) and secure methods of destruction, once materials are no longer needed.

A commissioner who discovers an unauthorized disclosure or misuse (potential or actual) of Commission confidential information must promptly notify the Executive Director. Similarly, a commissioner who receives a request, subpoena, or court order for disclosure of Commission confidential information must immediately notify the Executive Director.

Section 4: Term of Obligation

A commissioner's obligations pursuant to this Article do not terminate with the end of the commissioner's term of office.

ARTICLE X - PARLIAMENTARY PROCEDURE

Section 1: Robert's Rules of Order (Newly Revised) for Small Boards

The business of the Commission and its standing committees must be conducted, so far as it is practical in accordance with parliamentary rules as contained in Robert's Rules of Order Newly Revised, for Small Boards, except as modified by these rules and in accordance with the Brown Act and the Sunshine Ordinance. The City Attorney, or other person designated by the Chair and approved by the Commission, shall serve as the official parliamentarian for meetings of the Commission.

ARTICLE XI - STANDARDS OF CONDUCT

In addition to complying with the foregoing policies, each commissioner should aspire to:

A. **Actively and diligently support the mission, goals and objectives of the Commission**, for example, by thoroughly preparing for and attending Commission meetings; serving on committees; working cooperatively with Commission staff on officially-sanctioned projects; and attending civic events relevant to the Commission's purpose and jurisdiction.

B. **Preserve public confidence in commissioners' conduct, intentions, and impartiality**, for example, by fairly and objectively enforcing laws and regulations within the Commission's jurisdiction; refraining from conduct or statements that suggest personal bias; avoiding personal involvement in the investigation and prosecution of complaints (absent a recusal); and avoiding inappropriate political activity (endorsing, supporting, opposing, or working on behalf of a candidate or measure in an Oakland election).

C. **Protect the independence and integrity of the Commission**, for example, by working for the public good and not private interest in all matters related to city government; refraining from using their official positions to secure special advantages or benefits for self or others; declining to accept benefits or to participate in activities that might influence or undermine their ability to fairly and objectively discharge their Commission duties; and, if speaking to the press or public about a Commission matter, clearly explaining that the commissioner's statements reflect the personal view of the commissioner and not the view of the Commission.

D. **Set the highest example civil and efficient conduct of city government**, for example, by recommending and adopting rules and procedures that promote transparency and fair process in city government; treating the public, Commission staff, Commission legal advisors, and fellow

Item 6 - PEC Operations Policies

commissioners with dignity and fairness; and conducting the Commission's business in an efficient and timely manner.

ARTICLE XII - OPERATIONS POLICIES AMENDMENTS

As necessary, the Commission will review and amend these Operations Policies as provided by the Operations Ordinance. (O.M.C. section 2.24.070.) In so doing, the Commission must provide notice of any amendments to the City Council as required by the Public Ethics Commission Operations Ordinance.

Item 7 - Stipulation and Case Summary 18-14

1 Kellie F. Johnson
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 Petitioner

8 BEFORE THE CITY OF OAKLAND
9 PUBLIC ETHICS COMMISSION

10 IN THE MATTER OF) Case No.: 18-14
11)
12) **STIPULATION AND EXHIBIT**
13 JASON OVERMAN Defendant)
14) **Date:** 12/23/2021
15 Respondent.) **Place:** 1 Ogawa Plaza, Hearing Rm. 1 Oakland, CA
16) 94612
17)

18 **STIPULATION**

19 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and Respondent
20 Jason Overman, agree as follows:

- 21 1. This Stipulation will be submitted for consideration by the City of Oakland Public Ethics
22 Commission (Commission) at its next regularly scheduled meeting;
- 23 2. This Stipulation resolves all factual and legal issues raised in this matter and represents the
24 final resolution to this matter without the necessity of holding an administrative hearing to
25 determine the liability of Respondents;
- 26 3. Respondent knowingly and voluntarily waive all procedural rights under the Oakland City
27 Charter, Oakland Municipal Code, and Public Ethics Commission Complaint Procedures,
28 including, but not limited to, the right to personally appear at an administrative hearing
held in this matter, to be represented by an attorney at his own expense, to confront all
witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to
have the matter judicially reviewed;

Item 7 - Stipulation and Case Summary 18-14

- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. In 2017, Respondent Jason Overman a seasoned former City Council Aide and later
6 Lobbyist for “UrbanCore,” which had proposed to contract with or proposed to amend a
7 contract with the City, violated O.M.C. 3.12.140 of the Oakland Campaign Reform Act when
8 he made a contribution in the amount of \$800 to City of Oakland elected official/candidate
9 Abel Guillen before the expiration of the 180 Contractor Contribution prohibition period
10 (Count 1).
- 11 6. Again in 2017, Respondent Jason Overman violated O.M.C. 3.12.040 of the Oakland
12 Campaign Reform Act when he made a contribution in the amount of \$800 to City of
13 Oakland elected official/candidate, Mayor Libby Schaaf, before the expiration of the 180
14 Contractor Contribution prohibition period (Count 2).
- 15 7. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter
16 and is incorporated by reference into this Stipulation;
- 17 8. The Commission will impose upon Respondent a total administrative penalty in the amount
18 of \$2,600 (\$500 on Count 1, \$500 on Count 2, and \$1600 for the unlawful contribution
19 amount, totaling \$2,600);
- 20 9. A cashier’s check from Respondent, in said amount, made payable to the “City of
21 Oakland,” is submitted with this Stipulation as full payment of the administrative penalty,
22 to be held by the Commission until the Commission issues its decision and order regarding
23 this matter;
- 24 10. In the event the Commission refuses to accept this Stipulation, it shall become null and
25 void, and within fifteen business days after the Commission meeting at which the
26 Stipulation is rejected, all payments tendered by Respondent in connection with this
27 Stipulation will be returned to them; and
- 28 11. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
the Commission becomes necessary, neither any member of the Commission, nor the
Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Item 7 - Stipulation and Case Summary 18-14

Kellie Johnson

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Dated: 12/23/2021

Kellie F. Johnson, Enforcement Chief of the City of
Oakland Public Ethics Commission, Petitioner

Dated: 12/28/21

J Overman
Jason Overman, Respondent

Item 7 - Stipulation and Case Summary 18-14

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Jason Overman PEC Case No. 18-14, 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.

Dated: _____

Michael MacDonald, Chair
City of Oakland Public Ethics Commission

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EXHIBIT
In the Matter of Jason Overman
PEC 18-14 Case Summary

1 INTRODUCTION

2 On May 9, 2018, the City of Oakland Public Ethics Commission received a complaint alleging that
3 Respondent, Jason Overman violated the Oakland Campaign Reform Act. Based on the allegations in
4 the complaint, staff opened an investigation to determine whether the Respondent violated the
5 Oakland Campaign Reform Act’s Contractor Contribution Ban by making contributions to City of
6 Oakland elected officials, candidates, or their controlled committees. After close consideration of all
7 of the facts and the law, and the reasons explained in this memorandum, Staff recommends that the
8 Commission approve a stipulation that Jason Overman violated the Oakland Campaign Reform Act
9 for a penalty of \$500 on Count 1, \$500 on Count 2 and \$1,600 unlawful contribution totaling \$2,600 in
10 fines and penalties.

11
12 SUMMARY OF LAW:

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

15 **O. M.C. 3.12.140** OCRA, prohibits contributions to candidates from City contractors.¹ This prohibition
16 applies to any “person who contracts or proposes to contract with or who amends or proposes to
17 amend such a contract with the City for,” among other things, “purchasing or leasing any land or
18 building from the City, whenever the value of such transaction would require approval by the City
19 Council.”²

20
21 TIMELINE OF EVENTS:

22 Overman filed an Initial Lobbyist Registration Form dated June 22, 2015.
23
24

25 ¹ In January 2017, an amended provision of O.M.C. 3.12.040 went into effect expanding the Contractor Contribution Ban to
26 all principals of an entity, including an individual employee, independent contractor or agent of the entity, that is
authorized to represent the entity before the City in regards to a contract or proposal contract.

27 ² See also OMC § 3.12.140(E)(4), which also specifies that “transactions that require approval by the City Council include but
are not limited to ... [c]ontracts for the sale or lease of any building or land to or from the City.”

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- 1 07/14/15 Negotiations commenced when the City issued a Notice of Offer and Intent to
2 convey a vacant property known as the East 12th Street Remainder Site.
- 3 08/20/15 Developer selection/bid proposals due.
- 4 12/14/15 Overman filed a Lobbyist Registration Amendment dated December 10, 2015;
5 UrbanCore is listed as a client.
- 6 01/29/16 Overman filed two lobbyist reports, both dated January 28, 2016.
- 7 • UrbanCore is listed as a client on the Annual Lobbyist Registration.
- 8 • 2015 Lobbyist 4th Quarter Report (October 1 – December 31, 2015). Overman
9 reported lobbying on behalf of UrbanCore regarding the governmental
10 action, “E 12th Street Remainder Parcel Developer Selection.” He reported
11 having “[p]rovided information on project evolution and status, advocating
12 for client’s selection as developer of parcel.”
- 13 • Overman further reported lobbying the following persons:
- 14 ▪ Vice Mayor Rebecca Kaplan,
- 15 ▪ the Mayor’s Deputy Chief of Staff,
- 16 ▪ two policy analysts from the Office of the Council President, Lynette
17 Gibson McElhaney, and
- 18 ▪ Chief of Staff, Office of Council member Annie Campbell Washington.
- 19 03/15/16 The City Council adopted Resolution No. 86056 authorizing the City Administrator to
20 enter into an Exclusive Negotiating Agreement (ENA) with Developer.
- 21 03/15/16 Overman reports that he ceased lobbying on behalf of UrbanCore.
- 22 05/04/16 Overman filed a 2016 Lobbyist 1st Quarter Report (January 1 – March 31, 2016) dated
23 April 28, 2016. He reported lobbying for UrbanCore in the developer selection.
- 24 • Overman further reported lobbying the following persons:
- 25 ▪ Mayor Libby Schaaf,
- 26 ▪ Chief of Staff, Office of the Mayor,
- 27
- 28

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- Assistant City Administrator, Office of the Mayor,
- Lynette Gibson McElhaney, Council Member,
- Chief of Staff and Council Aide, Office of Lynette Gibson McElhaney,
- Annie Campbell Washington, Council Member,
- Dan Kalb, Council Member, and
- Chief of Staff, Office of Council Member Dan Kalb.

01/01/17 OCRA expanded the Contractor Contribution ban to include an entity’s principals, employees, independent contractors, and agents that represent or are authorized to represent the entity before the City regarding a contract.

02/15/17 The Distribution and Developer Agreement (DDA) was executed by the City Administrator and Developer. OCRA, Section 3.12.140(K) provides that “[c]ompletion of negotiations occurs when the City... executes the contract or amendment.”

04/28/17 Overman makes \$800 contribution to Abel Guillen.

6/30/17 Overman makes \$800 contribution to Libby Schaaf.

08/14/17 Since negotiations concluded when the Disposition and Development Agreement (DDA) was executed on February 15, 2017, the Contractor Contribution ban applied at least to August 14, 2017 (180 days after February 15, 2017).

FACTUAL SUMMARY AND ANALYSIS:

In late 2015, Overman was retained by UrbanCore to represent and prepare for the approval of a hearing on the “E 12th Street Remainder Parcel Developer Selection” by the City Council that was to occur early 2016. His role was to arrange meetings with various Councilmembers so that UrbanCore could brief them on the Project and make sure that the Council was aware that UrbanCore would be an acceptable choice as the developer of the parcel. Overman lobbied several Councilmembers, their aides, the Mayor, and members of her staff. These meetings were held in the Councilmember’s office or in a conference room.

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1
2 Overman lobbied on behalf of UrbanCore in the developer selection and appeared at two City
3 Council meetings in support of his client. Notably, Overman gave a statement to the news media
4 about the Project and quoted in a San Francisco Business Times newspaper as “a spokesman” for the
5 Developer. See Roland Li – Reporter, San Francisco Business Times (March 16, 2016).

6
7 Overman reported on his lobbyist registration form that UrbanCore was a client for all of 2016, but
8 the Respondent contends that he only reported lobbying for UrbanCore in the 1st Quarter of 2016
9 (January 1 – March 31). He also reported lobbying for UrbanCore in the 4th Quarter of 2015 (October
10 31 – December 31). He did not report UrbanCore as a client in 2017. The Respondent contends that he
11 had ceased all lobbying activity on behalf of UrbanCore in March 2016, the same day that the City
12 Council adopted Resolution No. 86056.

13
14 Overman’s reported lobbying activities during the 1st Quarter of 2016 occurred in the same period
15 that the City was negotiating to select a Developer. (Negotiations commenced on July 14, 2015.
16 UrbanCore was selected as the developer on March 15, 2016 and the negotiations over the DDA
17 commenced thereafter and did not conclude until February 15, 2017.) In two quarterly lobbyist
18 reports (4th Quarter 2015 an 1st Quarter 2016), Overman stated that he lobbied on behalf of
19 UrbanCore regarding the governmental action, “E 12th Street Remainder Parcel Developer
20 Selection.” He further reported having “[p]rovided information on project evolution and status,
21 advocating for client’s selection as developer of parcel.”

22
23 As a representative/agent of UrbanCore during the negotiation period, Overman’s 2017 contributions
24 would be covered by the Contractor Contribution ban because the negotiations concluded when the
25 DDA was executed on February 15, 2017, and the Contractor Contribution ban applied at least until
26 August 14, 2017. Accordingly, Overman’s \$800 contribution to Abel Guillen on April 28, 2017, and his
27

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1 \$800 contribution to Mayor Schaaf on June 30, 2017, were prohibited under the Contractor
2 Contribution Ban.

3 The Respondent asserts that when making the contributions, he did not believe he was violating the
4 Contractor Contribution Ban because during the time of his representation of UrbanCore in 2016, he
5 did not meet the definition of contractor and, even if he had met the definition, more than double
6 the 180 day cooling off period had passed since Overman provided any services to UrbanCore. The
7 Respondent contends he stopped providing lobbying services to UrbanCore at the end of March
8 2016 and did not make the alleged impermissible contributions until April and June 2017, respectively.
9

10 **VIOLATION(S):**

11 Jason Overman violated the following Oakland Municipal Code sections:
12

13 **Count 1: Violation of the Contractor Contribution Ban**

14
15 On or about April 28, 2017, Respondent Jason Overman violated O.M.C. 3.12.140 of the Oakland
16 Campaign Reform Act when he made a contribution in the amount of \$800 to City of Oakland elected
17 official/candidate Abel Guillen before the expiration of the 180-day Contractor Contribution
18 prohibition period.
19

20 **Count 2: Violation of the Contractor Contribution Ban**

21
22 On or about June 30, 2017 , Respondent Jason Overman violated O.M.C. 3.12.140 of the Oakland
23 Campaign Reform Act when he made a contribution in the amount of \$800 to City of Oakland elected
24 official/candidate Mayor Libby Schaaf before the expiration of the 180 Contractor Contribution
25 prohibition period.
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PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the unlawful amount (whichever is greater), per violation of the Oakland Campaign Reform Act.

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

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

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Aggravating Factors

Here, the circumstances of the Respondent’s conduct establish several aggravating factors that should increase the severity of the penalty:

1. The Respondent had demonstrated knowledge of the rule/requirement at issue.
2. The Respondent is an experienced former City Council Aide and current lobbyist.

Mitigating Factors

1. Respondent does not have prior Public Ethics Commission Violations.
2. The Respondent cooperated with the Public Ethics Commission enforcement activity.
3. The Oakland Campaign Reform Act Contractor Ban was amended in 2017, shortly before the Respondent made the campaign contribution, and expanded the definition of “Contractor” to expressly include lobbyists, among other authorized representatives of the contracting entity.
4. Overman did not participate or provide lobbying services to UrbanCore on the development agreement.
5. The Respondent’s violations of the Oakland Campaign Reform Act were inadvertent.

PROPOSED RESOLUTION

Staff recommends the Commission approve the Stipulation and impose a \$500 penalty on Count 1, a \$500 penalty on Count 2, and \$1,600 penalty for the unlawful contribution, for a total penalty of \$2,600.

Item 8- Staff Memorandum



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: December 27, 2021
RE: Proposed Amendments to the Limited Public Financing Program

This memorandum provides background information regarding the attached proposed draft amendments to the Limited Public Financing Program Ordinance (O.M.C. Chapter 3.13) in response to recommendations made by the City Auditor in her 2018 and 2020 audits of the program. If approved by the Commission, staff will pursue legislative approval of these amendments through City Council. The revisions are intended to implement two minor changes recommended by the City Auditor:

- 1) extend the deadline for candidates to deposit disbursement checks from the City from 3 business days to 30 calendar days, and
- 2) delete the requirement that the City Auditor conduct mandatory audits of all candidates who participate in the program every election cycle and replace it with a discretionary audit option.

Attached are the draft proposed amendments, and below is a summary of the changes.

Background

The Limited Public Financing Act (LPFA), enacted in 1999 and last amended in 2010, provides District City Council candidates with some public funds by way of reimbursements for certain qualified expenditures, to be used for campaign expenses with the goal of encouraging equity, ensuring a more fair chance at competition for candidates new to the process, reducing the influence of money in politics, and helping candidates spend less time fundraising and more time talking with voters.

The Commission has previously reviewed LPFA performance and made recommendations to redesign the program into a public financing system currently in place in Seattle, where each city resident would receive \$100 in campaign contributions to give to candidates of their choice. While outside organizations currently are working to bring such a City measure to the ballot in 2022, the PEC meanwhile should consider proposing the above two changes to City Council to be adopted in advance of the 2022 election.

Proposed Changes

The LPFA establishes myriad requirements for candidates to meet in order to participate in and received public funding for their campaigns. These requirements ensure that City money is not issued to candidates who do not provide a showing of a minimum level of support by people in their district. For example, as part of the process of applying for public funds, candidates must show that they received a certain amount of money in contributions and have made expenditures for specific campaign purposes. LPFA requirements also help to ensure that candidates are using the money as

Item 8- Staff Memorandum

intended and not depositing the payments into any personal accounts. For example, one requirement of the LPFA is that, when a candidate receives a reimbursement check from the City, the candidate must deposit the check into the campaign account within 3 days of receipt.

In 2018 and earlier audits, the City Auditor noted as part of her audit that not all candidates were complying with this 3-day requirement and that there did not seem to be a need for the deposit being made so soon after receipt of the check. The Auditor noted that 3 of the 10 candidates made their deposits within 5-17 days of receiving the check, and that perhaps more time could be given for candidates to deposit these checks. Often, checks are issued to candidates just days before the election, and they may be consumed with final election-related activities rather than administrative LPFA requirements. In the 2018 audit, the City Auditor recommended that the PEC consider proposing and amendment to LPFA to extend the deadline to allow more time for check deposits. Thus, the draft amendments delete the “3 business days” deadline and replace that with a “30 calendar day” deadline. (See OMC 3.13.120D)

The LPFA further includes a provision requiring mandatory post-election audits of all candidates accepting public financing. This requirement was in place before the Commission was strengthened and provided with stronger authority and staffing to effectively conduct its own investigations and audits.

In her 2020 audit, the City Auditor stated the following in her audit report letter to the Commission:

The audit found the Oakland Public Ethics Commission’s (PEC) overall systems and internal controls are adequate to ensure proper administration of the Program. All candidates were properly deemed eligible for the Program and expenditure reimbursements were appropriate.

In fact, in recent years, the biennial audits of the LPFA have not found any major deficiencies or misuse of funds. The risk of misuse was dramatically reduced when the Program began reimbursing candidates for valid expenditures in 2010 instead of advancing funds, as had occurred previously.

Given the reduction in risk, and consecutive audits demonstrating the PEC’s systems are working effectively, our Office recommended the PEC consider drafting an amendment to Oakland’s Municipal Code, for the City Council’s consideration, to eliminate the requirement of biennial post-election audits of the LPFA.

The original mandatory audit requirement focused on auditing candidates rather than the PEC. However, now that the Commission has its own staff to both assist candidates with meeting state and local requirements and investigate and enforce noncompliance, there is no need for the Auditor to serve in this capacity. In addition, the Auditor already has discretion under general City Charter provisions, outside of this ordinance, to conduct audits of all City programs and departments. Thus, the draft amendments delete the mandatory bi-ennial requirement and instead replace the language with a discretionary audit option for the City Auditor.

Recommendation

Commission staff recommends the PEC review and approve the proposed amendments to the Limited Public Financing Ordinance (O.M.C. Chapter 3.13) so that staff can submit them to City Council for consideration.

Item 8 - Draft Proposed Amendments to the Limited Public Financing Act

Title 3 - MUNICIPAL ELECTIONS
Chapter 3.13 LIMITED PUBLIC FINANCING ACT

Chapter 3.13 LIMITED PUBLIC FINANCING ACT¹

Article I. Findings and Purpose

3.13.010 Title.

This chapter shall be known as the "Limited Public Financing Act of the City of Oakland."

(Ord. No. 13031, 7-27-2010)

3.13.020 Findings and declarations.

The findings of this Act are as follows:

- A. The financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.
- B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions.
- C. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

(Ord. No. 13031, 7-27-2010)

3.13.030 Purpose of this Act.

The purpose of this Act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:

- A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.
- B. To reduce the influence of large contributors with a specific financial stake in matters under consideration by the city, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland.

¹Editor's note(s)—Ord. No. 13031, adopted July 27, 2010, amended Chapter 3.13 in its entirety to read as herein set out. Formerly, Chapter 3.13, §§ 3.13.010—3.13.290, pertained to similar subject matter and derived from Ord. No. 12308, adopted 2001; Ord. No. 12375, adopted 2001; Ord. No. 12519, § 1, adopted 2003; Ord. No. 12648, § 3, adopted 2005; Ord. No. 12669, §§ 3—10, adopted 2005; Ord. No. 12905, § 2, adopted November 18, 2009, and Ord. No. 13012, § 2, adopted May 4, 2010.

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- C. To reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.
- D. To encourage competition for elective office.
- E. To allow candidates and office holders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.
- F. To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of important issues involved in political campaigns.
- G. To help preserve public trust in governmental and electoral institutions.

(Ord. No. 13031, 7-27-2010)

Article II. Definitions

3.13.040 Interpretation of this Act.

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the text, the definitions set forth in Chapter 3.12 of this Code and in Government Code Sections 81000 et seq. as amended govern the interpretation of this Act.

For purposes of this Act, "principal residence" shall mean the place in which a person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.

For purposes of this Act, "primary place of doing business" shall mean the street address of a corporation's or association's principal executive office as filed with the California Secretary of State or the street address of an unincorporated association's principal office as filed with the California Secretary of State.

(Ord. No. 13031, 7-27-2010)

Article III. Election Campaign Fund

3.13.050 Election campaign fund.

There is hereby established an account within a special revenue fund of the city to be known as the "Election Campaign Fund."

(Ord. No. 13031, 7-27-2010)

3.13.060 Appropriation of funds.

- A. The city council shall appropriate to the election campaign fund, under the city's current two-year budget cycle, an amount sufficient to fund all candidates eligible to receive public financing for the office of district city councilmember.
- B. The city public ethics commission shall provide in the form and at the time directed by the mayor and city administrator a written estimate of the amount necessary to be appropriated for any two-year budget cycle

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according to the provisions of this Act for all eligible candidates. The amount of funds to be allocated to the election campaign fund shall be based on a consideration of anticipated campaign activity, anticipated administrative costs, and existing unspent funds within the account. The amount of funds to be allocated to the election campaign fund shall not exceed \$500,000.00 for any two-year budget cycle.

- C. The election campaign fund shall be established as an interest bearing account. Unspent funds in the election campaign fund at the end of a two-year budget cycle shall remain in the fund and accrue for disbursement to candidates eligible for public financing in future elections and for administrative costs.
- D. Up to seven and one-half percent of the amount allocated to the election campaign fund pursuant to Subsections 3.13.060(a) and (b) may be utilized by the public ethics commission to cover the anticipated cost of administering the provisions of this Act.

(Ord. No. 13031, 7-27-2010)

3.13.065 Allocation of election campaign fund.

No later than seven days after the city clerk has certified the names of all candidates to appear on the ballot, the public ethics commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the election campaign fund is adequate to provide the maximum amount to potentially eligible candidates. If the commission determines that the election campaign fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the commission shall order the disbursement of available funds on a pro rata or other equitable basis. The commission may at any time revise the disbursement plan consistent with these rules and prevailing law.

(Ord. No. 13031, 7-27-2010)

Article IV. Eligibility for Public Financing

3.13.070 Application and withdrawal procedures.

- A. Each candidate for district city council shall file a statement with the city clerk on a form approved for such purpose indicating acceptance or rejection of the voluntary spending ceilings pursuant to Section 3.12.190.
- B. Each candidate for district city council shall file with the public ethics commission a statement of acceptance or rejection of public financing on a form approved by the public ethics commission no later than 14 calendar days after the date the city clerk has certified the names of candidates to appear on the ballot for the election in which public financing will be sought. The statement of acceptance or rejection of public financing shall advise and require that the candidate's decision to reject public financing is irrevocable for the election in which his or her name appears on the ballot. The failure to timely file a statement of acceptance or rejection of public financing shall constitute a rejection of public financing.
- C. If a candidate declines to accept the voluntary expenditure ceilings prescribed in Section 3.12.200, the candidate shall be subject to the contribution limits of Subsections 3.12.050(a) and 3.12.060(a) and shall not be eligible for public financing.
- D. If a candidate agrees to accept the voluntary expenditure ceilings prescribed in Section 3.12.200, the candidate shall be subject to the contribution limits of Subsections 3.12.050(b) and 3.12.060(b) as adjusted pursuant to Subsections 3.12.050(g) and 3.12.060(g), and shall be eligible for public financing upon meeting the qualification requirements as provided in this Act.

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- E. In the event expenditure ceilings are lifted pursuant to Section 3.12.200, a candidate who accepted expenditure ceilings shall be permitted to receive public financing but shall no longer be subject to expenditure ceilings.

(Ord. No. 13031, 7-27-2010)

3.13.080 Qualification procedures.

A candidate shall be approved to receive public financing if the candidate meets all of the following requirements:

- A. The candidate has filed a timely statement of acceptance of the voluntary spending ceilings and acceptance of public financing.
- B. The candidate is certified to appear on the ballot for the election for which public financing is sought.
- C. The candidate has (1) received contributions in an aggregate amount of at least five percent of the expenditure ceiling for the office being sought from contributors whose principal residence or whose primary place of doing business is located within the city and which residence or business address appears on the written instrument used to make the contribution, and (2) made qualified campaign expenditures in an aggregate amount of at least five percent of the expenditure ceiling for the office being sought. Contributions from the candidate's own funds shall not be counted towards meeting this five percent requirement. The candidate shall provide copies of the contribution checks received and records of payments made to meet the five percent eligibility requirements.
- D. The candidate is opposed by another candidate for the same office.
- E. The candidate agrees to all conditions and requirements of this Act and to submit to any reasonable audit deemed appropriate by the public ethics commission or other civil authorities.
- F. The candidate or his or her campaign treasurer or designee attends a training program conducted or sponsored by the public ethics commission.
- G. The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time public financing is payable. All candidates receiving public financing shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received public financing.

(Ord. No. 13031, 7-27-2010)

3.13.090 Use of personal funds.

A candidate who accepts public financing shall not receive contributions or loans from the candidate's own funds which aggregate total exceeds ten percent of the voluntary expenditure ceiling for the office being sought. If the voluntary expenditure ceilings for the office being sought are lifted, this provision shall not apply.

(Ord. No. 13031, 7-27-2010)

Article V. Disbursement of Public Financing

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3.13.100 Duties of the public ethics commission and office of the city auditor.

- A. The public ethics commission shall develop any and all forms necessary to carry out the provisions of the Act. The public ethics commission may, in its discretion, require any document or form to be filed in an electronic format that is provided by the public ethics commission to the candidates free of charge.
- B. The public ethics commission shall review records submitted to determine a candidate's eligibility to receive public financing and requests for reimbursement promptly. For any candidate determined not to be eligible for public financing, the commission or its designee shall inform the candidate of the reasons why the candidate is not eligible and what actions, if any, the candidate may take to correct any insufficiencies.
- C. The city auditor may conduct a discretionary audit of the Public Ethics Commission's disbursement of public financing funds to candidates or may conduct discretionary audits of the campaign committee of any candidate who receives public financing. ~~shall conduct mandatory post-election audits of all candidates accepting public financing. The city auditor may chose to limit the scope of any audit to the items submitted for reimbursement.~~ The audit report shall be a public record and provided to the public ethics commission. The city auditor shall conduct all audits in accordance with generally accepted government auditing standards.

(Ord. No. 13031, 7-27-2010)

3.13.110 Requests for public financing.

- A. Public financing pursuant to this Act shall be provided solely by reimbursing eligible candidates for certain qualified campaign expenditures lawfully made by the candidate and his or her campaign committee.
- B. The qualified campaign expenditures eligible for reimbursement are:
 - 1. Candidate filing and ballot fees;
 - 2. Printed campaign literature and production costs;
 - 3. Postage;
 - 4. Print advertisements;
 - 5. Radio airtime and production costs;
 - 6. Television or cable airtime and production costs; and
 - 7. Website design and maintenance costs.
- C. The following conditions and restrictions shall apply to any request for reimbursement:
 - 1. All requests for reimbursement shall be made on a form authorized by the public ethics commission and shall include: (a) a copy of the billing invoice for which reimbursement is sought; (b) a copy of the check(s) by which the candidate's campaign committee made payment on the billing invoice; and (c) a copy, when applicable, of the campaign literature, advertisement, radio or television script, or website configuration.
 - 2. All requests for reimbursement shall include a sworn declaration by the candidate and his or her campaign treasurer that (a) the check(s) used to make payment on the billing invoice represents payment in full of the billing invoice submitted for reimbursement and that sufficient funds exist in the campaign account to provide payment, and (b) any money received from the election campaign fund has not been previously earmarked or specifically encumbered to pay or to secure payment of any

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loan, return of contribution or of any expenditure other than the one for which reimbursement was sought.

- D. Any decision made by the executive director to deny a request for reimbursement may be appealed to the commission whose decision shall be final. A request to agendaize an appeal of the executive director's decision shall be made in writing and delivered to the office of the public ethics commission no more than ten calendar days after receiving written notice of the executive director's decision.
- E. The total amount of public financing allocated to each candidate shall not exceed 30 percent of the voluntary expenditure ceiling per election for the office being sought.

(Ord. No. 13031, 7-27-2010)

3.13.120 Disbursement and deposit of public financing.

- A. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement to the public ethics commission in minimum increments of \$1,000.00 or more.
- B. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement in minimum increments of \$500.00 or more ten calendar days before the election.
- C. The public ethics commission or its designee shall have ten calendar days to cause the review and approval or denial of the request for reimbursement and disburse funds from the election campaign fund to the candidate or candidate's controlled committee.
- D. All funds disbursed from the election campaign fund shall be made payable to the candidate's controlled committee and shall be deposited directly into the candidate's campaign checking account within [thirty calendar three business](#) days of receipt.

(Ord. No. 13031, 7-27-2010)

3.13.150 Return of surplus funds.

- A. Surplus campaign funds remaining at the end of the post-election reporting period following the election for which public financing was received shall be returned to the election campaign fund no later than 31 calendar days from the last day of the semi-annual reporting period following the election in an amount specified by this section. A candidate shall not be required to return any surplus funds in an amount greater than the amount of public financing received. The amount of surplus campaign funds to be returned to the election campaign fund shall be calculated by multiplying the amount of surplus campaign funds by the percentage that total public financing received represents of total monetary contributions received for the election period.
- B. For purposes of this Act, campaign funds shall be considered "surplus" campaign funds to the extent that the total amount of contributions (excluding the receipt of public financing) exceed the total financial obligations of the candidate's campaign committee (excluding unlawful or non-qualified campaign expenditures) as of the last day of the semi-annual reporting period following the election. A financial obligation includes (1) accounts payable billed, or (2) accounts payable for which bills may be expected, for goods or services received during the election.
- C. Public financing shall not be disbursed to the certified candidate from the election campaign fund following the day of the election or the candidate's withdrawal from the election, whichever occurs first, except that public financing may be disbursed to a certified candidate after the date of the election or withdrawal

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provided that the candidate submitted a properly documented request for reimbursement before the date of the election or the date of withdrawal from the election.

(Ord. No. 13031, 7-27-2010)

3.13.170 Public debates.

While not a condition for receiving public financing, candidates receiving public financing are strongly encouraged to participate in one or more nonpartisan candidate debates for each election.

(Ord. No. 13031, 7-27-2010)

3.13.180 Enforcement.

The public ethics commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the public ethics commission, the commission shall promptly advise in writing the city attorney and the appropriate prosecuting enforcement agency.

(Ord. No. 13031, 7-27-2010)

3.13.190 Criminal misdemeanor actions.

Any person who knowingly or willfully (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is guilty of a misdemeanor. Prosecution shall be commenced within four years after the date on which the violation occurred.

(Ord. No. 13031, 7-27-2010)

3.13.200 Enforcement actions.

- A. Any person who intentionally or negligently (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is subject to enforcement proceedings before the public ethics commission pursuant to the public ethics commission general rules of procedure.
- B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.
- C. Any person alleging a violation of this Act shall first file with the public ethics commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The public ethics commission shall review, investigate and make determinations regarding any alleged violation consistent with the public ethics commission's general complaint procedures.
- D. The commission has full authority to settle any action involving public financing in the interest of justice.
- E. If the commission determines a violation has occurred, the commission is hereby authorized to administer appropriate penalties and fines not to exceed \$1,000.00 per violation and to order the repayment of public financing received or expended in violation of law.
- F. The public ethics commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.

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- G. No complaint alleging a violation of any provision of this Act shall be filed more than four years after the date the violation occurred.

(Ord. No. 13031, 7-27-2010)

3.13.220 Construction.

The Act shall be liberally construed to accomplish its purposes.

(Ord. No. 13031, 7-27-2010)

3.13.240 Applicability of other laws.

Nothing in this Act shall exempt any person from applicable provisions of any other laws of the city, state or other appropriate jurisdiction.

(Ord. No. 13031, 7-27-2010)

3.13.260 Severability.

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable.

(Ord. No. 13031, 7-27-2010)

Item 10 - Disclosure Report



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Charlotte Hill
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon J. Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: December 29, 2021
RE: Disclosure and Engagement Monthly and Year-End Report for the January 12, 2022, Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities for the past year. 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.

Program Milestones in 2021

Compliance with Disclosure Requirements

Campaign finance disclosure – As of December 2021, the City of Oakland has 77 active political committees required to file periodic campaign disclosure statements, 42 candidate and officeholder committees, 30 general purpose committees, 1 primarily-formed ballot measure committee, 2 independent expenditure committees, and 2 primarily-formed candidate committees.

In a non-election year, all active campaign committees must file two semi-annual campaign statements ([FPPC Form 460](#)). In all, staff processed and reviewed just over 300 campaign-related filings during 2021, including amended filings. During facial review staff detected 16 statements with issues requiring amendments and worked with filers to voluntarily come into compliance. Staff assessed \$3,531 in late fees against 15 committees. One non-responsive filer, Cherisse Gash, was referred to the Fair Political Practices Commission (FPPC) for enforcement resulting in a warning letter issued to the filer by the FPPC. Campaign statements are available to view and download at the PEC's [Public Portal for Campaign Finance Disclosure](#).

Contribution and Expenditure Ceiling Limit Adjustments – As the campaign filing officer, the Commission is responsible for adjusting the contribution and expenditure ceiling limits annually to adjust for increases in the Consumer Price Index (CPI). In January, staff adjusted the contribution and expenditure limits for 2021 and published by the February 1st deadline. The annual calculation resulted

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in increases in expenditure limits for Oakland offices, but the contribution limits for individuals and broad-based committees remained the same.

Lobbyist disclosure – 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. It also requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions.

The PEC received 83 lobbyist registrations and 15 terminations this year, ending the year with 68 registered lobbyists. Staff processed and reviewed 205 quarterly lobbyist activity reports this year. 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.

Statements of Economic Interests – April 1, 2021, marked the deadline for City officials and designated employees within the City's Conflict of Interest Code to file their annual statement of economic interests (Form 700). Staff conducted an initial compliance check of elected officials to confirm that their Form 700's were filed. All 11 officials filed their statements on time. Staff continues to work with the Department of Human Resources Management (DHRM) to make available an accurate list of all designated employees required to file Form 700 and is developing a compliance practice for these forms modeled on the process developed for campaign finance compliance.

Behested Payments (FPPC Form 803) – California law requires Oakland elected officials to file an FPPC Form 803 report any time they fundraise or otherwise solicit payments for a legislative, governmental or charitable purpose that total \$5,000 or more in a calendar year from a single source (one individual or organization) to be given to another individual or organization. In 2021, elected officials reported 33 behested payments totaling \$4,859,000. To learn more about behested payment rules and view an interactive chart of payments visit, the PEC's [behested payments webpage](#). To access data from Oakland behested payment reports, visit Oakland's [open data portal](#).

Illuminating Disclosure Data

Open Data Portal (OakData) – In 2021, Commission staff published eight new ethics-related datasets and ten interactive data visualizations on [OakData](#), the City's open data portal, including:

- Three datasets containing disclosure data submitted by lobbyists through to the PEC's lobbyist reporting app, with client information, contacts with Oakland officials, and campaign contributions solicited by lobbyists.
- Two datasets containing data from Oakland's NextRequest public records request system, with information such as the text of the request, department(s) assigned to respond to the request, request status, and closure date.
- A dataset with information from disclosure reports submitted when an Oakland elected official solicits a payment over \$5,000 from a third party for a legislative, governmental, or charitable purpose.
- Two datasets summarizing PEC enforcement and mediation cases.

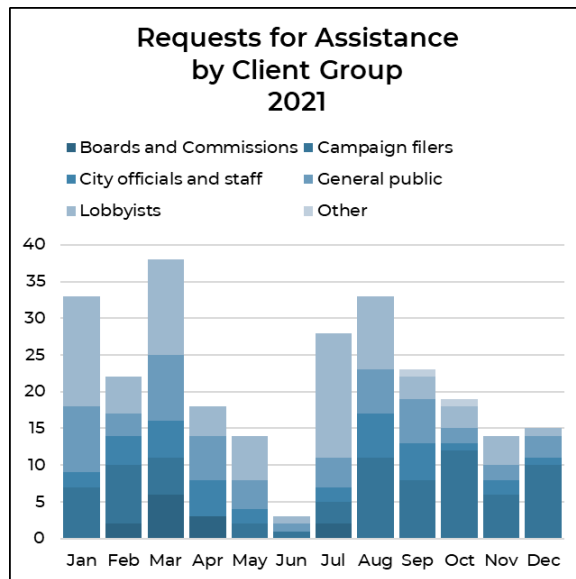
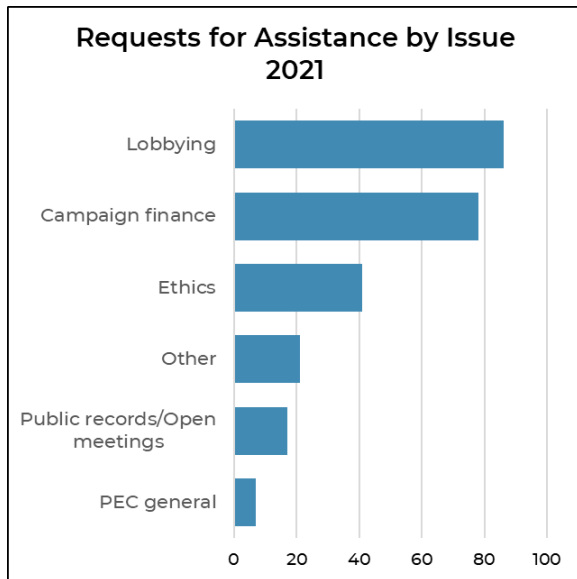
The new data assets garnered over 800 visits and 29 downloads in 2021. To view or export data from the City's open data site, visit OakData (<https://data.oaklandca.gov/>).

Lobbyist Dashboard and Data Portal – New features were added to the Lobbyist Dashboard and Data Portal in February enabling users to sort and filter the Lobbyist Directory and search lobbyist activity

reports based on the client name. To view the Dashboard and Lobbyist Directory visit https://apps.oaklandca.gov/pec/Lobbyist_Dashboard.aspx.

Advice and Engagement

Advice and Technical Assistance – In 2021, Commission staff responded to 260 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues, fielding an average 22 requests per month. Lobbyists (32 percent) and campaign filers (28 percent) made up over half of requests for advice and assistance.



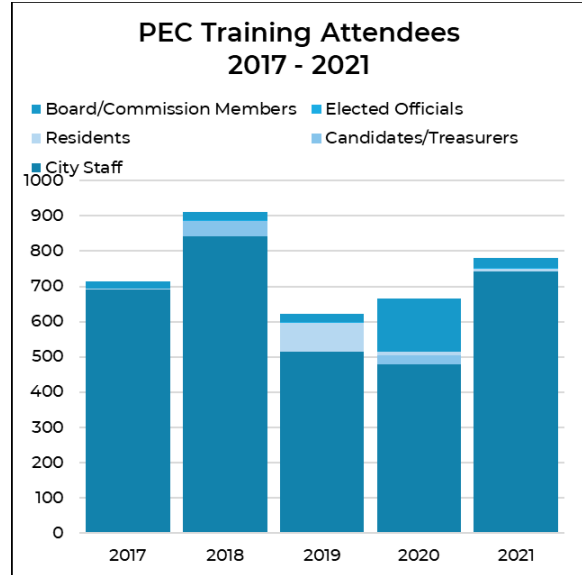
Elected Officials – Commission staff continued to provide communications with elected officials and extend support with state and local ethics laws. In 2021, staff met with two council offices providing each with an ethics resource binder that included guides and fact sheets relating to the Government Ethics Act, conflicts of interests, gift restrictions, non-interference provision, and the City’s ticket distribution policy. The increased outreach and informal meetings allowed PEC staff to better understand the support needs of councilmembers and their staff in complying with local ethics laws.

New Employee Orientation – Commission staff continued to collaborate with the Department of Human Resources (DHRM) to ensure that every new City employee received introductory Government Ethics training. This year, Commission staff made 11 live presentations and one video presentation reaching approximately 290 new employees. In addition, staff presented a live ethics training at the Oakland Parks, Recreation, and Youth Development Department’s Summer Orientation reaching over 65 new employees.

Ethics Training for Form 700 Filers – In 2021, 59 employees completed the PEC’s online Government Ethics Training for Form 700 Filers via Target Solutions, the City’s online learning management system. To provide an additional option for City employees to complete the ethics training requirement, PEC staff, in collaboration with Department of Human Resources Management (DHRM), held four live Zoom trainings that covered all the content in the PEC’s online ethics training for Form 700 filers. Approximately 70 employees attended the live Zoom trainings.

Supervisor Academy – The City’s Supervisor Academy provides training for supervisors and management level employees on City policies and procedures, internal systems, and leadership skills

relating to day-to-day supervision. In 2021, Commission staff provided ethics presentations at three Supervisor Academies, reaching nearly 100 supervisor-level City employees with an overview of the Government Ethics Act and PEC services, as well as the opportunity to dive into discussions of ethical issues and scenarios and skills-based training to deal with ethical dilemmas such as gift restrictions, lobbying activity, misuse of City resources, and public records requests.



Boards and Commissions – This past year, staff provided live introductory ethics trainings to three City boards and Commissions: The Cannabis Regulatory Commission, Library Commission, and the Commission on Homelessness. In addition, PEC staff participated in a joint effort with the Mayor’s Office, City Clerk, and City Attorney to provide a comprehensive training for City Board and Commission staff liaisons. The training covered all relevant laws and responsibilities, including Sunshine and GEA requirements, pertaining to boards and commissions to ensure understanding and compliance. Staff provided attendees with copies of the PEC’s Boards and Commission Members Handbook and shared practices used by our own Commission for onboarding new members.

comprehensive training for City Board and Commission staff liaisons. The training covered all relevant laws and responsibilities, including Sunshine and GEA requirements, pertaining to boards and commissions to ensure understanding and compliance. Staff provided attendees with copies of the PEC’s Boards and Commission Members Handbook and shared practices used by our own Commission for onboarding new members.

In addition, PEC staff held two live Government Ethics Trainings for Form 700 Filers for the City’s board and commission members. Between the two offered sessions, nearly 150 board and commission members completed the required training. The live recorded training is also now available on demand through the PEC’s website.

Sunshine Ordinance – This year, staff launched a new online Sunshine Training covering open meetings. The on-demand training can be accessed on the PEC’s website. Topics covered include: what constitutes a meeting, agenda publishing and noticing requirements, open meeting rules, and enforcement. Since launching in October, 17 board and commission members have accessed the new online resource.

Diversion Program – In July, Staff conducted the first live training for the Commission’s new enforcement diversion program. Staff provided participants with an overview of GEA provisions related to Form 700 requirements and conflicts of interest rules. Both diversion participants successfully completed the required trainings including the Government Ethics Training for Form 700 Filers, a live Conflicts of Interests training, and a one-on-one session with the Executive Director.

Candidates and Campaigns – Targeted communications sent to campaign filers in 2021 covered the topics of contribution limits and expenditure ceilings, restrictions on post-election use of campaign funds, and the process of closing a campaign committee after the election.

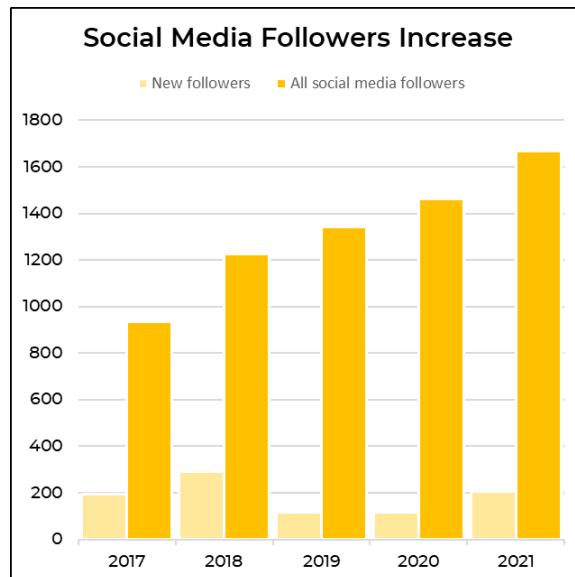
Sunshine Performance/Public Records Requests

In May, the Commission approved steps outlined in its report [Spotlight on Oakland’s Public Records System](#) to continue its work to ensure that Oakland’s public records request system is effective and ensures departmental compliance with state and local law. During the second half of 2021, Commission

staff began implementing the report recommendation to provide an ongoing monitoring tool for public records request performance by putting into operation the technical requirements to sync real-time data from the NextRequest database to a performance webpage. Staff developed a process to clean and prepare the raw data and calculate department statistics and initial performance metrics to measure compliance with the requirements of the CA Public Records Act and Oakland Sunshine Ordinance in terms of timeliness, transparency, quality of service, and best practices.

Online Engagement

Social Media – In 2021, Commission staff continued producing social media content to highlight specific PEC policy areas, activities, or client-groups. Social media posts generated over 800 user engagements (likes, shares or retweets, clicks on links, and new followers). There were 844 views of PEC content on the Commission’s YouTube channel. Social media followers continued to grow with 205 new followers gained for a total of 1,667 at the end of 2021.



Website – Three new pages of interactive charts and tables displaying PEC enforcement and mediation outcomes were added to the Commission website in September. The interactive tables allow website users to search, sort and download summaries of [closed enforcement cases](#) and [completed mediations](#). In addition, staff published a [Case Results webpage](#) to provide an up-to-date and easy to access overview of enforcement activities.

Commission staff also expanded access to online training by offering on-demand videos covering campaign finance basics, ethics, and open meeting requirements. On-demand training options are now featured prominently on the Commission’s home page.

Item 11 - Enforcement Report



Michael MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Arvon Perteet
Ryan Micik
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: December 29, 2021
RE: Enforcement Program Monthly and Year-End Report for the January 12, 2022, PEC Meeting

End of the Year Summary for Enforcement Matters

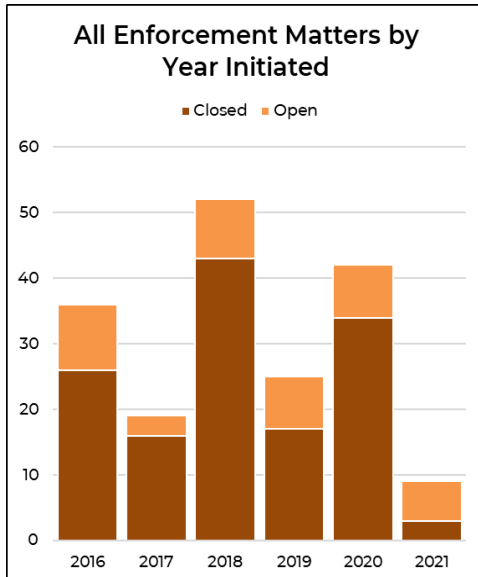
The Enforcement Unit's efforts to ensure fairness, openness, honesty and integrity in Oakland City Government by ensuring compliance with local and state government ethics, campaign finance, transparency, and lobbyist registration laws, are critical to instilling confidence in and accountability for public servants. In furtherance of the Public Ethics Commission's goals and objectives, the Enforcement Unit recommends, and the Commission brings, multiple enforcement actions that protect the integrity of our local government, deter violations, advise on policy, practice improvements, and restores accountability. The overarching goal of the PEC's enforcement activity is to obtain compliance with rules under its responsibility, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.

This end-of-year report presents a summary of the Enforcement Unit's work in 2021, including key priorities and accomplishments, as well as challenges imposed by the COVID-19 pandemic. Most notably in 2021, the Commission imposed its two largest ever fines for ethics cases that included significant bribery and conflicts of interest charges: a \$55,000 fine In the Matter of Anthony Harbaugh, and a \$309,600 fine In the Matter of Thomas Espinosa. These two cases required a substantial amount of staff resources due to both the complexity and volume of evidence as well as the lack of cooperation by respondents in both cases – from evidence gathering to an administrative hearing. This explains the unusual increase in fine amounts imposed in 2021 compared to prior years, as well as lower numbers in terms of volume of cases completed this year. In addition, the Commission employed its newly created Diversion program for the first time on two ethics cases in which diversion was the best option for fair and effective enforcement of local ethics rules. Together, these important actions highlight the PEC's Enforcement unit's ability to employ enforcement tools to address ethics matters of any level of complexity in a manner that is commensurate to the seriousness of each violation.

Enforcement Cases

The Enforcement Unit receives tips, complaints and referrals for violations of the City of Oakland ethics laws. In 2021, the Enforcement Unit received a total of nine complaints, significantly fewer than the

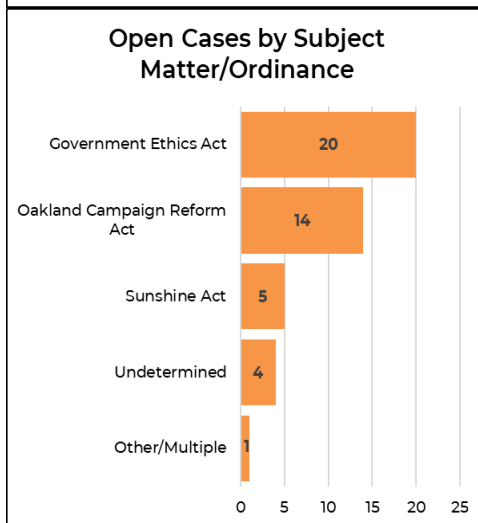
number of complaints received in past years. Currently the Enforcement Unit has a total of 44 open Enforcement cases.



Upon the receipt of every formal complaint received, Enforcement staff reviews, analyzes, and conducts a preliminary investigation of each complaint to determine whether the complaint is within the jurisdiction of the PEC and whether further investigation is needed. Following this process, Enforcement closed a total of 14 cases, including dismissing 9 complaints, in year 2021. Of the nine enforcement complaint dismissals in 2021, six were dismissed for lack of jurisdiction, one was referred to another agency and two were withdrawn by the complainant.

Enforcement Priorities

The Commission continued to prioritize enforcement activities based on the following considerations to determine priority level: 1) the extent of Commission authority to issue penalties; 2) the impact of a Commission decision; 3) public interest, timing, and relevancy, and 4) Commission resources.



Types of Cases

As the chart to the right illustrates, most of the Enforcement complaints involved allegations of Government Ethics Act (GEA). The Commission currently has a total of 20 enforcement cases that alleged violations of GEA. The second largest group of complaints encompassed complaints of 14 alleged Oakland Campaign Reform Act (OCRA). There are three Sunshine Act cases, one case categorized by multiple or other violations, and four undetermined violations.

Investigations

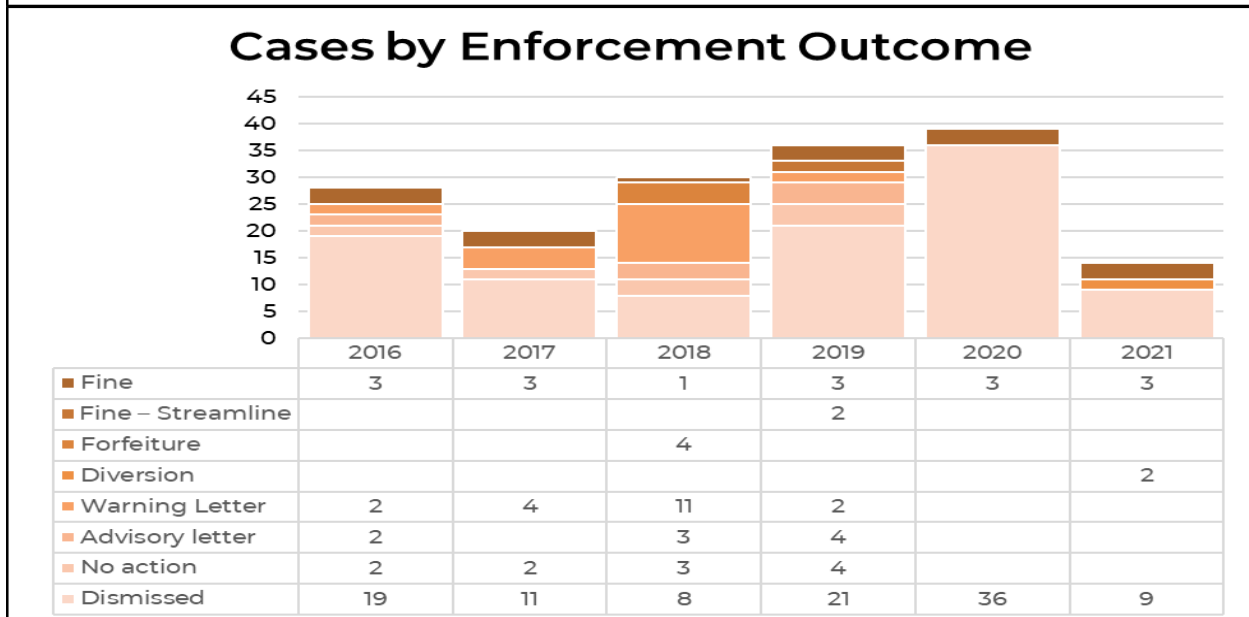
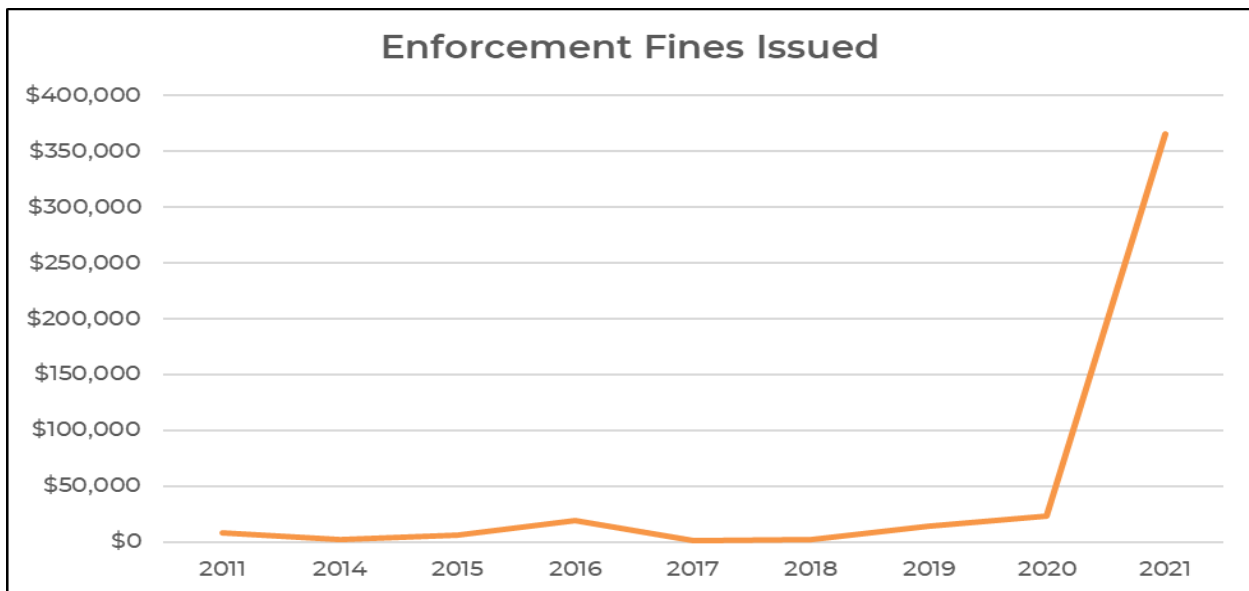
The Commission’s Enforcement unit conducts investigations to determine whether or not a violation of the Oakland Ethics Ordinances occurred and, if so, the persons or entities responsible. At year-end 2021, the Enforcement Unit has 16 matters under active investigation. The PEC’s administrative subpoena authority allows the Enforcement Unit to issue compulsory requests for documents or testimony. In 2021, the Executive Director issued 25 administrative subpoenas prepared by the Commission’s Investigator.

Achieving Results Through Contested Hearings

The majority of the Commission’s enforcement actions are settled as stipulated matters, but the Enforcement Unit can and will pursue an administrative hearing when a respondent rejects or ignores Enforcement staff’s attempts to resolve a matter by settlement. The Enforcement Unit took two matters to a hearing in 2021.

Penalties and Enforcement Outcomes

In year 2021, the Commission imposed \$365,600 in monetary penalties in enforcement actions. This reflects significantly larger fines than in prior years, commensurate with the type of violations, complexity of cases, and the amount of money in controversy in the cases brought this year. Below is a visual summary of fine amounts per year since 2011.



Non-Monetary Relief Ordered

In every enforcement action, Staff seeks to recommend appropriately tailored penalties that advance the mission of the PEC. In addition to the monetary penalties discussed above, there are a variety of potential non-monetary remedies available in the Commission's actions. Non-monetary remedial relief is important to the Commission's effort to ensure future compliance with local ethics ordinances and City policies. In year 2021 (as reflected in the graph above "Cases by Enforcement Outcomes"), the Commission issued two Diversion agreements – the first ever Diversion agreements approved by the PEC. Diversions are an agreement between the Respondent and the Commission to resolve an open enforcement case in a manner that facilitates education and training for the Respondent and meets the program goals of the Commission. A diversion may include a fee to cover the cost of training or other resources required of PEC staff to assist the respondent in meeting diversion requirements. In 2021 the Commission did not issue any advisory letters or warning letters, however, the Commission made recommendations to two separate City departments, the Oakland Planning and Building and Housing and Community Development departments on gaining compliance with Oakland ethics laws.

Mediation Cases

In 2021, The Commission's Mediation program was relocated internally from enforcement to the PEC's education and engagement team.

Conclusion

Over the past year, PEC enforcement has accomplished much in the face of an ever-changing workplace and a growing number of responsibilities. It has maintained its regulatory purpose of obtaining compliance with Oakland City ordinances, made full use of all available enforcement tools and continued to focus on providing timely, fair and consistent service to the community. Continuing advancement for enforcement in the new year will include maintaining an open mind to innovative ideas and approaches to enforcement, while continuing to draw on the experience and insights of its dedicated investigators and staff.

Summary of Current Case(s):

Since the last Enforcement Program Update in December 2021, the following status changes have occurred.

1. ***In the Matter of Jason Overman (Case No. 18-14)***. On May 9, 2018, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that Respondent, Jason Overman violated the Oakland Campaign Reform Act. Staff opened an investigation to determine whether the Respondent violated the Oakland Campaign Reform Act's Contractor Contribution Ban by making campaign contribution(s) to City of Oakland elected officials, candidates, or their controlled committees. After close consideration of all of the facts and the law, and the reasons explained in the attached memorandum, Staff recommends that the Commission approve a stipulation that Jason Overman violated the Oakland Campaign Reform Act and impose the following fines and financial penalties: \$500 on count 1 and \$500 on count 2, plus the unlawful amount \$1,600. (total sum of \$2,600). (See Agenda Items)
1. ***In the Matter of Oakland City Council (Case No. 18-05)***. On February 8, 2018, the City of Oakland Public Ethics Commission (PEC) received a complaint that alleged on February 6, 2018, the City Council held a meeting wherein City Councilmembers violated the Oakland Sunshine Act and California Brown Act when the Council voted to amend Council Rule (4) and (7.6). After conducting a preliminary review, Staff dismissed the complaint after determining that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)
2. ***In the Matter of Oakland City Council (Case No. 17-22)***. In December of 2017, the City of Oakland Public Ethics Commission (PEC) received a complaint that alleged Councilmembers participated in a vote to amend the Oak-to-Ninth Parcel (Brooklyn Basin Project) in violation of an unspecified City ordinance. After conducting a preliminary review, Staff dismissed the complaint after determining that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

December 23, 2021

Mr. Gene Hazard



Re: PEC Complaint No. 18-05; Notice of Dismissed Complaint

Dear Mr. Hazzard:

On February 8, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (#18-05) alleging that multiple members of City Council (including specifically Councilmembers, McElhaney, Kalb, Reid, Brooks, Gallo and Campbell Washington) violated the Oakland City Charter, Sunshine Ordinance, and the California Brown Act when they voted to amend Council Rule (4) to authorize the Council President to appoint members to committees and chair assignments and Rule (7.6) to authorize items moved from the consent calendar to the non-consent calendar so that the item can be heard at the same meeting and not unduly delayed, subject to the discretion of the Council President. Further, the complaint alleged that the motions should be nullified. We have concluded our preliminary review of your allegations and, after close review of the facts and the law, we are dismissing your complaint because there is no allegation of a violation within the PEC's enforcement jurisdiction.

On February 6, 2018, City Councilmembers voted to amend Rule 4 and Rule 7.6 to bring the Oakland City Council Rules in comity with other like size cities. The City Charter, the primary document that enacts and charges the City government, grants the City Council legislative authority to make recommendations and enact rules and procedures, subject to City Charter provisions and ordinances.

Even if the allegations in the complaint are true, neither the City Charter, the Oakland Sunshine Ordinance, nor the California Brown Act provide a penalty provision enforceable by the PEC for the City Council's failure to properly amend a Council Rule.

As you may already know, the California Brown Act provides, "prior to filing suit to invalidate an action taken in violation of the Brown Act, the complaining party must make a written demand on the legislative body to cure and correct the alleged violation. The written demand must be made within 90 days after the challenged action was taken in open session unless the

Item 11 - 18-05 Dismissal Letter

PEC Complaint No. 18-05; Dismissal Letter
Page 2

violation involves the Agenda requirements under Section 54954.2, in which case the written demand must be made within 30 days. The legislative body is required to cure or correct the challenged action and inform the party who filed demand of the correcting actions, or its decision not to cure or correct within 30 days...”

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting as part of our regular monthly update on Enforcement actions. That meeting will take place on January 12, at 6:30 p.m. (by teleconference as 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 call-in to that meeting to listen and/or 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. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-5239
FAX (510) 238-3315
TDD (510) 238-3254

Mr. Gene Hazzard,

Re: PEC Complaint No. 17-22; Dismissal Letter Regarding City Council

Dear Mr. Hazard:

On December 14, 2017, the City of Oakland Public Ethics Commission (PEC) received your complaint (Complaint No. 17-22) that in 2017, City Council Members violated an unspecified City ordinance when members of the Council voted to amend the General Plan Estuary Policy and convey 64 acres to the Oak to Ninth Parcel (“Brooklyn Basin”), contrary to the original plan for Open Space Development Project of 2001. After a close review of the allegations, analyzing the facts, relevant law and Enforcement Procedures, we found that there are insufficient facts alleged in the complaint to establish that any member of the 2017 City Council engaged in conduct that constitutes a violation of the Government Ethics Act or any other City of Oakland ordinance.

Contrary to the allegations in the complaint, the Estuary Policy Plan or Estuary Plan, as it later came to be known, was developed after concerns raised in a 1998 report prepared by the League of Women Voters and other concerned Oakland community members.

In June 1999 the Estuary Policy Plan was published, and it defined the purpose of the plan as follows: “The Estuary Policy Plan calls for a system of open spaces and shoreline access that provides recreational use opportunities, environmental enhancement, interpretive experiences, visual amenities, and significant gathering places. A series of individual parks, open spaces and shoreline access points, connected by a continuous landscaped parkway with promenades, bikeways and shoreline trails, is recommended. In addition to enhancing existing facilities, new parks are proposed at the mouth of the Lake Merritt Channel, at the site of the Ninth Avenue Terminal, at Union Point, and within the Jack London District. Further, the Estuary Plan proposes a variety of uses that strengthen Oakland’s position as an urban center, accommodate economic growth, and encourage development that complements the downtown and adjacent neighborhoods. The plan reinforces the Jack London District as the East Bay’s primary dining and entertainment venue, by promoting mixture of retail, dining, entertainment and visitor-services...” (Please see the attached copy of the Estuary Plan)

Furthermore the plan proposed, “[t]he large-scale transformation of the area from the Lake

Item 11 - 17-22 Dismissal Letter)

Merritt Channel to the Ninth Avenue Terminal into a mix of artisan work/live lofts, hotel, cultural and commercial-recreational uses that will complement the planned open spaces and parks along the water. The plan recommends strengthening the livability of existing and future residential development within the Kennedy Tract, and suggests new opportunities for small-scale office, business and commercial establishments. In certain areas (e.g., around the Con-Agra facility in the San Antonio/Fruitvale District), the plan supports the retention of existing industries, but acknowledges that they may relocate for a variety of reasons. If that occurs, the plan suggests land use priorities for an appropriate transition to new urban development in the future...”

On March 15, 2006, the Planning Commission approved a set of amendments to the General Plan for recommendation to the City Council and the Council adopted them on June 20, 2006. The Council amended the plan and added the following language: “ a mix of land use can be accommodated within the Oak-to-Ninth District, including open space, recreation, commercial, civic uses, marinas, and as designated in the PWD-4 land use classification, residential development.” The Brooklyn Basin project broke ground on March 13, 2014. (For additional information please consult the webpage [Waterfront Action.org](http://WaterfrontAction.org) Plans and Projects)

There is no provision within City ordinances or City Charter language enforced by the Public Ethics Commission that prohibits the City Council from amending a General Plan. There is no provision within the 1999 (reprinted in 2000) Estuary Policy Plan that prohibits the City Council from making amendments to the Plan. The investigation corroborated that, outside of voting on a measure to amend a City plan regarding the Oak to Ninth Parcel, there is insufficient information that any 2017 Council Member intentionally or knowingly participated in or aided and abetted another in violating any provision of the Oakland Municipal Code.

Because the alleged conduct does not constitute a violation of the Government Ethics Act or any other act under the PEC’s jurisdiction, we are dismissing the allegations against all members of the 2017 City Council in the complaint pursuant to the PEC’s Complaint Procedures. If you would like to review the PEC’s Complaint Procedures, they are available on the PEC’s website.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on January 12, 2022, at 6:30 p.m. by teleconference as 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 call-in to that meeting to listen and/or 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. Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,



Kellie Johnson,
Enforcement Chief

Item 12 - Executive Director's Report



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: December 29, 2021
RE: Executive Director's Monthly and Year-End Report for 2021 for the January 12, 2022, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month and in 2021 overall. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2020-21 for each program area. (Commission Programs and Priorities attached)

Public Meetings

The Commission's public meetings in 2021 continued to be held online and accessible to the public via Zoom. On September 16, 2021, the Governor signed AB 361 which amended provisions of the Brown Act to allow local legislative bodies to continue to meet by teleconference so long as the body adopts certain findings in compliance with the new law. Since then and ongoing, the Commission must adopt a resolution with findings that a public health emergency still exists, warranting the PEC to meet via teleconference. This process will continue for the near future, until otherwise indicated on a future agenda. AB 361 provisions sunset in January 2024.

Spotlight on Oakland's Public Records Responses

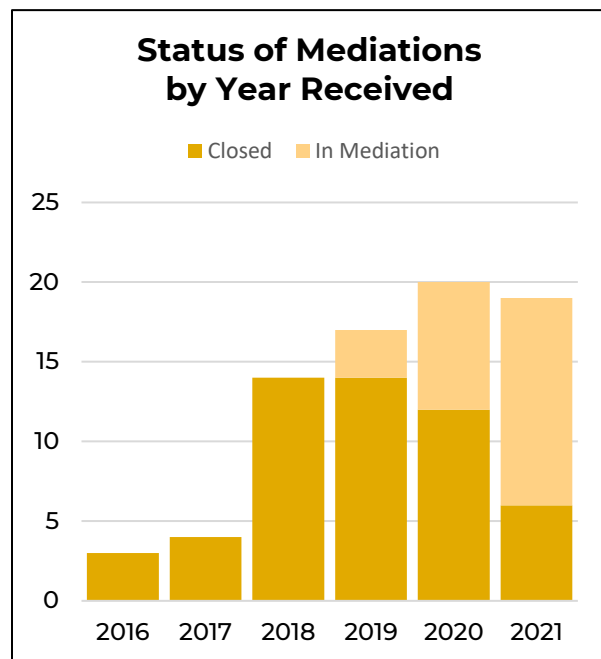
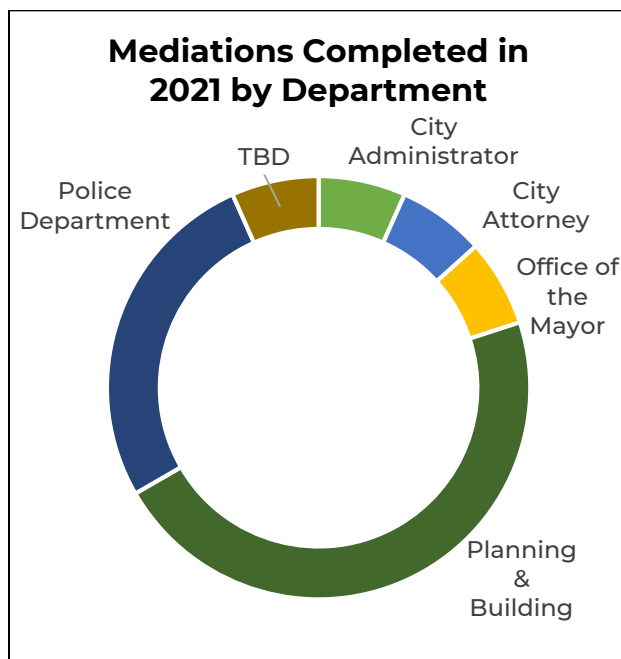
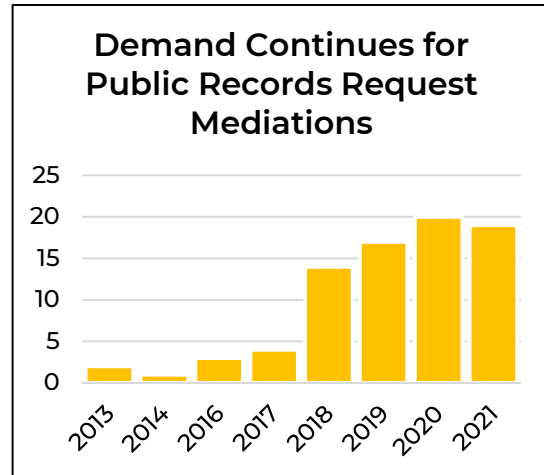
In May 2021, the Commission completed the first phase of its project to review Citywide performance in responding to public records requests via the City's online NextRequest system. The PEC's Sunshine Review subcommittee presented a summary of data extracted from the NextRequest online public portal for public records requests and the subcommittee's initial analysis of the information. The Commission adopted the subcommittee's recommendations as outlined in **Spotlight on Oakland's Public Records System**, which includes recommendations and next steps to improve public records request performance and create an online tool to track ongoing progress across City departments.

In November 2021, after noting that six of the PEC's nine mediations completed as of October 2021 were regarding public records requests made to the Department of Planning and Building, the PEC invited the director to provide an update regarding his department's system of responding to public records requests. The director and his team reported on significant changes that had been made to improve their performance and addressed specific concerns that were brought to their attention during the PEC's mediation of certain public records requests. PEC staff also reviewed NextRequest data for the department and found significant improvements in average response time and closures within the 10 day time period in 2021 compared to the prior 3 years, despite record requests almost tripling in total number over that four year time period.

Mediations

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. In 2021, the Commission received 19 new requests for mediation, continuing the high demand for mediations since 2018.

In March 2021, the Mediation Program was moved from the Enforcement team to the Education and Engagement team to address the increase in workload from both mediations and enforcement cases, facilitate staff ability to enhance education and engagement through the mediation process itself, and integrate this work with the PEC's broader Sunshine Review project to assess department performance Citywide as discussed above. In 2021, the PEC closed 16 mediations, some of which were received in prior years, and ends the year with 24 open mediations.



Following each mediation, Commission staff provides a written summary of the mediation to the PEC and can also make recommendations for further Commission action. The following mediations were conducted by staff and subsequently closed this past month (reports attached):

1. In the Matter of Councilmember Taylor's Office (Case No. M2019-15a)
2. In the Matter of the City Administrator's Office (Case No. M2019-15b)
3. In the Matter of the Public Works Department (Case No. M2019-15c)
4. In the Matter of the Information Technology Department (Case No. M2020-17)
5. In the Matter of the Public Works Department (Case No. M2021-11)

Fine Collections

In March 2021, Commission staff received final payment of the \$10,000 penalty imposed in the matter of Michael Colbruno, who had refused to make payment on his fine since it was imposed in early 2020. Commission staff pursued collection, and Mr. Colbruno submitted a \$5,000 payment on February 15 and paid the remaining \$5,000 on March 15.

Throughout 2021, Commission staff worked with City Collections and outside counsel to pursue collection of the \$55,000 fine imposed by the PEC in the matter of Anthony Harbaugh earlier this year. Mr. Harbaugh entered into a bankruptcy plan in December 2021 that will be implemented by a Trustee to ensure monthly payments are made to the City over the course of the next four years.

Commissioner Transition

In 2021, the Commission welcomed new Commissioner Arvon Perteet, who was selected by the PEC through its annual public recruitment process at the end of 2020 and whose term began on January 22, 2021, as well as Jessica Leavitt, the City Attorney's appointment to the Commission, who was appointed on September 15, 2021, to fill the January 22, 2021 – January 21, 2024 term. Commissioner Perteet's and Commissioner Leavitt's terms will end January 21, 2024.

In addition, the Commission conducted an unexpected recruitment in the Spring to fill the seat left vacant from Janani Ramachandran's early departure in February 2021. From this public recruitment, the Commission selected new Commissioner Ryan Micik, who began his service on June 8, 2021, to fill the remaining term through January 21, 2023.

In addition, incoming Commissioner Charlotte Hill was selected through the PEC's annual public recruitment process initiated in September 2021 to fill outgoing Commissioner Avi Klein's seat to become vacant after January 21, 2022. Ms. Hill's 3-year term begins January 22, 2022 and ends January 21, 2025.

The City Auditor will have a vacancy for appointment beginning January 22, 2022, to fill outgoing Commissioner Jerett Yan's seat that will open after January 21, 2022.

Special appreciation to Vice Chair Yan and Commissioner Klein for their commitment and service to the PEC and the City of Oakland since 2019 and 2020, respectively. Thank you for your voluntary service!

PUBLIC ETHICS COMMISSION
Programs and Priorities 2021

Program	Goal	Desired Outcome	Key Projects for 2021
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Oakland Sunshine Report Card, ongoing compliance 2. Campaign Public Finance Redesign 3. City Ticket Policy
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	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.	<ol style="list-style-type: none"> 1. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Sunshine training – Open meetings; public records 3. New trainings as needed for diversion
Outreach/ Engage	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.	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.	<ol style="list-style-type: none"> 1. Sunshine mediations 2. Communications/outreach to client groups 3. PEC social media outreach 4. Website – PEC dashboards for enforcement cases and mediations
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>	<ol style="list-style-type: none"> 1. Filing Officer/Compliance – assess, follow-up, and refer 2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App 3. Open Disclosure – continue coordination and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Investigations 2. Collaborate with other government law enforcement agencies

Item 12 - Executive Director's Report

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	
Prosecute	Enforcement is swift, fair, consistent, and effective.	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.	<ol style="list-style-type: none"> 1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC 2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources. 3. Resolve all 2016 cases
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Annual Report 2. Budget – new positions 3. Enforcement database upgrade 4. Review data to adjust activities throughout the year 5. Ongoing: professional development and staff reviews

Item 12 - M2019-15a Mediation Summary;



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: December 27, 2021
RE: *In the Matter of Councilmember Taylor's Office (Case No. M2019-15(a)); Mediation Summary*

I. INTRODUCTION

On September 24, 2019, the Commission received a request for mediation alleging that the office of Councilmember Loren Taylor – District 6 failed to disclose records in response to two public records requests made by the Requester on July 11, 2019. On October 2, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding office provided the responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 12 - M2019-15a Mediation Summary;

III. SUMMARY OF FACTS

On July 11, 2019, Councilmember Taylor's Office received, via the web, a public records request (No. 19-3484) stating:

Emails, documents, recordings, transcripts, or any other form of communication between District 6 representative, Loren Taylor and staff, and any members of John Gooding, Michael Colbruno, Nara Dahlbacka, Alistair Mcelwee, or Nicole Drake or any other principal, staff member or employee of the Milo Group. From February 6, 2019 to July 11, 2019.

In addition, on July 11, 2019, the Councilmember Taylor's Office received another public records request (No. 19-3485):

Emails, documents, recordings, transcripts, or any other form of communication between District 6 representative, Loren Taylor and staff, and Chris Grant, and/or any other principals and employees of Pacific Companies, its subsidiaries; and/or James Wilcox and/or any other Strategic Growth Partners employees; and representatives of Aspire Schools, or any of its Oakland schools. From February 6, 2019 to July 11, 2019.

On August 27, 2019, Councilmember Taylor's Office requested additional time for both public records requests via NextRequest stating:

Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).

On September 24, 2019 the Commission received a complaint alleging that Councilmember Taylor's Office had failed to respond to public records requests 19-3484 and 19-3485.

On October 2, 2019, Staff initiated its mediation program and notified the Councilmember Taylor's Office of the mediation request.

On October 7, 2019, Councilmember Taylor's Office released one responsive document related to PRR 19-3484. Subsequently, Councilmember Taylor's Office closed the PRR stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

In addition, on October 7, 2019, Councilmember Taylor's Office released one responsive document related to PRR 19-3485. Subsequently, Councilmember Taylor's Office closed the PRR stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

Item 12 - M2019-15a Mediation Summary;

On October 26, 2021, Staff followed up with the Requester regarding their public records request and informed them that the mediation would be closed. The Requester had no further inquiries and acknowledged closure of the request.

IV. RECOMMENDATION

Because Councilmember Taylor's Office provided the responsive documents, and because the Requester had no further inquiry for responsive documents, Staff closed the mediation without further action.

Item 12 - M2019-15b Mediation Summary



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: December 27, 2021
RE: *In the Matter of the City Administrator's Office (Case No. M2019-15(b));* Mediation Summary

I. INTRODUCTION

On September 24, 2019, the Commission received a request for mediation alleging that the Office of the City Administrator failed to disclose records in response to a public records request made by the Requester on August 8, 2019. On October 2, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department provided the responsive documents per the requests, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 12 - M2019-15b Mediation Summary

III. SUMMARY OF FACTS

On August 8, 2019, the City Administrator's Office received, via the web, a public records request (No. 19-3996) stating:

Any emails, letters, or other forms of communications with officials of California Department of Transportation's Departments Right of Way Airspace Development and the city administrator's office of the City of Oakland, California regarding the lease of airspace at 04-ALA-580-38 & 39--aka airspace between Mandela Parkway and Beach Street in Oakland, California

Officials of that office, including, but not limited to:

Jim Bozionelos
Juliew McDaniel
John D. Kluge
Brenda McKenzie
Eva Marie Figlietti
Kimberly Ellis Erickson

The dates requested are: 5/01/2018 to 08/08/2019

On August 22, 2019, the Requester sent a message via NextRequest stating:

The legal 10 day period for response has elapsed.

On August 26, 2019, the City Administrator's Office requested additional time for the public records request stating:

Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)). We anticipate providing a response in the next week.

On September 24, 2019, the Commission received a complaint alleging that the City Administrator's Office had failed to respond to public records request 19-3996.

On October 2, 2019, Staff initiated its mediation program and notified the City Administrator's Office of the mediation request.

On December 6, 2019, the City Administrator's Office released 13 responsive documents related to PRR 19-3996.

On December 9, 2019, the City Administrator's Office closed the PRR stating:

We released all of the requested documents.

The City has redacted documents covered by the attorney-client privilege pursuant to Section 6254(k) of the Public Records Act which states that "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

Item 12 - M2019-15b Mediation Summary

On October 26, 2021, Staff followed up with the Requester regarding their public records request and informed them that the mediation would be closed. The Requester had no further inquiries and acknowledged closure of the request.

IV. RECOMMENDATION

Because the City Administrator's Office provided the responsive documents, and because the Requester had no further inquiry for responsive documents, Staff closed the mediation without further action.

Item 12 - M2019-15c Mediation Summary



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: December 27, 2021
RE: *In the Matter of the Public Works Department (Case No. M2019-15(c)); Mediation Summary*

I. INTRODUCTION

On September 24, 2019, the Commission received a request for mediation alleging that the Public Works Department failed to disclose records in response to a public records request made by the Requester on August 27, 2019. On October 2, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department provided the responsive documents per the request, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 12 - M2019-15c Mediation Summary

III. SUMMARY OF FACTS

On August 27, 2019, the Public Works Department received, via the web, a public records request (No. 19-4286) stating:

All activity records, including schedules and any other records listing date, time and location and type of work done by people contracted by the City of Oakland through the SWAP, Alameda County Sheriff Work Alternative Program, from 1/1/2019 to 8/27/2019.

If possible please include cumulative number of participants, or ongoing numerical sets of participants by date, time or other criteria.

On September 24, 2019, the Commission received a complaint alleging that the Public Works Department had failed to respond to public records requests 19-4286.

On October 2, 2019, Staff initiated its mediation program and notified the Public Works Department of the mediation request.

On October 7, 2019, the Public Works Department released one responsive document related to PRR 19-4286 stating:

OPW did not start receiving SWAP Participants until 5-4-19. Attached are redacted rosters from 5-4-19 thru 8-30-19.

OPW is continuing to research records to determine if there are any additional responsive documents.

On October 16, 2019, the Public Works Department released an additional responsive document related to PRR 19-4286 stating.

SWAP Program from 6-5-19 thru 8-30-19 (the attachment contains the location in which the participants worked and the number of participants that were on the crew).

SWAP Roster from 5-4-19 thru 8-30-19 (this attachments contains the participants names which has been redacted, the date and their schedule).

The May correspondence did not contain the cumulative number of participants or the locations where they worked. However, there was improvement in this area in June and July and a significant increase in August when almost all of the information is captured.

All the emails pertained to the participants removing vegetation, and removing illegal dumping and abating litter.

The participants also worked the Bulky Block Parties the last Saturday of each month:

- 5-25-19;
- 6-29-19;
- 7-27-19; and
- 8-31-19.

Subsequently, the Public Works Department closed the PRR stating:

Item 12 - M2019-15c Mediation Summary

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On October 26, 2021, Staff followed up with the Requester regarding their public records request and informed them that the mediation would be closed. The Requester had no further inquiries and acknowledged closure of the request.

IV. RECOMMENDATION

Because the Public Works Department provided the responsive documents, and because the Requester had no further inquiry for responsive documents, Staff closed the mediation without further action.

Item 12 - M2020-17 Mediation Summary;



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: December 27, 2021
RE: *In the Matter of the Information Technology Department (Case No. M2020-17);
Mediation Summary*

I. INTRODUCTION

On November 24, 2020, the Commission received a request for mediation alleging that the City's Information Technology Department (ITD) and the City Administrator's Office (CAO) failed to disclose records in response to a public records request made by the Requester on November 6, 2020. On December 4, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department determined that there were no responsive documents per the request, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 12 - M2020-17 Mediation Summary;

III. SUMMARY OF FACTS

On November 6, 2020, the City received, via web, the following public records request (No. 20-7893):

This is a public records request. Please observe local and state laws.

Please provide the grant agreement and/or contract, if they are separate documents, for Oakland Public Education Fund for a project known as "Digital Inclusion Committee". The project is described in a city document found here. <https://cao-94612.s3.amazonaws.com/documents/Attachment-A-CARES-Act-Relief-Fund-Supplemental-November-6-2020.pdf>

Subsequently, the public records request was assigned to the Information Technology Department as the responsible departments in NextRequest and a message was sent from the CAO to the Requester stating:

Thank you for submitting a request for public records through the City of Oakland's NextRequest system. Your request will be delivered to the appropriate City Departments or Officials.

The City of Oakland is committed to transparency and to providing you with a full and timely response to your request. If we need to clarify your request in order to provide a complete response, we will contact you directly or post a reply in NextRequest.

If you have any questions, you may contact the department liaison assigned to your request.

On November 6, 2020, an internal message was sent from CAO staff to the ITD stating:

Hi Cynthia & Tyehimba - per source document provided by requester (pg 2), ITD is the responsible department for this item re: COVID Broadband/Digital Resilience. Please confirm, thank you

On November 16, 2020, the Requester sent a message via NextRequest stating:

It appears that the updated report has another line item description for this contract/grant. Please provide the grant and contract with Oakland Public Education Fund for either "digital inclusion committee" and/or "technological equipment" for this project, whichever scope of work the grant/contract entails.

On November 18, 2020, the Requester sent an additional message stating:

There was supposed to be a response to this two days ago.

On November 24, 2020, the Commission received a complaint alleging that the ITD and CAO had failed to respond to the public records request No. 20-7893.

On December 4, 2020, Staff initiated its mediation program and notified the ITD of the mediation request.

Item 12 - M2020-17 Mediation Summary;

On December 10, 2020, Rose Rubel from the CAO was assigned as the new point of contact for the public records request. Subsequently, the City's Open Government Coordinator intervened with an internal message stating:

why is this being reassigned to City Admin? Page 2, section 4 of the document shows this matter assigned to IT

On December 10, 2020, Cynthia Perkins from the ITD was assigned as the new point of contact for the public records request.

On December 23, 2020, a number of staff members from the ITD were removed from the request and the CAO was added to the request again. Subsequently, CAO staff responded:

Cynthia: My understanding from both CAO and Mayor's Office staff is that ITD was the lead for this project/agreement.

On December 23, 2020, ITD was confirmed as the responsive department and assigned the public records request.

On December 24, 2020, the ITD closed the request stating:

These documents do not exist. An agreement was never executed for the digital inclusion committee.

On October 26, 2021, Staff followed up with the Requester regarding their public records request and informed them that the mediation would be closed. The Requester had no further inquiries and acknowledged closure of the request.

IV. RECOMMENDATION

Because the Information Technology Department indicated that they had no responsive documents for the public records request, and because the Requester had no further inquiry for responsive documents, Staff closed the mediation without further action.

Item 12 - M2021-11 Mediation Summary



Michael B. MacDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Jessica Leavitt
Ryan Micik
Arvon Perteet
Joe Tuman

Whitney Barazoto, Executive Director

TO: Whitney Barazoto, Executive Director
FROM: Jelani Killings, Ethics Analyst
DATE: December 28, 2021
RE: *In the Matter of the Public Works Department (Case No. M2021-11); Mediation Summary*

I. INTRODUCTION

On May 20, 2021, the Commission received a request for mediation alleging that the City's Public Works Department failed to disclose records in response to a public records request made by the Requester on April 8, 2021. On May 20, 2021, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department provided the responsive documents per the request, Staff closed the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

Item 12 - M2021-11 Mediation Summary

III. SUMMARY OF FACTS

On April 8, 2021, the City received, via web, the following public records request (No. 21-3176):

All invoices from CARES Act grant recipient Beautification Council sent to the City of Oakland between 7/1/2020 and 2/1/2021. If redactions are necessary, please supply the rationale for the redactions and the relevant legal justification.

On May 11, 2021, the Public Works Department sent a message to the Requester via NextRequest stating:

The Oakland Public Works Dept. is continuing to work on this request, documents will be uploaded as they become available. Thanks for patience!

On May 19, 2021, The Public Works Department released one responsive document to the Requester stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers, email addresses and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

The Government Code provided is the justification for the redactions.

We are continuing to work on this request and will upload any additional information as it becomes available.

On May 20, 2021, the Commission received a complaint alleging that the Public Works Department had erroneously redacted documents for unsubstantiated reasons.

On May 20, 2021, Staff initiated its mediation program and notified the Public Works Department of the mediation request.

On May 24, 2021, the Public Works Department released an additional document in response to PRR 21-3176.

On May 26, 2021, the Public Works Department released an additional two documents in response to PRR 21-3176.

On June 9, 2021, the Public Works Department released an additional two documents in response to PRR 21-3176.

On June 18, 2021, the Public Works Department released an additional document in response to PRR 21-3176.

On June 22, 2021, the Public Work Department closed the request stating:

Item 12 - M2021-11 Mediation Summary

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On October 26, 2021, Staff followed up with the Requester regarding their public records request and informed them that the mediation would be closed. The Requester had no further inquiries and acknowledged closure of the request.

IV. RECOMMENDATION

Because the Public Works provided the responsive documents, and because the Requester had no further inquiry for responsive documents, Staff closed the mediation without further action.