

Public Ethics Commission

ENFORCEMENT PENALTY GUIDELINES

The Public Ethics Commission (PEC) is authorized by the Charter of the City of Oakland (City Charter) to impose penalties, remedies, and fines as provided for by local ordinances that are within the PEC's jurisdiction, including the Government Ethics Act, Oakland Campaign Reform Act and Lobbyist Registration Act. This Guideline includes general principles and factors to consider in determining a penalty, and a tiered approach to penalties based on the seriousness of the violation. This Guideline is advisory only, and does not limit the PEC from using discretion to deviate from the guidance when atypical or egregious circumstances exist.

The penalties set forth in this Guideline are separate and apart from any late filing fees that may be owed by a respondent.

Guiding Principles for Enforcement

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. The following principles guide the PEC's compliance activities as part of an effective enforcement program:

- 1. Timeliness** – For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed. Compliance should be timely to provide the public with required disclosures, and to mitigate harm caused by a violation(s). Enforcement resolutions should be viewed through this lens to craft a range of penalties and enforcement actions that drive timely compliance and mitigate harm. For campaign violations, this should mean swift resolution and correction of violations, especially before an election. Timely public disclosure is crucial in these cases, as the value of required pre-election disclosure declines significantly after the election. Similarly, PEC enforcement of violations should also be pursued in a diligent and timely manner as allowed by PEC staffing/priorities.
- 2. Fairness** – The core of the PEC's work is fairness to ensure that enforcement actions are even-handed and consistent, as well as to ensure due process for those accused of violating the law. The PEC frequently investigates and administratively prosecutes public officials, and it is essential that politics and rivalries not become part of such investigations. The PEC shall track penalty amounts over time and articulate in each enforcement action its consistency with previous actions. This allows the public, respondents, and future PEC Commissioners to see the articulated rationale for the decision and the reasons for any variation. Additionally, effective enforcement of violations leads to fairness in government, as timely enforcement of government ethics rules also shows respect and fairness to those who follow the rules.
- 3. Focus on Serious Violations and Repeat Offenders** – The focus of the PEC's work – both in terms of resources spent as well as the level of penalty imposed – should reflect the seriousness of each violation so that penalties urge compliance, while preserving PEC resources for major

violations that may occur. Minor violations will not be ignored, but proportionality in penalties and an ability to take on more significant cases is important to creating a culture of compliance. Violations will not be considered minor where a pattern of violations exists.

4. **Education and Support** – To fully embrace the goals of its enforcement responsibilities, the PEC has implemented a full range of services for the purpose of educating and supporting the regulated community, including: voluntary and mandatory training sessions; published materials and guidebooks explaining rules and requirements; on-line access to rules, forms, guidebooks and advice; access to staff members in person, via email and by phone for guidance and assistance; proactive monitoring, communication and reminders regarding filing deadlines; and electronic filing platform for most filing requirements. These services are intended to ensure that the regulated community is advised of, and aware of, filing and reporting requirements, and to ensure full and timely compliance with various regulatory requirements. Given the array of services, including the availability of PEC staff for questions, claims of ignorance regarding the obligations of the regulated community will not be given much weight, if any, in an enforcement action.

Specific Factors to Consider in Determining a Penalty

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.

Penalty Options Based on Levels

To obtain compliance with the law and provide timely and fair enforcement that is proportional to the seriousness of the violation, the PEC institutes a three-tiered approach that utilizes warning letters, streamlined stipulations, and more severe penalties based on the level of public harm and the articulated aggravating and mitigating circumstances. This approach aims to provide consistency across similar violations and an expedited way to handle cases according to the level of seriousness so that staff resources are allocated according to the level and significance of the violation.

1. **Warning Letter:** A warning letter is an enforcement option for any minor violations without any aggravating circumstances. It is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of a potential or proven low-level violation. This allows for respondents to be educated about the rules and provides the PEC with a historical list of prior violations for future consideration in enforcement cases. A warning letter may be used to address a violation where the evidence demonstrates that a monetary penalty is not justified, or in the interest of justice. A warning letter will not be available where the respondent has had a prior violation of the same or similar type.
2. **Streamline Stipulation:** The streamlined stipulation program takes common violations, such as the non-filing of a campaign statement, and provides a scaled-down stipulation document and set penalties. These more common cases can be quickly handled with a penalty commensurate to the violation, which helps preserve staff time to focus on more serious cases. The streamlined stipulation program is an option (but is not required) to resolve the following types of violations:
 - a. Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040);
 - b. Gift Restrictions (GEA § 2.25.060C);
 - c. Form 301 Non-Filer (CRA § 3.12.190);
 - d. Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.240);

The streamlined stipulation program takes into account that the articulated evidence demonstrates a greater degree of public harm than a case that qualifies for a warning letter and is therefore worthy of a penalty. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations have been standardized and shortened to promote efficiency.

The penalty tiers applying to streamlined stipulations are set forth below and are contingent upon the following conditions:

- the respondent has filed the form or amendment that forms the basis of the violation;
- the respondent has agreed to the terms of the streamlined stipulation;
- the respondent has paid all late filing fines; and
- the penalties are applied on a per-violation basis.

| Violation | Compliance prior to or in response to first PEC enforcement contact | Compliance prior to publication of PEC investigation report |
|--|---|--|
| <u>Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040):</u> | <u>\$400</u> | <u>\$800</u> |
| <u>Gift Restrictions (GEA § 2.25.060C)</u> | <u>\$400, plus unlawful amount</u> | <u>\$800, plus unlawful amount</u> |
| <u>Form 301 Non-Filer (CRA § 3.12.190)</u> | <u>\$400, plus 2% of contributions received over limit prior to filing form</u> | <u>\$800 plus 2% of contributions received over limit prior to filing form</u> |
| <u>Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340)</u> | <u>\$400, plus 1% of all financial activity not timely reported</u> | <u>\$800, plus 1% of all financial activity not timely reported</u> |

- 3. Mainline Penalty.** For more serious violations and violations that do not qualify for a warning letter or the streamlined stipulation program, the PEC will start with the following “base-level” penalty amount and then adjust the penalty amount based on mitigating and aggravating factors of the enforcement action, which will be articulated in any decision to impose a monetary penalty.

| Violation | Base-Level Per Violation | Statutory Limit Per Violation |
|--|-----------------------------------|--|
| Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.) | \$1,000. | \$5,000 or three times the amount not timely reported, whichever is greater. |
| Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.) | \$3,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Revolving Door Provisions. (GEA § 2.25.050.) | \$3,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Misuse of City Resources. (GEA § 2.25.060A1.) | \$2,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Misuse of Position or Authority (GEA § 2.25.060A2.) | \$5,000 | \$5,000 or three times the unlawful amount, whichever is greater. |
| Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.) | \$3,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Gift Restrictions. (GEA § 2.25.060C.) | \$1,000 plus the unlawful amount. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Contracting Prohibition. (GEA § 2.25.060D.) | \$2,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Bribery/Payment for Position. | \$5,000, or three times | \$5,000 or three times the unlawful amount, |

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| (GEA § 2.25.070A-B.) | the unlawful amount, whichever is greater | whichever is greater. |
| Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.) | \$3,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.) | \$1,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Contribution Limits. (CRA §§ 3.12.050 -3.12.080.) and Contractor Contribution Prohibition. (CRA § 3.12.140.) | \$1,000, plus the unlawful amount. | \$5,000 or three times the amount of the unlawful contribution, whichever is greater. |
| One Bank Account Rule. (CRA § 3.12.110.) | \$1,000. | \$5,000 or three times the unlawful amount, whichever is greater. |
| Fundraising Notice Requirement. (CRA § 3.12.140P.) | \$1,000. | \$5,000 or three times the unlawful expenditure, whichever is greater. |
| Officeholder Fund Requirements. (CRA § 3.12.150.) | \$2,000. | \$5,000 or three times the unlawful expenditure, whichever is greater. |
| Form 301 Requirement. (CRA § 3.12.190.) | \$1,000, plus 2% of contributions received over contribution limit prior to filing Form 301. | \$5,000 or three times the unlawful contribution or expenditure, whichever is greater. |
| Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.) | \$1,000. | \$5,000 or three times the unlawful expenditure, whichever is greater. |
| Contribution and Expenditure Restrictions. (CRA §§ 3.12.065 and 3.12.130.) | \$1,000 | \$5,000 or three times the unlawful contribution or expenditure, whichever is greater. |
| Campaign Statement/Report Non-Filer and Non-Reporter. (CRA § 3.12.340.) | \$1,000, plus 1% of the all financial activity not timely reported. | \$5,000 or three times the amount not properly reported, whichever is greater. |
| Public Finance Program Requirements. (LPFA § 3.13.010.) | \$1,000. | \$1,000 and repayment of public financing unlawfully received or expended. |
| Lobbyist Registration Non-Filer. (LRA § 3.20.040.) | \$750. | \$1,000. |
| Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.) | \$750. | \$1,000. |

Application of this Guideline

While most enforcement matters will likely fall within the penalty structure outlined in this guideline, this document was created merely to assist the PEC in determining an appropriate penalty in certain

types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty that deviates from this guideline or from the PEC's past practice. Additionally, this guideline is not a comprehensive list of violations for which the PEC has jurisdiction to investigate and impose a penalty, and exclusion of a type of violation from this guideline does not in any way limit the PEC or its staff from investigating and imposing a fine or penalty on any person who commits such a violation.