

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, November 5, 2018
Hearing Room 1
6:30 p.m.



Commissioners: Jonathan Stein (Chair), Jodie Smith (Vice-Chair), Lisa Crowfoot, James E.T. Jackson, Gail Kong, and Krisida Nishioka

Commission Staff to attend: Whitney Barazoto, Executive Director; Milad Dalju, Deputy Director and Chief of Enforcement; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Simon Russell – Investigator

City Attorney Staff: Trish Hynes, Deputy City Attorney

REGULAR MEETING AGENDA

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

CONSENT ITEMS

- 4. Approval of Commission Meeting Draft Minutes.**
 - a. October 1, 2018, Regular Meeting Minutes ([Attachment 1 – Minutes](#))

ACTION ITEMS

- 5. Campaign Finance Compliance for the November 2018 Election.** Commission staff presents findings and recommendations following its proactive review of contributions reported by candidates for the November 2018 election and its assessment of related formal complaints recently submitted to the Commission. The Commission will review and take action on the staff recommendations listed in the report. ([Attachment 2 – Campaign Finance Compliance Report](#))
- 6. In the Matter of Rich Fielding (Case No. 16-11).** On July 11, 2016, the Commission received a complaint alleging that Rich Fielding, a Principal Inspection Supervisor in the City’s Planning and Building Department, sent a letter to PG&E that incorrectly identified a vacant property for which gas and electric service would be disconnected, in violation of the Oakland Government Ethics Act’s provisions governing the misuse of City resources or official position. Commission staff’s investigation found no evidence that Mr. Fielding’s actions were in violation of the Oakland Government Ethics Act and therefore recommends that this matter be closed without any further action. ([Attachment 3 – Staff Memorandum](#))
- 7. In the Matter of Thomas Espinosa (Case No. 16-14).** In October 2016, Commission staff opened a pro-active investigation into allegations referred by employees in the City

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Administrator's Office and the Department of Planning and Building about potential Government Ethics Act violations by Thomas Espinosa, a building inspector in the City's Planning and Building Department until 2017. Commission staff's investigation found probable cause that Mr. Espinosa committed 47 violations of the Oakland Government Ethics Act, including the following: soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; misusing his City position to induce/coerce others to provide him with economic gain, and; failing to report significant loans and income from individuals with matters before him as a City building inspector. Commission staff recommends the Commission set this matter for an administrative hearing. ([Attachment 4 – Staff Memorandum](#))

8. **In the Matter of the Oakland Planning and Building Department (Case No. 16-22M).** On September 7, 2016, the Commission received a complaint alleging that the City's Planning and Building Department failed to disclose records in response to a public records request. On October 31, 2016, Commission staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Oakland Planning and Building Department provided additional records responsive to the public records request. Commission Staff has completed mediation and recommends that the Commission close this matter without further action. ([Attachment 5 – Mediation Summary](#))
9. **In the Matter of the City of Oakland (Case No. 17-14M).** On July 27, 2017, the Commission received a complaint alleging that the City failed to respond to a public records request. On December 12, 2017, Commission staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the City provided additional records responsive to the public records request. Commission staff has completed mediation and recommends that the Commission close this matter without further action. ([Attachment 6 – Mediation Summary](#))
10. **Penalty Guidelines.** The Commission's Penalty Guidelines Subcommittee presents a draft revision of the Penalty Guidelines to Commissioners and staff for discussion and possible adoption. ([Attachment 7 – Staff Memorandum](#); [Attachment 8 – Existing Enforcement Penalty Guidelines, created in 2015](#); [Attachment 9 – Draft Revisions to the Penalty Guidelines, with changes tracked](#); [Attachment 10 – Revised Draft Penalty Guidelines, clean version](#))

DISCUSSION ITEMS

11. **Subcommittee Reports.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Current or recent subcommittees include the following:

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- a. **Campaign Finance Subcommittee** – Jonathan Stein (Chair), Lisa Crowfoot, and James Jackson
- b. **Education and Outreach Subcommittee** – Krisida Nishioka (Chair), James Jackson, and Gail Kong
- c. **Complaint Procedures Subcommittee** (*ad hoc*, created 3/26/18) – Krisida Nishioka and Jodie Smith
- d. **Penalty Guidelines Subcommittee** (*ad hoc*, created 3/26/18) – Lisa Crowfoot and Gail Kong
- e. **Ticket Policy Guidance Subcommittee** (*ad hoc*, created 9/11/18) – James Jackson and Gail Kong

INFORMATION ITEMS

- 12. Public Ethics Commission Regular Meeting Schedule 2019.** The Commission will review a revised proposed schedule of regular Commission meetings planned for 2019. ([Attachment 11 – Proposed Meeting Schedule](#))
- 13. Disclosure Program.** Lead Analyst Suzanne Doran provides a report of recent disclosure and data illumination activities. ([Attachment 12 – Disclosure Report](#))
- 14. Education and Engagement Program.** Commissioners will review Ethics Analyst Jelani Killings' report on the Commission's education and outreach activities. ([Attachment 13 – Education Report](#))
- 15. Enforcement Program.** Deputy Director Milad Dalju provides an update on the Commission's enforcement work since the last regular Commission meeting. ([Attachment 14 – Enforcement Report](#))
- 16. Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Attachment 15 – Executive Director's Report](#))

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.oaklandnet.com/pec.

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10/26/2018

Approved for Distribution

Date



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CITY OF OAKLAND
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DRAFT

Commissioners: Jonathan Stein (Chair), Jodie Smith (Vice-Chair), Lisa Crowfoot, James E.T. Jackson, Gail Kong, and Krisida Nishioka

Commission Staff to attend: Whitney Barazoto, Executive Director; Milad Dalju, Deputy Director and Chief of Enforcement; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Simon Russell – Investigator

City Attorney Staff: Trish Hynes, Deputy City Attorney

REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

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

Members present: Commissioners Stein, Smith, Crowfoot, Kong, Jackson, Nishioka.

Staff present: Whitney Barazoto, Milad Dalju, and Suzanne Doran.

City Attorney Staff: Trish Hynes, Deputy City Attorney.

2. Staff and Commission Announcements.

Executive Director Whitney Barazoto announced that staff found a sponsor for the ticket policy resolution and will be working to bring the policy revision to City Council as soon as possible.

Commissioner Smith shared that she is attending the City's Race and Equity training.

3. Open Forum.

There were no public speakers.

CONSENT ITEMS

4. Approval of Commission Meeting Draft Minutes.

- a. September 11, 2018, Regular Meeting Minutes

Commissioner Nishioka moved and Commissioner Jackson seconded to approve the minutes for September 11, 2018.

The motion passed 6-0.



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There were no public speakers

PRESENTATION

5. Open Disclosure Project 2018.

Commission staff and Open Oakland volunteers provided an overview of work completed to launch www.opendisclosure.io, a web-based application created by the Open Disclosure team to visualize campaign finance data for all Oakland candidates and ballot measures in the 2018 election.

There were no public speakers.

DISCUSSION ITEMS

6. Penalty Guidelines.

Commissioner Lisa Crowfoot and the Commission's Penalty Guidelines Subcommittee presented a draft revision of the Penalty Guidelines to Commissioners and staff for discussion. Commissioners discussed the draft and made suggestions. Commissioner Crowfoot noted that the Subcommittee would bring a new draft back to the Commission in November.

There was one public speaker.

7. Public Ethics Commission Regular Meeting Schedule 2019.

The Commission received a proposed schedule of regular Commission meetings planned for 2019. Executive Director Whitney Barazoto noted that staff will work to schedule the hearing room on these dates and will report back on any adjustments needed.

8. Subcommittee Reports.

- a. **Campaign Finance Subcommittee** – Jonathan Stein (Chair), Lisa Crowfoot, and James Jackson

Commissioner Stein reported he attended a meeting at the Bay Political Equity Committee.

- b. **Education and Outreach Subcommittee** – Krisida Nishioka (Chair), James Jackson, and Gail Kong



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There were no updates.

- c. **Complaint Procedures Subcommittee** (*ad hoc*, created 3/26/18) – Krisida Nishioka and Jodie Smith

Commissioner Smith reported that they should have a draft soon.

- d. **Penalty Guidelines Subcommittee** (*ad hoc*, created 3/26/18) – Lisa Crowfoot and Gail Kong

Update was provided in Item 6.

- e. **Ticket Policy Guidance Subcommittee** (*ad hoc*, created 9/11/18) – James Jackson and Gail Kong

Ms. Barazoto reported that the *ad-hoc* subcommittee worked on language to serve as the basis for advice as to ticket use; however, Ms. Barazoto advised that the Commission should first seek the policy change through City Council, and then, if no policy is adopted, the Commission should draft a regulation to interpret the applicable Government Ethics Act section.

Chair Stein asked who would be interested in serving on a new *ad hoc* Recruitment Subcommittee. Commissioners Stein, Crowfoot, and Nishioka volunteered.

There were no public speakers.

INFORMATION ITEMS

9. Commissioner Recruitment.

Ms. Barazoto announced that the Commission is recruiting to fill one Commission-appointed vacancy that will occur in January 2019. A second vacancy to occur at the same time will be subject to appointment by the City Auditor, and yet another vacancy currently exists for appointment by the City Attorney for the 2018 – 2021 term.

To date, no applications have been submitted.

There were no public speakers.

10. Disclosure Program.

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

There were no public speakers.

11. Education and Engagement Program.

Ms. Barazoto noted that Mr. Killings has been working diligently on the Public Financing Program to provide funds to City Council District candidates. She added that it looks likely that ten candidates will receive at least \$15,000 in funds for their campaigns.

There were no public speakers.

12. Enforcement Program.

Deputy Director Milad Dalju made himself available to answer questions about the Enforcement Report.

There were no public speakers.

13. Executive Director's Report.

Ms. Barazoto reported that the Independent Expenditure Ceiling, which candidates voluntarily accept in order to limit their campaign spending and receive individual contributions at a higher amount, was recently lifted by Commission staff in the City Council district 2 and 4 races, and in the Oakland Unified School District 4 race due to independent expenditures being made by outside entities in support or opposition to a candidate in each of those districts.

There were no public speakers.

The meeting adjourned at 8:32 p.m.

CITY OF OAKLAND

Public Ethics Commission

Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E. T. Jackson
Gail Kong
Krisida Nishioka



TO: Public Ethics Commission
FROM: Campaign Finance Compliance Team (Investigator Simon Russell, Lead Analyst Suzanne Doran, Enforcement Chief Milad Dalju, and Executive Director Whitney Barazoto)
DATE: October 26, 2018
RE: Campaign Finance Compliance for the 2018 Election

This year marks the first time the Public Ethics Commission served as filing officer for campaign statements for a full election cycle. In taking on this responsibility, the Commission's goal was to align its education, outreach, disclosure, and compliance work to achieve maximum compliance with campaign finance requirements by Oakland candidates and committees. To that end, Commission staff has significantly enhanced its education and compliance work in 2018 to ensure that candidates and committees understand and adhere to campaign finance requirements, that campaign data is accurate and up-to-date for the public, and that non-compliance is detected and corrected quickly. This includes staff reaching out to candidates and committees to immediately correct any filing deficiencies that were evident from facial campaign statement reviews, among a variety of other activities that will be summarized comprehensively following the election.

In addition to working directly with candidates and committees, Commission staff initiated a proactive review of all candidate committees – once in August and again in October – to check for contributions received by candidates over the contribution limit (\$800 for individuals, \$1,600 for broad-based political committees). This memorandum provides an overview of Commission staff's findings from this contribution limit compliance review and describes staff's actions to achieve full compliance by all committees. In some cases, issues identified by Commission staff's review were also the subject of later complaints submitted by members of the public; those complaints are addressed in this report with the exception of one dismissal letter, which is attached to the Enforcement Report for this agenda.

Again, the goal of this compliance review, and this report, was to review all candidate committees across the board for compliance with local campaign contribution limits and to obtain compliance with these limits by committees in advance of the November election. This aims to serve the public interest in receiving timely and accurate information about contributions in advance of the imminent election, and to ensure that any money received over the limit was not used by the committee for the election and instead forfeited to the City.

Review of Campaign Filings

As of the time of Commission staff's review, a total of 5,406 contributions had been reported by all candidate committees combined for the 2018 election. During its review, Commission staff found roughly 25 instances in which over-the-limit contributions were corrected proactively by candidates through refunds to the contributor. While some of these refunds could be considered legal violations if the original checks had been deposited by the campaign, Commission staff did not pursue any action for these contribution limit violations that were proactively self-corrected by committees.

Overall, candidates have overwhelmingly adhered to contribution limits with minor exceptions:

1. Multi-Year Contributions Resulting in Forfeiture

One issue that became clear from the contribution limit review is that candidates who began their campaigns in 2017 have occasionally missed detecting overages where a donor contributed once in 2017 and again in 2018. Making or accepting a contribution to a candidate committee of more than \$800 per person, or more than \$1,600 per broad-based political committee, for each election is a violation of the Oakland Campaign Reform Act.¹ These amounts apply for each election cycle and include contributions made over the span of multiple years.

In cases where staff found duplicate contributions across multiple years, staff contacted the committees to confirm the violation and request forfeiture of excess contributions. Committees were quick to respond and voluntarily forfeit the overages. Some noted that the software the committee uses does not aggregate an individual's contributions across multiple years even though the campaign form has a category for "per-election to date," but that they will add additional safeguards to avoid future violations.

Voluntary forfeitures in these cases allowed staff to address minor violations expeditiously and ensure that the overage is eliminated from the committee in advance of the election, and it facilitated timely disclosure of the information so that the public is promptly informed and contributor information is accurate and in compliance across campaigns.

Below is a summary of multi-year contribution overages that were reported by the committees and forfeited to the City.

Candidate Committee	Contributor	First Contribution	Second Contribution	Third Contribution	Overage Forfeited to the City
<i>Desley Brooks for City Council 2018</i>	Frank Tucker	\$500 07/04/2017	\$500 04/26/2018		\$200
<i>Desley Brooks for City Council 2018</i>	Lenny Williams	\$300 07/04/2017	\$400 03/12/2018	\$200 07/04/2018	\$100
<i>Desley Brooks for City Council 2018</i>	Mark Tran	\$800 07/18/2017	\$800 07/18/2017		\$800
<i>Abel Guillen for City Council 2018</i>	Oakland Police Officer's Assoc.	\$1,500 11/02/2017	\$1,500 08/31/2018		\$1,400

¹ O.M.C. 3.12.040 and 3.12.050.

<i>Libby Schaaf for Mayor 2018</i> ²	Terrence McGrath	\$800 06/30/2017	\$800 05/31/2018		\$800
<i>Libby Schaaf for Mayor 2018</i>	Tomiquia Moss	\$500 06/30/2017	\$800 06/30/2018		\$500
<i>Libby Schaaf for Mayor 2018</i>	James Vohs	\$800 12/22/2017	\$800 06/30/2018		\$800

Commission staff notes the following mitigating factors: 1) the committees timely and accurately reported all the relevant contributions, showing no intent to conceal the overage or information about the contributions and indicating that the receipt of duplicate contributions was inadvertent; 2) this type of mistake appears to be common among the campaigns that received contributions across multiple years; and 3) the committees each responded immediately to Commission staff's inquiries, request for documentation, and request to forfeit the excess contributions to the City.

Staff Recommendation: Commission staff recommends closing the above contribution limit matters (PEC No. 18-21 *Desley Brooks for City Council 2018*; 18-22 *Libby Schaaf for Mayor 2018*; and 18-36 *Abel Guillen for City Council 2018*) with forfeiture letters to the committees describing the violations and noting each committee's voluntary forfeiture. These letters will also serve as notice to the committees to fix their internal process to avoid future violations. Commission staff also recommends sending warning letters to the reported contributors to alert them of the law. Lastly, Commission staff will include this issue, and suggested approaches to ensure compliance, in its education efforts in future election cycles.

2. Minor Overage Resulting in Forfeiture

Commission staff's contribution limit review also identified a minor overage by the *Sheilagh Polk "Cat Brooks" for Mayor 2018* committee in the amount of \$25. When contacted by Commission staff, the committee confirmed the contributions and agreed to staff's request to voluntarily forfeit the overage to the City. The committee said the contribution was made through an online web portal and that it was an oversight that the committee had intended to refund.

Candidate Committee	Contributor	First Contribution	Second Contribution	Overage Forfeited to the City
<i>Sheilagh Polk "Cat Brooks" for Mayor 2018</i>	Scott Clifford	\$800 08/26/2018	\$25 08/26/2018	\$25

Commission staff notes the following mitigating factors: 1) the committee timely and accurately reported all the relevant contributions, showing no intent to conceal the overage or information about the contributions and indicating that the receipt of excess contributions was inadvertent; 2) the committees each responded immediately to Commission staff's inquiries, request for information, and request to forfeit the excess contributions to the City; and 3) the amount of the overage was relatively minor compared to the total amount of contributions received by the committee.

² When Commission staff contacted the *Libby Schaaf for Mayor 2018* committee about the other listed overages, the committee conducted its own search for repeat contributors and self-reported this additional excess contribution from Terrence McGrath.

Staff Recommendation: Commission staff recommends closing this matter (PEC No. 18-20) with a forfeiture letter describing the violation and the committee’s voluntary forfeiture. This letter will also serve as notice to the committee to fix its internal process to avoid future violations. Commission staff also recommends sending a warning letter to the reported contributor to alert them of the law.

3. Contribution Limit Errors or Overages Corrected

The following errors were minor and technical, and were corrected immediately by the committees:

- A. *Sheilagh Polk “Cat Brooks” for Mayor 2018* committee received a \$1,000 contribution from a business (Adnan Market) that she said she thought was a broad-based political committee. Accepting a contribution of more than \$800 per person (including a business) is a violation of the Oakland Campaign Reform Act.³ When contacted by Commission staff, the committee responded immediately and corrected the error. In addition, the committee asserted that the check was not deposited into the committee’s bank account until after the committee issued the refund. A contribution is not “received” if not deposited or used and if returned to the donor within 5 days of the campaign statement filing deadline.⁴

On October 8, 2018, the Commission received a formal complaint (PEC No. 18-34) regarding four other contributions received over the limit and corrected by the committee. The complaint alleged that the *Sheilagh Polk “Cat Brooks” for Mayor 2018* committee accepted excess contributions on four occasions, which the committee then refunded instead of returning.

These contributions include the following:

Candidate Committee	Contributor	First Contribution	Second Contribution	Third Contribution	Fourth Contribution	Refund Issued
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Rachel Gelman	\$1,000 05/01/2018				\$200 05/11/2018
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Monica Anderson	\$100 05/03/2018	\$100 05/09/2018	\$1,000 05/17/2018		\$400 05/23/2018
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Katrin Wehrheim	\$54.06 05/09/2018	\$800 05/17/2018			\$54.06 06/08/2018
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Cassia Stepak	\$54.06 05/15/2018	\$500 05/17/2018	\$31 05/31/2018	\$250 06/30/2018	\$35.06 06/30/2018

The committee noted that two of the above contributions (Gelman and Stepak) were not deposited into the committee’s bank account before the overage was refunded, and therefore were not technically “received” under the Oakland Campaign Reform Act. For

³ O.M.C. 3.12.040 and 3.12.050.

⁴ O.M.C. 3.12.070.

the remaining two contributions, one was an online contribution that was automatically deposited into the bank account before being refunded within 6 days (Anderson), and the other was the online purchase of tickets to a fundraiser done separately from an \$800 contribution from the same donor (Wehrheim), refunded within 22 days and before the filing deadline.

Staff Recommendation: Because the committee responded immediately to correct the Adnan Market contribution error noted by Commission staff, and because the committee self-corrected the overages listed in the formal complaint on its own within days of each contribution, Commission staff recommends closing this matter (PEC No. 18-34) with an advisory letter to the committee to note the very slight technical violations and subsequent correction by the committee. Commission staff also recommends sending warning letters to the reported contributors to alert them of the law.

- B. *Desley Brooks for City Council 2018* committee received a \$1,600 contribution from LT Liquors, a business, on April 7, 2018. Accepting a contribution of more than \$800 per person (including a business) is a violation of the Oakland Campaign Reform Act.⁵ Commission staff had identified the overage as part of its broad compliance review in August and had contacted the committee regarding the overage. Ms. Brooks explained that the contribution was intended to come from two individuals who co-own the business, and this was corroborated by the two co-owners.

Ms. Brooks responded immediately to Commission staff's inquiries and agreed to correct the overage by properly documenting and reporting the contributions from each contributor.

On September 18, 2018, the Commission received a formal complaint (PEC No. 18-27) regarding the LT Liquors contribution.

Staff Recommendation: Because Ms. Brooks responded immediately to Commission staff's inquiries and corrected the overage, Commission staff recommends closing this matter (PEC No. 18-27) with an advisory letter to the committee to note the technical violation and subsequent correction by the committee. Commission staff also recommends sending warning letters to the contributors to alert them of the law.

4. Self-Loan – No Violation

Commission staff identified a loan reported by *Pamela Price for Mayor 2018* committee for \$2,500 from Ida B. Wells, LLC, on August 17, 2018. Making or accepting a contribution to a candidate committee of more than \$800 per person for each election is a violation of the Oakland Campaign Reform Act.⁶ Loans are considered a contribution from the maker and subject to the contribution limits of the Oakland Campaign Reform Act.⁷

⁵ O.M.C. 3.12.040 and 3.12.050.

⁶ O.M.C. 3.12.040 and 3.12.050.

⁷ O.M.C. 3.12.090.

Commission staff reviewed the loan information and found that, according to state business filings, Pamela Price is the sole manager/member of Ida B. Wells, LLC; therefore, contributions or loans from that entity should be considered contributions from Ms. Price. There is no limit on contributions that a candidate may make to their own campaign. Since there was no violation, staff took no further action on this matter.

Because Commission later received a formal complaint (PEC No. 18-33) regarding this loan, staff includes a dismissal letter in the Enforcement Report on the November meeting agenda as is customary for allegations received for which no violation was found.

Conclusion and Summary of Recommendations

In summary, staff recommends the Commission take the following actions:

1. PEC Case No. 18-20; *Sheilagh Polk “Cat Brooks” for Mayor 2018* – Close with forfeiture letter to the committee and warning letter to the reported contributor
2. PEC Case No. 18-21; *Desley Brooks for City Council 2018* – Close with forfeiture letter to the committee and a warning letter to the reported contributor
3. PEC Case No. 18-22 *Libby Schaaf for Mayor 2018* – Close with forfeiture letter to the committee and a warning letter to the reported contributors
4. PEC Case No. 18-27; *Desley Brooks for City Council 2018* – Close with advisory letter to the committee and warning letters to the contributors
5. PEC Case No. 18-33; *Pamela Price for Mayor 2018* – No action needed, dismissal letter attached to Enforcement Report
6. PEC Case No.18-34; *Sheilagh Polk “Cat Brooks” for Mayor 2018* – Close with advisory letter to the committee and warning letter to the reported contributor
7. PEC Case No. 18-36; *Abel Guillen for City Council 2018* – Close with forfeiture letter to the committee and a warning letter to the reported contributor

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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Simon Russell, Investigator
DATE: October 26, 2018
RE: *In the Matter of Rich Fielding (Case No. 16-11)*; Investigation Summary and Recommendation

I. INTRODUCTION

On July 11, 2016, the Commission received a sworn complaint alleging that Rich Fielding, in the course of his duties as a Principal Inspection Supervisor at the City’s Planning and Building Department (the Department), sent a letter to PG&E which incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service there (the PG&E Letter). According to the complainant, this action violated the Oakland Government Ethics Act (GEA) provisions governing the misuse of City resources or official position.¹

Commission Staff investigated the allegation and found that Mr. Fielding drafted and sent the PG&E Letter to the building’s owners pursuant to the Department’s policy, and never sent the letter to PG&E. Furthermore, even if the existence of the PG&E Letter caused some of the residents to vacate the property, Commission Staff did not find evidence of a corrupt action or intent outside the scope of Mr. Fielding’s duties to give rise to a violation of GEA. Commission Staff therefore recommends that this matter be closed without any further action.

II. SUMMARY OF LAW

Section 2.25.060(A)(1) of GEA prohibits a City employee from using or permitting others to use public resources for personal or non-City purposes not authorized by law.

¹ Under the section headed “Type of Alleged Violation,” the complaint states “Use of City Positions & Resources OMC 2.25.060(C)”. Section 2.25.060(C) of GEA governs restrictions on gifts, and does not appear to be implicated by the facts in this matter. Commission Staff used its discretion to investigate this matter as a potential violation of Section 2.25.060(A) of GEA, which governs the misuse of City resources and official position.

In an e-mail to Commission Staff on January 8, 2018, the complainant also alleged that the Department violated Section 8.22.360.10 of the Oakland Municipal Code, which the PEC does not have jurisdiction to enforce.

Section 2.25.060(A)(2) of GEA prohibits a City employee from using their position or the power or authority of their position in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City employee or any other person.

III. FINDINGS

On or about January 8, 2015, the City's Planning and Building Department (the Department) received an official Tenant Complaint and Request for Service from Joy Newhart, a resident of 1919 Market Street, requesting that the Department investigate "a lack of heat, gaps in the flooring, exposed electrical wiring, and common area garbage overflow" at 1919 Market Street.

On April 8, 2015, Tim Low, Deputy Director at the Department, received an email from a reporter at the *East Bay Express* stating that the building at 1919 Market Street was being used as a "live-work building" and asking whether 1919 Market had the appropriate code and zoning to be a residential property. Mr. Low responded that it did not have the proper permits to be used as a live-work building and that the Department would investigate the matter. On the same day, Mr. Low assigned the matter to a Building Inspector and informed the Department Director of the investigation into the matter.

On May 13, 2015, the Department sent a Notice of Violation to Market Holdings LLC, the owners of 1919 Market Street, informing them that 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Code. (Code Enforcement Case No. 1501220.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations before the re-inspection date of June 16, 2015.

On July 15, 2015, the Department sent another Notice of Violation to Market Holdings LLC informing them that Unit #18 of 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Codes. (Code Enforcement Case No. 1501925.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations, including the violations from Code Enforcement Case No. 1501220, before the re-inspection date of August 17, 2015.

On September 8, 2015, the Department sent another Notice of Violation to Market Holdings LLC in which it reconfirmed the violations in Code Enforcement Case No. 1501220, and instructed Market Holdings LLC to correct the listed violations before the re-inspection date of October 12, 2015.

On September 30, 2015, Mr. Fielding, in his capacity as an official of the Department, sent an email to the owners of 1919 Market, informing them that he was assigned to the pending code enforcement issues with 1919 Market Street.

On November 24, 2015, Mr. Low, in his capacity as an official of the Department, sent a packet of documents to the owners of 1919 Market Street informing them that a re-inspection of 1919

Market Street had occurred on October 15, 2015, that the habitable conditions that were the subject of Code Enforcement Case No. 1501220 remained deteriorated, and that health and safety violations remained unabated. The letter also stated that the violations continued to endanger the residents and visitors of 1919 Market Street to the extent that the premises were determined to be a public nuisance and manifestly unsafe to occupy pursuant to the Oakland Building Maintenance Codes and the Oakland Building Construction Codes. The letter also stated that 1919 Market Street was declared substandard and a public nuisance, that its Certificate of Occupancy was revoked, and that administrative citations totaling \$5,000 were assessed against 1919 Market Street.

The November 24, 2015, letter also ordered the owners of 1919 Market Street to pay, within 14 days, relocation benefits to affected residential tenants to allow abatement work to commence, pursuant to Oakland Municipal Code section 15.60.

The November 24, 2015, letter also informed the owners of 1919 Market Street that they had the right to appeal the Substandard/Public Nuisance Declaration and Administrative Citation in writing by December 17, 2015.

In the packet of documents sent to the owners of 1919 Market Street on November 24, 2015, Mr. Low included a copy of the PG&E Letter, which was signed by Mr. Fielding, dated November 24, 2015, addressed to PG&E, and stated the following:

The subject property is unoccupied, and an attractive nuisance to children and detriment to the neighborhood. The City of Oakland has secured the building to prevent unauthorized entry but the electrical and gas service remain an extreme safety hazard that is endangering life, limb and property.

Pursuant to Oakland Municipal Code Sections 15.08.340D and E, this building is a Public Nuisance and the electric and gas service must be immediately disconnected.

The City has not received any response from the owners and is pursuing condemnation action. It is imperative that Pacific Gas and Electric take steps to immediately remove the meters, and service at the joint pole. The services should not be reconnected without notification from the City of Oakland.

Pursuant to the Department's written procedures, it was standard procedure to include a draft of such a letter addressed to PG&E in the packet sent to owners of properties that were the subject of abatement. According to the Department's records, the PG&E Letter was only sent to the owners of 1919 Market Street and never to PG&E. PG&E also independently confirmed that it never received the PG&E Letter.

On December 7, 2015, the Department received a request from the owners of 1919 Market Street to extend the deadline to vacate the building to January 31, 2016, to avoid a scramble by the tenants to find new housing during the holidays.

On December 23, 2015, the owners of 1919 Market Street and the Department agreed to a compliance plan that required the owners, among other things, to fully vacate the building by January 31, 2016.

On January 29, 2016, the Department “red-tagged” 1919 Market Street as an uninhabitable building. The red-tag notice was posted at the property and stated that no one was to enter the building after January 31, 2016.

On February 2, 2016, the Department re-inspected the property and determined that it was now vacant.

1919 Market Street has since been partially demolished, and is currently in the process of being converted into live/work housing.

V. CONCLUSION

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(1) by misusing City resources, the evidence indicates that Mr. Fielding sent the PG&E Letter to the owners of 1919 Market Street in the course of his duties as a Principal Inspection Supervisor for the Department, after several earlier attempts to resolve the alleged code violations at the property. No evidence indicates that Mr. Fielding sent the PG&E Letter to the property owners “for personal or non-City purposes not authorized by law,” as required by GEA 2.25.060(A)(1). Therefore Mr. Fielding did not misuse City resources by sending the PG&E Letter.

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(2) by using his City position to induce or coerce someone for personal gain, there are two possible theories of liability under that ordinance, neither of which is supported by the facts. First, it might be argued that Mr. Fielding induced or coerced PG&E into shutting down services for the tenants at 1919 Market Street. However, Mr. Fielding’s letter was never actually sent to PG&E, so he could not have induced or coerced PG&E into any action.

Second, it might be argued that the mere threat of a utilities shutdown induced or coerced the tenants at that property to vacate their homes. Indeed, Mr. Low confirmed to the PEC that the Department’s intention in drafting the PG&E Letter was to convince the property owners that the City was serious about the abatement process. However, Section 2.25.060(A)(2) of GEA requires some corrupt action or intent outside the scope of one’s official duties. Here, according to Mr. Low and the Department’s written procedures, drafting such a letter was standard Department procedure. Also, the purpose of the PG&E Letter was to further the Department’s ongoing efforts to address the alleged code violations at the property and protect the health and safety of the tenants. Because the action and purpose of drafting the PG&E Letter were within the scope of Mr. Fielding’s duties with the Department, he did not violate Section 2.25.060(A)(2) of GEA.

VI. RECOMMENDATION

Because the investigation did not find that Mr. Fielding violated the Oakland Government Ethics Act, Commission Staff recommends that this matter be closed without further action.

CITY OF OAKLAND

Public Ethics Commission



Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Simon Russell, Investigator
DATE: October 26, 2018
RE: *In the Matter of Thomas Espinosa (PEC No. 16-14)*; Investigation Summary and Recommendation

I. INTRODUCTION AND OVERVIEW

In October 2016, Commission Staff opened a pro-active investigation to determine whether Thomas Espinosa (Respondent), in his capacity as a City building inspector, made governmental decisions in which he had disqualifying financial interests, disclosed confidential City information, misused City resources, misused his City position, and failed to disclose financial interests on his statement of economic interests, in violation of the Oakland Governmental Ethics Act. The investigation was prompted by concerns that employees of the City Administrator's Office and the City's Planning and Building Department brought to Commission Staff's attention.

In July 2018, Commission Staff completed its investigation and found probable cause that Respondent committed, in his capacity as a City building inspector, 47 violations of the Oakland Government Ethics Act, including the following: soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; misusing his City position to induce/coerce others to provide him with economic gain, and; failing to report significant loans and income from individuals with matters before him as a City building inspector.

This report summarizes Commission Staff's investigation and recommendation to refer this matter for an administrative hearing. If the Commission finds that Respondent committed each of the 47 violations described herein, it has the authority to impose on Respondent administrative penalties totaling up to \$1,151,737.

II. SUMMARY OF LAW

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

A. Jurisdiction

The Oakland Government Ethics Act was adopted by City Council on December 9, 2014, and it authorizes the Commission to impose an administrative penalty of up to \$5,000 per violation, or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater, on any person who commits a violation of the Oakland Government Ethics Act.¹ The enforcement authority established by the Oakland Government Ethics Act does not apply to violations that occurred prior to December 9, 2014.²

B. Investigation Summary

At the conclusion of an investigation of alleged violations of the Oakland Government Ethics Act, Commission Staff must prepare a written report that includes a summary of the evidence gathered and a recommendation of whether there is probable cause to believe that a violation occurred.³ Upon review of the written report, the Commission may decide to dismiss, close, request further investigation, request that Commission Staff seek a settlement, or refer the matter to an administrative hearing.⁴

If the Commission decides to refer the matter to an administrative hearing, it shall decide at that time whether to sit as a hearing panel or to delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing examiner.⁵

C. Economic Interest Disclosure Requirement

Every City of Oakland (City) employee designated in the City's Conflict of Interest Code is required to file statements of economic interests and disclose all required information pursuant to the California Political Reform Act and the City's Conflict of Interest Code.⁶

The City's Conflict of Interest Code incorporates Fair Political Practices Commission (FPPC) Regulation 18730 and requires every Specialty Combination Inspector in the City's Planning and Building Department (Building Department) to report, on his or her statement of economic interests, investments and business positions in business entities, sources of income, and interests in real property.⁷ The City's Conflict of Interest Code requires designated employees file their statement of economic interests with the City Clerk's Office.⁸

A Specialty Combination Inspector is required to report by April 1 all reportable investments and business positions in business entities, sources of income and interests in real property, held or received during the previous calendar year.⁹ He or she is also required to report within

¹ Oakland Municipal Code (O.M.C.) § 2.25.080(C)(3).

² O.M.C. § 2.25.020(D).

³ Commission's Complaint Procedures § III(C).

⁴ Commission's Complaint Procedures § IV(A).

⁵ Commission's Complaint Procedures § V(A).

⁶ O.M.C. § 2.25.040(B).

⁷ O.M.C. § 3.16.010.

⁸ O.M.C. § 3.161.020.

⁹ FPPC Regulation 18730, subs. (b)(5)(C) and (b)(6)(C).

30 days after leaving office all reportable investments and business positions in business entities, sources of income and interests in real property, received or held during the period between the closing date of the last statement filed and the date his or her employment with the City is terminated.¹⁰

Reportable income is any payment received by the Specialty Combination Inspector and includes loans other than those received from a commercial lending institution.¹¹ The Specialty Combination Inspector is required to report the name and address of every source of income aggregating \$500 or more in value during the period that is covered by the statement of economic interests, the amount of income received, and a description of the consideration for which the income was received.¹²

A business position must be reported when the filer is a director, officer, partner, trustee, or employee of, or hold any position of management in, a business entity that has an interest in real property in the jurisdiction, or does business or plan to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed.¹³

D. Conflict of Interest

A City employee may not make, participate in making, or seek to influence a decision of the City in which the City employee has a disqualifying financial interest.¹⁴ A City employee has a disqualifying financial interest in a governmental decision if the decision will have a reasonably foreseeable material financial effect on any his or her qualifying financial interests.¹⁵

A City employee makes a governmental decision if he or she authorizes, directs, obligates, or commits his or her agency to any course of action.¹⁶

A City employee attempts to use his or her official position to influence a decision when he or she contacts or appears before any official in his or her agency for the purpose of affecting the decision.¹⁷

A City employee has a disqualifying financial interest in any individual or business entity from whom he or she has been provided or promised income aggregating \$500 or more within 12 months prior to the time when the relevant government decision is made.¹⁸

¹⁰ FPPC Regulation 18730(b)(5)(D).

¹¹ Government Code (G.C.) § 82030.

¹² G.C. § 87207.

¹³ G.C. § 87209.

¹⁴ O.M.C. § 2.25.040(A); GC 87100.

¹⁵ FPPC Regulation 18700(a).

¹⁶ FPPC Regulation 18704(a).

¹⁷ FPPC Regulation 18704(c)(1).

¹⁸ G.C. § 87103(c).

The financial effect of a decision on a disqualifying financial interest is presumed to be reasonably foreseeable if the disqualifying financial interest is a named party in, or the subject of, the decision before the City employee or the City employee's agency.¹⁹

For income received by the official, the reasonably foreseeable financial effect of the decision on the City employee's disqualifying financial interest is material if the source of the income is a claimant, applicant, respondent, contracting party, or is otherwise identified as the subject of the proceeding.²⁰

E. Bribery

A City employee may not solicit or accept anything of value in exchange for the performance of any official act.²¹

F. Using Authority as a City Official to Induce or Coerce a Private Advantage

A City employee may not use his or her position, or the power or authority of his or her position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City employee or any other person.²²

G. Misuse of Public Resources

A City employee may not use public resources for personal purposes.²³ Personal purposes means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business.²⁴ Public resources means any property or asset owned by the City, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City compensated time.²⁵ Use means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.²⁶

III. SUMMARY OF EVIDENCE

Respondent was a City employee from May 23, 2005, until August 16, 2016. At all relevant times, Respondent was a Specialty Combination Inspector in the Building Department's Code Enforcement Division.

Respondent filed Annual Statements of Economic Interests with the City Clerk's Office for 2010, 2011, 2012, 2013, and 2014. To date, Respondent has not filed an Annual Statement of

¹⁹ FPPC Regulation 18701.

²⁰ FPPC Regulation 18702.3(a)(1).

²¹ O.M.C. § 2.25.070.

²² O.M.C. § 2.25.060(A)(2).

²³ O.M.C. § 2.25.060(A)(1).

²⁴ O.M.C. § 2.25.060(A)(1)(a)(i).

²⁵ O.M.C. § 2.25.060(A)(1)(a)(iii).

²⁶ O.M.C. § 2.25.060(A)(1)(a)(iv).

Economic Interests for 2015, or a Leaving Office Statement of Economic Interests for the January 1 through August 16, 2016, period, with the City Clerk's Office.

Income from Elizabeth Williams

Elizabeth Williams owned, at all relevant times, approximately 15 residential rental properties in Oakland.

In 2009, the City and Ms. Williams entered into a stipulated final judgment and permanent injunction that prohibited Ms. Williams and her agents from maintaining any of her properties in substandard, dangerous, uninhabitable, unhealthy, or unsanitary condition, and failing to correct code violations in a timely manner when directed to make repairs by City code compliance inspectors. Respondent, in his official capacity, was assigned to inspect Ms. Williams' residential properties in Oakland and determine whether they were in compliance with the stipulated final judgement and permanent injunction. By 2015, Respondent was no longer assigned to the stipulated final judgment and permanent injunction between the City and Ms. Williams.

Between June 26 and September 18, 2015, Respondent received checks totaling \$100,000 from Ms. Williams and deposited each check into his personal bank account. According to Ms. Williams, the \$100,000 was a loan to Respondent and she and Respondent agreed that Respondent would repay the loan to Ms. Williams and pay her \$30,000 as consideration for the loan. To date, Respondent has not repaid any part of the loan or the agreed upon consideration, and Ms. Williams has not attempted to recover any part of the loan or the agreed upon consideration.

In 2015, Respondent also received payments from Ms. Williams totaling \$76,179 for contracting work and consulting he performed for her in his personal capacity, as follows:

Date Received	Amount	Date Received	Amount
September 24, 2015	\$12,000	November 27, 2015	\$7,840
October 16, 2015	\$11,570	December 4, 2015	\$6,365
November 6, 2015	\$6,108	December 10, 2015	\$6,264
November 13, 2015	\$6,000	December 18, 2015	\$6,404
November 20, 2015	\$5,763	December 28, 2015	\$7,865

On March 3, 2016, Respondent received a payment of \$850 from Ms. Williams for contracting work and/or consulting he performed for her in his personal capacity.

Respondent has not, to date, reported receiving any income from Ms. Williams in 2015 or 2016. (Counts 1 and 2.)

Elizabeth Williams and 915 24th Street

915 24th Street was, at all relevant times, part of a four-plex that included 907, 909, and 911 24th Street, located in the Oakland and owned by Ms. Williams.

On September 20, 2013, a City building inspector verified building code violations at 915 24th Street and in response opened a code enforcement case against Ms. Williams.

In 2014, a City building inspector met several times with Ms. Williams' agents regarding her attempts to bring 915 24th Street into compliance with the building code and found that Ms. Williams needed to apply for the appropriate permits for the work she was doing at 915 24th Street.

Between June 26 and September 24, 2015, Respondent received payments totaling \$112,000 from Ms. Williams, as described above.

On October 1, 2015, Respondent, in his official capacity as a City building inspector, closed the code enforcement case against Ms. Williams for 915 24th Street. (Count 3.)

Elizabeth Williams and 857 Mead Avenue

857 Mead Ave. was, at all relevant times, a duplex in Oakland and owned by Ms. Williams. On December 9, 2014, Respondent inspected the property and issued a "stop-work order" for unapproved remodeling throughout the house on the property. He noted in City records that Ms. Williams needed to also supply records and permits for a second building in the back of 857 Mead Ave.

On December 10, 2014, Ms. Williams applied for a building permit to remodel the kitchen and bathroom of Unit B at 857 Mead Ave. In response to her application, Respondent completed, signed, and submitted a Code Enforcement Routing Slip with Ms. Williams' application that waived the requirement that building code violation fees be applied to Ms. Williams' application, that waived the requirement that a field check be conducted to confirm facts stated in Ms. Williams' application, and that the permit could be approved over-the-counter.

On December 12, 2014, a City building inspector conducted a field check in response Ms. Williams' application for a building permit and rejected her application because the work was beyond the scope of the application.

On June 24, 2015, Ms. Williams submitted an application to expand the scope of the building permit she applied for on December 10, 2014, to include a new electric subpanel, construction of partition walls to enclose a water heater in the kitchen, converting the living room into a new bedroom with a closet, and remodeling of the kitchen and bathroom in Unit A. On the same day, the Building Department issued her a building permit, electrical permit, and plumbing permit.

Between June 26 and December 28, 2015, Respondent received payment from Ms. Williams totaling \$176,179, as described above. During that entire period Respondent was still assigned, in his official capacity as a City building inspector, to the code enforcement case against Ms. Williams that he initiated on December 12, 2014.

On September 21, 2015, Respondent met, on behalf of Ms. Williams, with a PG&E Engineering Estimator at 857 Mead Ave. to discuss electric and gas service installation at 857 Mead Ave.

On October 21, 2015, a City building inspector conducted the final inspection for the electrical permit, issued a “no pass,” and noted eight issues that had to be addressed before the electrical permit could be finalized.

On October 22, 2015, Ms. Williams applied for an electrical permit for a service upgrade to 857 Mead Ave.

On October 27, 2015, Ms. Williams filed a Letter of Agency for Property Owners with the Building Department that authorized Respondent to act as her agent/representative in obtaining permits for 857 Mead Ave., 2735 Market Street, 877/879 27th Street, and other properties she owned in Oakland.

On October 29, 2015, a City building inspector conducted another inspection on the electrical permit that Ms. Williams applied for on June 24, 2015, issued a “no pass,” and noted four issues that would have to be addressed before the electrical permit could be finalized. No further inspections were conducted on that electrical permit and it expired on December 23, 2015.²⁷

On October 30, 2015, a City building inspector conducted an inspection on the electrical permit that Ms. Williams applied for on October 22, 2015, issued a “no pass,” and noted three issues that had to be addressed before the electrical permit could be finalized.

On November 25, 2015, Respondent billed Ms. Williams for electrical work he did for her at 857 Mead Ave.

On December 8, 2015, Ms. Williams and Respondent discussed her outstanding electrical permit.

On December 10, 2015, a City building inspector performed another inspection on the electrical permit that Ms. Williams applied for on October 22, 2015, again issued a “no pass,” and noted six issues that had to be addressed before the electrical permit could be finalized.

On December 14, 2015, Ms. Williams again discussed with Respondent her concerns regarding the electrical permit that had failed inspection twice.

On January 12, 2016, Ms. Williams again discussed with Respondent her concerns regarding the electrical permit that had failed inspection twice. In response, Respondent told her that he would talk to Anthony Harbaugh about it. Mr. Harbaugh is and was, at all relevant times, a City building inspector.

²⁷ Permits are “issued” as soon as the applicant submits all the required paperwork, including the application, and pays all the associated fees. Then inspections are conducted and the permit is “finalized” after a property passes a “frame” inspection and a “final” inspection.

On January 13, 2016, Mr. Harbaugh conducted a final inspection for the electrical permit, issued it a “pass,” and attached Green Tags on the electrical meters at 857 Mead Ave.²⁸

On January 22, 2016, Respondent solicited \$300 from Ms. Williams for the final inspection and the issuance of the Green Tags on the electrical meters at 857 Mead Ave. that took place on January 13, 2016. (Count 4.)

On March 1, 2016, Respondent submitted an application to the Building Department for an electrical permit for 857 Mead Ave. on behalf Ms. Williams. (Count 5.) This application eventually expired without the permit being finalized.

Also on March 1, 2016, Respondent submitted an application to the Building Department for a plumbing permit for 857 Mead Ave. on behalf Ms. Williams. (Count 6.) This application eventually expired without the permit being finalized.

Elizabeth Williams and 2735 Market Street

2735 Market Street was, at all relevant times, a complex of residential buildings in Oakland and owned by Ms. Williams.

On July 8, 2014, a City building inspector issued a “stop-work order” on 2735 Market Street for remodeling being done without the required plumbing, electrical, and building permits. The following day, the Building Department opened an enforcement case against Ms. Williams for the unpermitted work at 2735 Market Street.

On July 16, 2014, Ms. Williams applied for a building permit for the remodeling being done at 2735 Market Street.

On August 4, 2014, a City building inspector conducted an inspection of 2735 Market Street, and concluded that there was a life safety issue that required Ms. Williams to remove sheet rock from the walls and ceiling, that she needed to apply for electrical, plumbing, and mechanical permits for the work being done, and that the building permit that Ms. Williams applied for on July 16, 2014, needed to be broadened.

On August 6, August 8, and September 18, October 14, 2014, January 20, February 20, March 20, March 30, May 7, June 8, July 8, August 7, and September 17, 2015, City building inspectors inspected 2735 Market Street and each time concluded that it was still in violation of the building code. During this time, the building permit that Ms. Williams applied for on July 16, 2014, expired without being finalized.

Between June 26 and September 18, 2015, Respondent received \$100,000 from Ms. Williams, as described above.

²⁸ Green Tags are placed on new electrical meters by City building inspectors only after an electrical permit for a new meter has been finalized by the Building Department. PG&E will not release electricity to a new electrical meter on a property in Oakland until a PG&E technician has personally verified that the Building Department has placed a Green Tag on the new electrical meter.

On September 22, 2015, Ms. Williams applied for a building permit to remodel 2735 Market Street. On the same day, Respondent completed, signed, and submitted a Code Enforcement Routing Slip for Ms. Williams' application that waived the requirement that Ms. Williams submit an architectural plan approved by the City's Zoning Department, confirmed that the monetary valuation on Ms. Williams' application was correct, allowed Ms. Williams' permit to be issued over-the-counter, and waived the requirement that Ms. Williams submit photos of the proposed project with her application. (Count 7.)

On October 15, 2015, a City building inspector conducted an inspection of 2735 Market Street for the building permit that Ms. Williams applied for on September 22, 2015, and found that an inspection could not be conducted because the remodeling had already been done and covered up with sheet rock. The City building inspector issued Ms. Williams a correction notice that required her to remove the sheet rock on the walls and the ceiling so that he could properly inspect the work.

On October 22, 2015, Ms. Williams applied for an electrical and a plumbing permit for 2735 Market Street.

On October 27, 2015, Respondent submitted a Letter of Agency for Property Owners form to the Building Department that gave him the authority to act as Ms. Williams' agent in regards to any permits for 2735 Market Street. On the same day, Building Department issued Ms. Williams the electrical, building, and plumbing permits for 2735 Market Street. (Counts 8, 9, and 10.)

On November 4, 2015, Mr. Harbaugh conducted inspections on the building, electrical, and plumbing permits, passed each, and scheduled himself to conduct the final inspection for each permit.

On November 5, 2015, Respondent solicited \$300 from Ms. Williams for passing the three inspections at 2735 Market Street. (Count 11.)

On November 20, 2015, Mr. Harbaugh conducted the final inspection for Ms. Williams' building, electric, and plumbing permits, gave each a pass, and finalized each.

Elizabeth Williams and 877/879 27th Street

877/879 27th Street was, at all relevant times, a duplex in Oakland and owned by Ms. Williams.

Between June 26 and September 18, 2015, Respondent received \$100,000 from Ms. Williams, as described above.

On November 10, 2015, Respondent, acting as an agent for Ms. Williams, applied to the Building Department for a building permit, an electrical permit, a mechanical permit, and a plumbing permit, for kitchen and bathroom remodels to 877 27th Street. (Counts 12, 13, 14, and 15.)

On November 23, 2015, a City building inspector conducted a rough inspection for the electrical and plumbing permits that Respondent applied for and did not pass either.

On December 11, 2015, Mr. Harbaugh, in his official capacity as a City building inspector, conducted inspections for the building, mechanical, electrical, and plumbing permits that Respondent applied for on behalf of Ms. Williams, and issued a pass for each.

On December 16, 2015, Mr. Harbaugh again conducted inspections for the building, mechanical, electrical, and plumbing permits that Respondent applied for on behalf of Ms. Williams, and again issued a pass for each.

On March 1, 2016, Respondent solicited \$300 from Ms. Williams for the building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing rough inspection on December 11, 2015. (Count 16.)

Also on March 1, 2016, Respondent solicited \$300 from Ms. Williams for the building, mechanical, electrical, and plumbing permits passing final inspection on December 16, 2015. (Count 17.)

On March 14, 2016, Respondent, on behalf of Ms. Williams, submitted applications for a building permit, electrical permit, and plumbing permit, to remodel the kitchen and bathroom of 879 27th Street. (Counts 18, 19, and 20.)

Bill Charman and 4163 Rifle Lane

4163 Rifle Lane was, at all relevant times, a single-family home in Oakland. On November 14, 2013, and again on January 21, 2014, Respondent conducted an inspection of 4163 Rifle Lane, verified building code violations at 4163 Rifle Lane, and opened an enforcement case for building code violations at 4163 Rifle Lane.

On October 29, 2015, 4163 Rifle Lane was listed for sale, and Gimme Shelter, Inc., was, at all relevant times, the brokerage representing the owner of 4163 Rifle Lane. On February 1, 2016, a potential buyer entered into escrow for 4163 Rifle Lane. On the same day, the potential buyer called Respondent to inquire about the enforcement case related to 4163 Rifle Lane. On February 2, 2016, Respondent conducted a follow-up inspection of 4163 Rifle Lane and warned the potential buyer of significant potential fines as a result of unpermitted work on the property and the potential of having to conduct major inspections that would possibly require opening up the walls of the building. In response to Respondent's warning, the potential buyer retracted his offer for 4163 Rifle Lane.

On February 8 and 9, 2016, Bill Charman, in his capacity as a broker at Gimme Shelter, Inc., representing the owner of 4163 Rifle Lane, and Respondent discussed the outstanding building code violations at 4163 Rifle Lane over the phone and via email. Mr. Charman, at Respondents' request, agreed to meet Respondent outside Oakland City Hall to further discuss the outstanding code violations at 4163 Rifle Lane.

On February 9, 2016, Mr. Charman and Respondent met outside Oakland City Hall. During their meeting, Respondent told Mr. Charman that Mr. Charman would need to pay \$1,500 for the inspections needed to resolve the outstanding permit issues for 4163 Rifle Lane. Mr. Charman agreed to pay the \$1,500, and Respondent directed him to make the payment to Respondent personally, rather than to the City. In response, Mr. Charman issued Respondent a \$1,500 check, which Respondent deposited into his personal bank account on the same day. (Count 21.)

After the meeting and on the same day, Mr. Charman applied, on behalf of the owner of 4163 Rifle Lane, for building, electrical, and plumbing permits for 4163 Rifle Lane. Respondent completed, signed, and submitted a Code Enforcement Routing Slip for Mr. Charman's application that waived the building code violation fees, verified that the unpermitted work had not commenced, waived the requirement that a field check be conducted, and allowed the permit to be approved over-the-counter. The Building Department issued Mr. Charman the permits without submission of architectural plans for the projects, without conducting a field check, and without collecting fees for the outstanding building code violations, due to Respondent's decision to waive each of those requirements.

Due to Respondent's decision to waive the fees for to the building code violations, Mr. Charman was only required to pay the regular fees for the three permits, totaling \$1,099.09, which he paid to the City on February 9, 2016, as part of his application for the three permits.

On February 10, 2016, Respondent scheduled himself to inspect 4163 Rifle Lane regarding the outstanding building code violations. Two minutes later, Respondent changed the status of the outstanding building code violations to "abated," even though he never conducted an inspection of 4163 Rifle Lane and the permits regarding the unpermitted addition to 4163 Rifle Lane had not been finalized by the Building Department.

Also on February 10, 2016, Respondent asked Mr. Harbaugh to finalize the building, electrical, and plumbing permits that Mr. Charman applied for the day before. (Counts 22, 23, and 24.) In response, Mr. Harbaugh scheduled himself to conduct the frame inspections on the same day and the final inspections on February 16, 2016, and signed off on the frame inspections and the final inspections without actually conducting any inspections.

On February 24, 2016, a new buyer went into escrow to buy 4163 Rifle Lane, and on March 25, 2016, the title passed to a new owner.

Respondent has not, to date, reported receiving \$1,500 from Mr. Charman. (Count 25.)

Alexandre Machado and 6220 Valley View

In October 2015, Alexandre Machado purchased 6220 Valley View Road, a single-family home in Oakland, as an investment. His intention was to remodel it and sell it.

On November 12, 2015, Mr. Machado applied for, and was issued, a building permit for rot repair at 6220 Valley View Road.

On January 20, 2016, a City building inspector found that the work being done at 6220 Valley View Road was outside the scope of the building permit issued to Mr. Machado and opened an enforcement case against him.

On February 27, 2016, Respondent received \$1,700 from Mr. Machado.

On February 29, 2016, Mr. Harbaugh conducted an inspection of 6220 Valley View Road and finalized Mr. Machado's building permit.

On March 1, 2016, Mr. Machado applied for a building permit to replace the roof at 6220 Valley View Road.

On March 13, 2016, Respondent received \$200 from Mr. Machado.

On March 31, 2016, Respondent posted an official "stop-work order" from the Building Department on 6220 Valley View Road that stated that Mr. Machado was required to stop all work being done to 6220 Valley View Road until the work was approved by Respondent. (Count 27.) Respondent did not follow any of the policies and procedures of the Building Department in issuing the "stop-work order," and never recorded issuing the "stop-work order" into the Building Department's records. Respondent used the "stop-work order" to coerce Mr. Machado into providing Respondent with more payments. (Count 28.)

On April 11, April 13, and April 27, 2016, Respondent received \$1,000, \$4,500, and \$5,000, respectively, from Mr. Machado.

On May 10, 2016, Mr. Machado applied for a building permit to legalize 1322 square feet on the lower floor, remodel the upper floor, and abate the building code violation that the City verified on January 20, 2016.

On May 13, 2016, Mr. Harbaugh conducted a field check and finalized the building permit Mr. Machado applied for on May 10, 2016.

On May 20, 2016, Respondent received \$450 from Mr. Machado.

Respondent has not, to date, reported receiving \$12,850 from Mr. Machado. (Count 26.)

Vivian Tang and 8925 Lawlor Street

8925 Lawlor Street was, at all relevant times, owned by Vivian Tang and located in Oakland. On February 14, 2014, Respondent verified building code violations at 8925 Lawlor Street, issued a "stop-work order" for unpermitted conversions of the basement and the attic, and opened an enforcement case against Ms. Tang.

On December 10, 2014, Ms. Tang applied for building, electrical, and plumbing permits to return the attic to its original use to abate the building code violations. Respondent reviewed

Ms. Tang's permit applications and waived the required approval from the Zoning Department and the required field check to issue the permits.

On January 15, 2015, Ms. Tang hired Respondent to convert the attic and basement of 8925 Lawlor Street for \$21,500.

On January 21, 2015, Respondent passed inspections for Ms. Tang's building, electrical, and plumbing permits, and closed the enforcement case against her. (Counts 30, 31, 32, and 33.)

On January 22, 2015, Ms. Tang applied for building, mechanical, electrical, and plumbing permits to convert the basement of 8925 Lawlor Street.

On January 29, 2015, Respondent received \$10,000 from Ms. Tang pursuant to their agreement. On February 6, 2015, Respondent received the remaining \$11,500 from Ms. Tang pursuant to their agreement.

On February 19, 2015, Respondent passed inspections for Ms. Tang's building, mechanical, electrical, and plumbing permits. (Counts 34, 35, 36, and 37.)

On April 28, 2015, a City building inspector finalized Ms. Tang's building, mechanical, electrical, and plumbing permits.

On May 20, 2015, Respondent received an additional \$3,100 from Ms. Tang for work he did, in his personal capacity, at 8925 Lawlor Street.

Respondent has not, to date, reported receiving \$24,600 from Ms. Tang. (Count 29.)

Ana Siu and 5135 Manila Avenue

5135 Manila Ave. was, at all relevant times, a single-family home in Oakland. On August 13, 2013, Ana Siu bought 5135 Manila Ave.

On December 11, 2013, a City building inspector opened an enforcement case against Ms. Siu for building code violations at 5135 Manila Ave.

On December 24, 2013, Ms. Siu applied for a building permit for 5135 Manila Ave.

On February 21, 2014, Respondent issued a "stop-work order" on 5135 Manila Ave.

On May 1, 2014, Ms. Siu applied for a building permit, mechanical permit, electrical permit, plumbing permit, and obstruction permit, to convert and remodel 5135 Manila Ave.

On May 16, 2014, May 24, 2014, January 16, 2015, and January 26, 2015, Respondent inspected 5135 Manila Ave. for the enforcement case against Ms. Siu and Ms. Siu's permits.

Between February 12 and April 30, 2015, Respondent received payments totaling \$66,277 from Ms. Siu for real estate services and general contracting work at 5135 Manila Ave. and another property Ms. Siu owned.

In March and April 2015, City building inspectors inspected 5135 Manila Ave. for the enforcement case and Ms. Siu's permits.

Between October 21 and October 28, 2015, City building inspectors inspected 5135 Manila Ave. for the permits Ms. Siu had applied for and finalized each of the permits.

On December 24, 2015, Ms. Siu sold 5135 Manila Ave. as a residential duplex.

Respondent has not, to date, reported receiving \$66,277 from Ms. Siu. (Count 38.)

Income from One Development and Investment Corporation

One Development and Investment Corporation (ODIC) was, at all relevant times, a corporation conducting real estate business in Oakland through Ms. Siu, its owner, and Respondent, its president.

Between May 27 and June 25, 2015, Respondent received income totaling \$19,770 from ODIC for real estate and general contracting work.

Respondent has not, to date, reported receiving \$19,770 from ODIC or that he was its president in 2015. (Counts 39 and 40.)

Other Reportable Sources of Income

On March 15, 2015, Respondent received \$1,000 from Pat Viswanathan, a person doing business in Oakland, for consulting services. Respondent has not, to date, reported Mr. Viswanathan as a source of income. (Count 41.)

On April 3, 2015, Respondent received \$3,000 from Apex Construction, a business entity doing business in Oakland, for consulting services. Respondent has not, to date, reported Apex Construction as a source of income. (Count 42.)

On April 8, 2015, Respondent received \$3,000 from Zati Uysal, a person doing business in Oakland, for consulting services. Respondent has not, to date, reported Mr. Uysal as a source of income. (Count 43.)

On August 15, 2016, Respondent received \$3,500 from Jerry Tran, a person doing business in Oakland, for consulting services. Respondent has not, to date, reported Mr. Tran as a source of income. (Count 44.)

Misuse of Public Resources

On several occasions in June and July of 2015, Respondent drove a City-owned vehicle to Orinda to conduct personal business. (Count 45.)

In July and August 2015, Respondent used a City-owned computer and a City-owned printer to print hundreds of pages of personal materials. (Count 46.)

In October 2015, Respondent, while on vacation, used a City-owned cell phone to make personal phone calls totaling 587 minutes. (Count 47.)

IV. VIOLATIONS

Based on the aforementioned evidence, there is probable cause that Respondent committed the following violations of the Oakland Government Ethics Act.

Count 1: Economic Interest Disclosure Violation: Failing to Report the Source of Income

Respondent was a Specialty Combination Inspector in the Building Department in 2015, and as such was required to report all sources from whom he received income, including loans other than those received from a commercial lending institution, totaling \$500 or more during the January 1 through December 31, 2015, period, by April 1, 2016.

In 2015, Respondent received income totaling \$176,179 from Ms. Williams, a person doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Williams as a source of income by April 1, 2016.

Count 2: Economic Interest Disclosure Violation: Failing to Report the Source of Income

Respondent was a Specialty Combination Inspector in the Building Department until August 16, 2016, and as such was required to report all sources from whom he received income totaling \$500 or more during the January 1 through August 16, 2016, period, by September 15, 2016.

On March 3, 2016, Respondent received income totaling \$850 from Ms. Williams. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Williams as a source of income by September 15, 2016.

Count 3: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

As a City employee, Respondent was prohibited from making, participating in making, or attempting to use his official position to influence a governmental decision in which he had a disqualifying financial interest.

An official has a disqualifying financial interest in any governmental decision that involves an individual from whom the official was promised or provided income totaling \$500 or more within 12 months prior to the time when the governmental decision is made.

On October 1, 2015, Respondent had a disqualifying financial interest in any governmental decision involving Ms. Williams because he had received income totaling \$112,000 from her within the prior 12 months. On October 1, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by closing a code enforcement case against Ms. Williams for 915 24th Street.

Count 4: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

As a City employee, Respondent was prohibited from soliciting or accepting anything of value in exchange for the performance of any official act.

On January 22, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by soliciting \$300 from Ms. Williams in exchange for the Building Department passing inspections for her permits, and issuing Green Tags, for 857 Mead Avenue.

Count 5: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

A City employee attempts to use his or her official position to influence a decision when he or she contacts or appears before any official in his or her agency for the purpose of affecting the decision.

On March 1, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by submitted an application to the Building Department on behalf of Ms. Williams. for an electrical permit for 857 Mead Ave.

Count 6: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 1, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by submitted an application to the Building Department on behalf of Ms. Williams. for a plumbing permit for 857 Mead Ave.

Count 7: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On September 22, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by waiving the requirement that Elizabeth Williams submit an architectural plan approved by the City's Zoning Department with her building permit application for 2735 Market Street, confirming that the monetary valuation on her building permit application was correct, allowing her building permit to be issued over-the-counter, and waiving the

requirement that she submit photos of the proposed project with her building permit application.

Count 8: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams an electrical permit for 2735 Market Street.

Count 9: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a building permit for 2735 Market Street.

Count 10: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a plumbing permit for 2735 Market Street.

Count 11: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On November 5, 2015, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by soliciting \$300 from Ms. Williams in exchange for her permits for 2735 Market Street passing inspections.

Count 12: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a building permit for 877/879 27th Street.

Count 13: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams an electrical permit for 877/879 27th Street.

Count 14: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a mechanical permit for 877/879 27th Street.

Count 15: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a plumbing permit for 877/879 27th Street.

Count 16: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On March 1, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by solicited \$300 from Ms. Williams in exchange for building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing rough inspections.

Count 17: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On March 1, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics by solicited \$300 from Ms. Williams in exchange for building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing final inspections.

Count 18: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a building permit for 877/879 27th Street.

Count 19: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams an electrical permit for 877/879 27th Street.

Count 20: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a plumbing permit for 877/879 27th Street.

Count 21: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On February 9, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by soliciting and accepting \$1,500 from Bill Charman in exchange for resolving outstanding permit issues for 4163 Rifle Lane.

Count 22: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Mr. Charman a building permit for 4163 Rifle Lane.

Count 23: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Mr. Charman electrical permit for 4163 Rifle Lane.

Count 24: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Mr. Charman a plumbing permit for 4163 Rifle Lane.

Count 25: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On February 9, 2016, Respondent received income totaling \$1,500 from Mr. Charman and was therefore was required to report him as a source of income by September 15, 2016.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Charman as a source of income by September 15, 2016.

Count 26: Economic Interest Disclosure Violation: Failing to Report a Source of Income

Between February 27 and May 20, 2016, Respondent received income totaling \$12,850 from Alex Machado, who was doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Machado as a source of income by September 15, 2016.

Count 27: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On March 31, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by issuing a “work-stop order” on 6220 Valley View, a property owned and being remodeled by Mr. Machado.

Count 28: Misuse of City Authority: Using One’s City Authority to Induce or Coerce a Person to Provide an Economic Gain

On March 31, 2016, Respondent issued a “work-stop order” on 6220 Valley View, a property owned and being remodeled by Mr. Machado, for the purpose of inducing or coercing Mr. Machado into providing Respondent with payments.

By attempting to use his authority as a City official to induce or coerce a person to provide him with an economic gain, Respondent violated Section 2.25.060(A)(2) of the Oakland Government Ethics Act.

Count 29: Economic Interest Disclosure Violation: Failing to Report a Source of Income

Between January 29 and May 20, 2015, Respondent received income totaling \$24,600 from Vivian Tang, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Tang as a source of income by April 1, 2016,

Count 30: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by closing a code enforcement case against Ms. Tang for 8925 Lawlor Street.

Count 31: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an inspection for Ms. Tang’s building permit for 8925 Lawlor Street.

Count 32: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an inspection for Ms. Tang’s electrical permit for 8925 Lawlor Street.

Count 33: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an inspection for Ms. Tang's plumbing permit for 8925 Lawlor Street.

Count 34: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an another inspection for Ms. Tang's building permit for 8925 Lawlor Street.

Count 35: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing another inspection for Ms. Tang's electrical permit for 8925 Lawlor Street.

Count 36: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing another inspection for Ms. Tang's plumbing permit for 8925 Lawlor Street.

Count 37: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing inspection for Ms. Tang's mechanical permit for 8925 Lawlor Street.

Count 38: Economic Interest Disclosure Violation: Failing to Report a Source of Income

In 2015, Respondent received income totaling \$66,277 from Ana Siu, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Siu as a source of income by April 1, 2016.

Count 39: Economic Interest Disclosure Violation: Failing to Report a Source of Income

In 2015, Respondent received income totaling \$19,770 from One Development and Investment Corporation, a business entity doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report One Development and Investment Corporation as a source of income by April 1, 2016.

Count 40: Economic Interest Disclosure Violation: Failing to Report a Business Position

In 2015, Respondent was the president of One Development and Investment Corporation, a business entity doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report his business position with One Development and Investment Corporation by April 1, 2016.

Count 41: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On August 15, 2016, Respondent received income totaling \$3,500 from Jerry Tran, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Tran as a source of income by September 15, 2016.

Count 42: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On March 15, 2015, Respondent received income totaling \$1,000 from Pat Viswanathan, a person doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Viswanathan as a source of income by September 15, 2016.

Count 43: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On April 8, 2015, Respondent received income totaling \$3,000 from Zati Uysal, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Uysal as a source of income by April 1, 2016.

Count 44: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On April 3, 2015, Respondent received income totaling \$3,000 from Apex Construction, a business entity doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Apex Construction as a source of income by April 1, 2016.

Count 45: Misuse of Public Resources Violation: Using City Resources for Personal Matters

In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government Ethics Act by using a City-owned vehicle for personal matters unrelated to any City business.

Count 46: Misuse of Public Resources Violation: Using City Resources for Personal Matters

In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government Ethics Act by using a City-owned computer and printer for personal matters unrelated to any City business.

Count 47: Misuse of Public Resources Violation: Using City Resources for Personal Matters

In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government Ethics Act by using a City-owned cell phone for personal matters unrelated to any City business.

V. RECOMMENDATION

Because there is probable cause that Respondent committed 47 violations of the Oakland Government Ethics Act, as described above, Commission Staff recommends that the Commission refer this matter for an administrative hearing. If the Commission decides to refer this matter for an administrative hearing, Commission Staff recommends that the administrative hearing be held before a panel of three members of the Commission.

CITY OF OAKLAND

Public Ethics Commission



Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Kyle McLean, Law Clerk
DATE: October 26, 2018
RE: *In the Matter of the Oakland Planning and Building Department (Case No. 16-22M)*; Mediation Summary

I. INTRODUCTION

On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department (Department) failed to disclose records in response to a public records request made by the complainant (Complainant) on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant's public records request. Commission Staff has completed mediation and recommends that the Commission close this matter 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 are 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 he or she has 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

¹ Oakland Municipal Code § 2.20.010(C); 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).

were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On August 8, 2016, the City received, via RecordTrac, the following public records request: “All records in any way related to Case File no. DS15-0313 regarding the development at 5150 Redwood Road.”

At the time, RecordTrac was the City’s online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On August 18, 2016, the Department stated the following on RecordTrac: “Request extended: Additional time is required to answer your public records request. We need to consult with another agency before we are able to deliver your record (Government Code Section 6253(c)(3)).”

Also on August 18, 2016, Complainant stated the following on RecordTrac: “This response does not appear to fulfill the requirements of Government Code section 6253(c)(3) in that you have not stated "the estimated date and time when the records will be made available." Given that the entire project has taken place in Planning and Building what outside agency has records concerning this project?”

Also on August 18, 2016, the Department stated the following on RecordTrac: “Dear Requester, this was not a response, but a request for additional time as the Planning and Building Department does need to consult with another department in the production of the records. Documents will be uploaded on or before September 1st.”

On August 26, 2016, the Department provided the following statement, 420 pages of documents, and closed the request: “Dear Records Requester, I have just scanned and uploaded 410 pages of documents which staff from the City of Oakland’s Department of Planning and Building believe to be responsive to your request. Having made all responsive materials available to you, the City of Oakland will consider your request closed. Thank you,”

On September 7, 2016, the Commission received a complaint alleging that the Department failed to disclose records in response to public records request (PRR) No. 16745 made by Complainant.

On October 31, 2016, Commission Staff started its mediation process by reaching out to the Department and giving them the opportunity to review the complaint and submit a response. On November 18, 2016, the Department provided Commission Staff with a detailed memorandum outlining communications the Department had with Complainant preceding the filing of the complaint, the Department’s response to PRR No. 16745, as well as one page of additional records that were not provided in the Department’s response to the public records request on Recordtrac.

⁵ Complaint Procedures § IV (C)(5).

On December 14, 2016, Commission Staff shared the Department's memorandum with Complainant, including the one page of additional records. Complainant responded to Commission Staff on the same day, asserting that Complainant found the response inadequate because it did not contain a copy of the Conditions of Approval for Case File No. DS15-0313 signed by both the City and the applicant.

Commission Staff continued to communicate with Complainant in January 2017, during which Complainant alleged that the Department continued to purposefully withhold records. On January 10, 2017, Commission Staff asked what evidence Complainant had supporting this allegation. Complainant replied that the fact the Department did not provide "the signed [Conditions of Approval] is evidence that they are withholding records." Complainant alleged that the lack of a signed Conditions of Approval was in violation of Department policy.

In response, Commission Staff requested confirmation from the Department that it did not have a copy of the signed Conditions of Approval. On February 2, 2017, the Department confirmed that it did not have a signed Conditions of Approval, or any additional records in response to PRR No. 16745. The Department explained to Commission Staff that it approved the application and moved forward with the project without receiving a Conditions of Approval signed by the applicant. The Department had verbally informed the applicant of the Conditions of Approval and had confirmed that the applicant was adhering to the Conditions of Approval by visual inspection approximately two weeks later. Commission Staff relayed this information to Complainant, but Complainant continued his allegation that the Department was withholding a signed Conditions of Approval and/or communications between the Department and the applicant.

In response, Commission Staff informed Complainant that further mediation was unlikely to resolve his concerns, and that the violation of Department Policy that he alleged was outside the scope of the mediation process and the Oakland Sunshine Ordinance as it relates to public records.

IV. RECOMMENDATION

Since the Department disclosed additional records responsive to Complainant's public records request and explained that the specific record Complaint seeks has never existed, Commission Staff recommends that the Commission close this matter without further action.

Once the Commission closes this matter, Respondent will have the right, pursuant to the Oakland Sunshine Ordinance, to request that the Commission investigate whether the Department's response to PRR No. 16745 was in violation of the Oakland Sunshine Ordinance.

CITY OF OAKLAND

Public Ethics Commission



Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Kyle McLean, Law Clerk
DATE: October 26, 2018
RE: *In the Matter of City of Oakland (Case No. 17-14M)*; Mediation Summary

I. INTRODUCTION

On July 27, 2017, the Commission received a complaint alleging that the City failed to respond to a public records request made by the complainant (Complainant) on May 2, 2017. On December 12, 2017, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the City provided additional records responsive to Complainant's request and Complainant subsequently requested that the mediation be closed. Therefore, Commission Staff recommends that the Commission close this matter without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records are 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 The CPRA provides that records involving attorney client privilege or work product doctrine is exempt from disclosure.³

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.⁴ 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 he or she has requested and participated in the Commission's mediation program.⁵

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

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

² Government Code § 6253(b).

³ Government Code § 6254(k).

⁴ O.M.C. § 2.20.270(C)(1).

⁵ O.M.C. § 2.20.270(F).

efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁶

III. SUMMARY OF FACTS

On May 2, 2017, the City received, via RecordTrac, the following public records request:

This request is made pursuant to the California Public Records Act for a copy of the following records and documents: 1. All versions of the draft Oakland City Council tobacco ordinance amending Oakland Municipal Code Chapter 5.91 to: (1) prohibit the sale of flavored tobacco products; (2) require the posting of the full retail price of tobacco products; (3) prohibit the redemption of tobacco discounts coupons; and (4) make administrative changes for the licensure of tobacco retailers (referred to as the “Oakland Ordinance”). 2. All notices of meetings, agendas, and minutes of the Rules and Legislation Committee meetings held on November 17, 2016, January 12, 2017, February 2, 2017, and April 13, 2017 regarding the Oakland Ordinance. 3. All Oakland city staff reports regarding the Oakland Ordinance provided to the Oakland City Council or to any committee of the Oakland City Council. 4. All memos, reports, documents, notes, correspondence, and e-mails regarding the Oakland Ordinance drafted, received, or sent by and/or between Oakland city staff, Oakland City Council members, the Alameda County Board of Supervisors, the Alameda County Public Health Department, the Alameda County Department of Health Service (Tobacco Prevention Program), ChangeLab Solutions, the African American Tobacco Control Leadership Council, Americans for Non-Smokers Rights, American Heart Association, American Lung Association, American Cancer Society Cancer Action Network, and the UCSF Center for Tobacco Control Research and Education. 5. All reports on local tobacco retail compliance checks conducted on Oakland, California retailers that are licensed to sell tobacco products by the City of Oakland, the Oakland Police Department, or other organization or agency conducting such tobacco retail compliance checks on behalf of the City of Oakland during 2015 and 2016.

At the time, RecordTrac was the City’s online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On May 9, 2017, City Clerk’s Office uploaded 57 documents in response to the request and stated the following on RecordTrac: “This signifies completion of the records request with records currently in our possession.”

On May 10, 2017, the City’s IT Department (ITD) stated the following on RecordTrac: “We released all of the requested documents.”

⁶ Complaint Procedures § IV (C)(5).

On July 27, 2017, Complainant filed a complaint with the Commission alleging that the Oakland City Councilmembers and City Attorney's Office violated the Oakland Sunshine Ordinance and CPRA by failing to respond to the entirety of the request.

On October 31, 2017, Commission Staff staffed informed Complainant that the Oakland Sunshine Ordinance requires him to participate in mediation before Commission Staff can consider whether to open an investigation into his allegations and offered to begin the mediation process.

On December 12, 2017, Complainant accepted Commission Staff's offer to mediate the allegations in his complaint, and Commission Staff started the mediation process.

Commission Staff communicated with Complainant, Councilmembers' offices, and the City Attorney's Office throughout January, February, March, and April, 2018. On January 8, 2018, in response to Commission Staff's mediation efforts, the records request was reopened in RecordTrac and assigned to departments who could assist in providing the requested documents.

Also on January 8, 2018, the City Attorney's Office stated the following on RecordTrac:

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)).

For section #4, the timeline should be May 2, 2017 through November 7, 2017 (see supplemental request #23918)

For section #5, the requestor also wants the same records for the timeline May 2, 2017 through November 7, 2017 (see supplemental request #23918).

The requestor also is asking for "All memos, reports, documents, notes, correspondence, and e-mails from May 2, 2017 through November 7, 2017 regarding the Oakland Ordinance that were drafted, received, or sent by and/or between Oakland city staff, Oakland City Council members, and the Oakland Public Ethics Commission." See supplemental request #23918. PLEASE POST ALL RESPONSES FOR BOTH REQUESTS HERE.

On January 9, 2018, Oakland City Council stated the following on RecordTrac: "PRR # 20887 has been distributed to the Council's Liaisons"

On January 10, Oakland City Council stated the following on RecordTrac: "PRR # 20887 - Council Member Brooks does not have any records for the item."

On January 25, 2018, Councilmember Rebecca Kaplan's Office stated the following on RecordTrac: "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 January 29, 2018, Commission Staff stated the following on RecordTrac: “The Public Ethics Commission has no records that are responsive to this request.”

On March 1, 2018, the Oakland Police Department (OPD) stated the following on RecordTrac: “The OPD ABAT section is reviewing this request for responsive documents.”

On March 5, 2018, OPD uploaded two documents and stated the following on RecordTrac: “The Oakland Police Department has provided responsive records in our possession to the requester and this signifies the completion of our portion of this request. The other departments within the City will respond separately.”

On March 6, 2018, Councilmember Noel Gallo’s Office stated the following on RecordTrac: “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 March 15, 2018, Councilmember Gallo’s Office uploaded one document to RecordTrac.

On March 19, 2018, the City moved its record database from RecordTrac to NextRequest. NextRequest is currently the City’s online portal for sharing public records and allows members of the public to make requests, receive responses from the City, and search past requests and responses.

On April 13, 2018, Councilmember Kaplan’s Office uploaded one document to NextRequest.

On August 7, 2018, the City Attorney’s Office stated the following on NextRequest: “Records involving attorney-client privilege or attorney work product are exempt from disclosure under Gov. Code 6254(k).”

On July 11, and again on September 14, 2018, Commission Staff attempted, unsuccessfully, to reach Complainant by telephone to discuss if he had any outstanding concerns regarding the City’s response to his records request. Commission Staff also sent follow-up emails to Complainant on July 11, July 23, August 8, and September 17, 2018.

On September 19, 2018, Complainant informed Commission Staff that he has no outstanding issues or concerns regarding the response to his public records request and requested that Commission Staff close the mediation.

IV. RECOMMENDATION

Because the City provided additional records responsive to Complainant’s request and Complainant has no outstanding issues or concerns regarding the City’s response to his public records request, Commission Staff recommends that the Commission close this matter without further action.

CITY OF OAKLAND

Public Ethics Commission

Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Subcommittee on Penalty Guidelines
DATE: October 26, 2018
RE: Revised Enforcement Penalty Guidelines

The Oakland City Charter authorizes the Public Ethics Commission to impose penalties, remedies, and fines as provided for by local ordinances that are within the Commission's jurisdiction, including the Government Ethics Act, Oakland Campaign Reform Act and Lobbyist Registration Act. City Charter section 603(f)(4)¹ requires the Commission to develop standards for imposing penalties and exercising enforcement discretion; the Commission adopted its first set of Enforcement Penalty Guidelines in December 2015 and is now reviewing the Guidelines for possible amendment. This memorandum describes proposed amendments to the Guidelines, made by the Penalty Guidelines Subcommittee, to be reviewed and potentially adopted by the Commission.

The purpose of the Penalty Guidelines is to provide a consistent and transparent framework to guide Staff and Commission decisions in determining administrative penalties. It provides guiding principles for enforcement, factors to consider in determining a penalty, and varied penalty options based on the significance of the violation.

The attached draft revision to the Penalty Guidelines makes the following changes to the original version, among additional technical changes:

- Adds a note about the integral role of the Commission's education and support services in enhancing compliance;
- Consolidates duplicative lists of factors and mitigating and aggravating circumstances that are considered in determining a penalty;
- Increases base penalty amounts under the Streamline Stipulation program and consolidates the list of categories and options within the program;
- Eliminates Lobbyist non-filer and non-reporter cases from the Streamline Stipulation program; and
- Makes changes to the Mainline Penalty chart to correct the omission of the Misuse of Position or Authority section of the Government Ethics Act, and revise Oakland Campaign Reform Act and Lobbyist Registration Act penalties to accord with the

¹ § 603(f)(4) was added to the City Charter by Measure CC, which was passed by voters in the November 2014 election.

maximum fine amounts available under those laws, among other edits.

Staff recommends the Commission review and potentially approve the attached revised Penalty Guidelines.

Attachments:

1. Enforcement Penalty Guidelines, effective December 2015
2. Draft Revisions to the Enforcement Penalty Guidelines, with changes tracked
3. Revised Draft Enforcement Penalty Guidelines, clean version

Public Ethics Commission

ENFORCEMENT PENALTY GUIDELINES

The Public Ethics Commission (PEC) is authorized by the City Charter to impose penalties, remedies, and fines as provided for by local ordinances that are within the PEC's jurisdiction. In accordance with the City Charter, this document outlines principles to guide the PEC and its staff in determining an appropriate penalty in any given case. This policy serves as a guide and does not limit the PEC or its staff from using discretion to deviate from the norm in cases in which atypical or egregious circumstances exist. The guidelines include general principles, factors to consider in determining a penalty, and a tiered approach to penalties based on the level of the violation, which takes into account the overall principles and specific factors.

Guiding Principles for Enforcement

The overarching goal of the PEC's enforcement activity is to obtain compliance with ethics rules 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** – Compliance should be timely, if possible, to provide the public with needed ethics disclosures, and to mitigate harm that occurred from the violations. Enforcement resolutions should be viewed through this lens to craft a range of penalties and enforcement actions that drive timely compliance and mitigate future harm. For campaign violations, this can mean swift resolution and correction of violations, including before an election. Timely public information is crucial in these cases, as the value of required pre-election disclosure declines significantly after the election. For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed.
- 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. An ethics commission frequently investigates and administratively prosecutes public officials, and it is essential that politics and rivalries not become part of these actions. 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 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** – 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 to the extent necessary while preserving PEC resources for major violations that may occur. Minor violations should not be ignored, but proportionality in penalties and an ability to take on more significant cases is important to creating a culture of compliance.

Specific Factors to Consider in Determining a Penalty

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

1. The seriousness of the violation;
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 and whether the violator has a prior record of violations;
5. Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure; and
6. The degree to which the respondent cooperated with the PEC's investigation and demonstrated a willingness to remedy any violations.

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 offense, the PEC institutes a three-tiered approach that is similar to the approach used by the California Fair Political Practices Commission. This approach 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 an offense where the evidence demonstrates one or all of the following to an extent that a monetary penalty is not justified or in the interest of justice. To determine whether a case qualifies for a warning letter, the PEC will consider all relevant circumstances surrounding the case, including, but not limited to, the following:
 - a. Whether there was any intent to commit the violation;
 - b. Whether there are significant mitigating factors;
 - c. Whether the respondent lacked sophistication regarding the relevant law;
 - d. Whether the violation caused an insignificant harm to the public (such as failing to file statements with little or nothing to report);
 - e. Whether the respondent corrected the public harm caused by the violation prior to any actions by the PEC; and

f. Whether the action that caused the violation was a ministerial act.

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 low-level common cases can be quickly handled with a fine commensurate to the violation, which helps preserve staff time to focus on more serious cases. Under Oakland ethics laws, a streamlined stipulation is an option to resolve the following types of cases:

- a. Form 700 Non-Filer (GEA § 2.25.040);
- b. Form 700 Non-Reporter (GEA § 2.25.040);
- c. Gift Restrictions (GEA § 2.25.060C);
- d. Form 301 Non-Filer (CRA § 3.12.190);
- e. Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340);
- f. Lobbyist Registration Non-Filer (LRA § 3.20.040); and
- g. Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110).

To determine whether a case qualifies for the streamlined stipulation program, the PEC will use similar factors to those used to determine if a case qualifies for a warning letter, as outlined above.

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 mid-level penalty. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations will be standardized and shortened from higher-level penalty ranges to promote efficiency.

The penalty tiers for streamlined stipulations are as follows:

- a. Form 700 Non-Filer (GEA § 2.25.040):

Tier	Penalty per Form 700 not timely filed ¹
1 – Compliance in response to first PEC contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to administrative hearing.	\$800
4 – Compliance prior to adoption of a Commission decision.	\$1,000

¹ No streamlined program penalty can exceed the statutory limit.

b. Form 700 Non-Reporter (GEA § 2.25.040):

Tier	Penalty per Form 700 that did not include all qualifying economic interests
1 – Compliance in response to first PEC contact.	\$100
2 – Compliance prior to issuance of a probable cause report.	\$200
3 – Compliance prior to administrative hearing.	\$400
4 – Compliance prior to adoption of a Commission decision.	\$800

c. Gift Restrictions (GEA § 2.25.060C):

Tier	Penalty
1 – Compliance in response to first PEC contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to administrative hearing.	\$800
4 – Compliance prior to adoption of a Commission decision.	\$1,000

d. Form 301 Non-Filer (CRA § 3.12.190):

Tier	Penalty
1 – Compliance in response to first PEC contact.	\$200, plus 2% of contributions received over contribution limit prior to filing Form 301.
2 – Compliance prior to issuance of a probable cause report.	\$400, plus 2% of contributions received over contribution limit prior to filing Form 301.
3 – Compliance prior to administrative hearing.	\$800, plus 2% of contributions received over contribution limit prior to filing Form 301.
4 – Compliance prior to adoption of a Commission decision.	\$1,000, plus 2% of contributions received over contribution limit prior to filing Form 301.

e. Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340):

Tier	Penalty per statement/report not timely filed or not including all required disclosure²
1 – Compliance in response to first PEC contact.	\$200, plus 1% of all financial activity not timely reported.
2 – Compliance prior to issuance of a probable cause report.	\$400, plus 1% of all financial activity not timely reported.
3 – Compliance prior to administrative hearing.	\$800, plus 1% of all financial activity not timely reported.
4 – Compliance prior to adoption of a Commission decision.	\$1,000, plus 1% of all financial activity not timely reported.

f. Lobbyist Registration Non-Filer (LRA § 3.20.040):

Tier	Penalty
1 – Compliance in response to first PEC contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to administrative hearing.	\$800
4 – Compliance prior to adoption of a Commission decision.	\$1,000

g. Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110):

Tier	Penalty
1 – Compliance in response to first PEC contact.	\$200, plus 1% of all financial activity not timely reported.
2 – Compliance prior to issuance of a probable cause report.	\$400, plus 1% of all financial activity not timely reported.
3 – Compliance prior to administrative hearing.	\$800, plus 1% of all financial activity not timely reported.
4 – Compliance prior to adoption of a Commission decision.	\$1,000, plus 1% of all financial activity not timely reported.

² “Statement” refers to statements pursuant to Sections 84200 and 84200.5 of the California Political Reform Act. “Reports” refers to reports pursuant to Sections 84202.5, 84203, 84203.5, 84204, 84213, and 84511 of the California Political Reform Act.

- 3. Mainline Stipulation.** For more serious violations, the PEC will start with the following “base-level” fine amount and then adjust the fine amount based on mitigating and aggravating factors of the individual case, which will be articulated in the stipulation.

Mainline penalty amounts are as follows:

Violation	Streamline Stipulation Available?	Base-Level Per Violation	Statutory Limit Per Violation
Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.)	Yes.	\$1,000.	\$5,000 or up to three times the amount not timely reported.
Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Revolving Door Provisions. (GEA § 2.25.050.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Misuse of City Resources Provisions. (GEA § 2.25.060A.)	No.	\$2,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Gift Restrictions. (GEA § 2.25.060C.)	Yes.	\$1,000 plus forfeiture of unlawful gift.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Contracting Prohibition. (GEA § 2.25.060D.)	No.	\$2,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Bribery/Payment for Position. (GEA § 2.25.070A-B.)	No.	\$5,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)	No.	\$1,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Contribution Limits. (CRA §§ 3.12.050 -3.12.080.)	No.	Amount of unlawful contribution, plus forfeiture of unlawful contribution.	Three times the amount of the unlawful contribution.

One Bank Account Rule. (CRA § 3.12.110.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Fundraising Notice Requirement. (CRA § 3.12.140P.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Contractor Contribution Prohibition. (CRA § 3.12.140.)	No.	\$2,000.	Three times the amount of the unlawful contribution.
Officeholder Fund Requirements. (CRA § 3.12.150.)	No.	\$2,000.	Three times the amount of the unlawful expenditure.
Form 301 Requirement. (CRA § 3.12.190.)	Yes.	\$1,000.	Three times the amount of unlawful contribution or expenditure.
Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Campaign Statement/Report Non-Filer and Non-Reporter. (CRA § 3.12.340.)	Yes.	\$1,000.	Three times the amount not properly reported, or \$2,000, whichever is greater.
Public Finance Program Requirements. (LPFA § 3.13.010.)	No.	\$1,000.	\$1,000 and repayment of funds.
Lobbyist Registration Non-Filer. (LRA § 3.20.040.)	Yes.	\$1,000.	\$5,000.
Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)	Yes.	\$1,000.	\$5,000 or up to three times the amount the not timely reported, whichever is greater.

Application of these Guidelines

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 fine in certain types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty or fine 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 fine or 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.

Public Ethics Commission

ENFORCEMENT PENALTY GUIDELINES

The Public Ethics Commission (PEC) is authorized by the ~~City 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. ~~In accordance with, including the City Charter, this document outlines principles to guide the PEC Government Ethics Act, Oakland Campaign Reform Act and its staff in determining an appropriate penalty in any given case. Lobbyist Registration Act.~~ This policy serves as a guide and does not limit the PEC or its staff from using discretion to deviate from the norm in cases in which atypical or egregious circumstances exist. ~~The guidelines include~~ Guideline includes general principles, and factors to consider in determining a penalty, and a tiered approach to penalties based on the ~~level~~ seriousness of the violation, ~~which takes into account the overall principles and specific factors.~~ 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 ~~ethics~~ 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.
 1. Compliance should be timely, ~~if possible,~~ to provide the public with ~~needed~~ ethics required disclosures, and to mitigate harm ~~that occurred from the violations 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 ~~future~~ harm. For campaign violations, this ~~can~~ should mean swift resolution and correction of violations, ~~including especially~~ before an election. Timely public ~~information disclosure~~ is crucial in these cases, as the value of required pre-election disclosure declines significantly after the election. ~~For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed.~~ 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. ~~An ethics commission~~ The PEC frequently investigates and administratively prosecutes public officials, and it is essential that politics and rivalries not become part of ~~these actions 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

~~commissioners~~ 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 ~~to the extent necessary,~~ while preserving PEC resources for major violations that may occur. Minor violations ~~should~~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.

3.

Specific Factors to Consider in Determining a Penalty

The PEC will consider all relevant mitigating and aggravating circumstances surrounding ~~the ease~~ 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 ~~and whether;~~
- 4.5. Whether the violator/respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
5. ~~Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure; and~~
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 ~~investigation~~ enforcement activity in a timely manner;

8. The relative experience of the respondent.

~~The PEC has broad discretion in evaluating a violation and demonstrated a willingness to remedy 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 violations– 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.~~

~~6.~~

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 ~~offenseviolation~~, the PEC institutes a three-tiered approach that ~~is similar to the approach used by the California Fair Political Practices Commission. This approach~~ 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 ~~an offensea violation~~ where the evidence demonstrates ~~one or all of the following to an extent~~ that a monetary penalty is not justified, or in the interest of justice. ~~To determine whether a case qualifies for a A warning letter, the PEC will consider all relevant circumstances surrounding the case, including, but not limited to, the following: be available where the respondent has had a prior violation of the same or similar type.~~
 - ~~a. Whether there was any intent to commit the violation;~~
 - ~~b. Whether there are significant mitigating factors;~~
 - ~~c. Whether the respondent lacked sophistication regarding the relevant law;~~
 - ~~d. Whether the violation caused an insignificant harm to the public (such as failing to file statements with little or nothing to report);~~
 - ~~e. Whether the respondent corrected the public harm caused by the violation prior to any actions by the PEC; and~~
 - ~~f. Whether the action that caused the violation was a ministerial act.~~
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 ~~low-levelmore~~ common cases can be quickly handled with a ~~finepenalty~~

commensurate to the violation, which helps preserve staff time to focus on more serious cases. ~~Under Oakland ethics laws, a~~ The streamlined stipulation program is an option (but is not required) to resolve the following types of eases~~violations~~:

- ~~a.~~ Form 700 Non-Filer (~~GEA § 2.25.040~~);
- ~~b.a.~~ Form 700 and Non-Reporter (GEA § 2.25.040);
- ~~e.b.~~ Gift Restrictions (GEA § 2.25.060C);
- ~~d.c.~~ Form 301 Non-Filer (CRA § 3.12.190);
- ~~e.d.~~ Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.~~340~~240);
- ~~f.~~ Lobbyist Registration Non-Filer (LRA § 3.20.040); and
- ~~g.~~ Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110).

~~To determine whether a case qualifies for the streamlined stipulation program, the PEC will use similar factors to those used to determine if a case qualifies for a warning letter, as outlined above.~~

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 mid-level penalty. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations will behave been standardized and shortened ~~from higher level penalty ranges~~ to promote efficiency.

The penalty tiers ~~for applying to~~ streamlined stipulations are ~~as follows~~:

- ~~a.~~ Form 700 Non-Filer (GEA § 2.25.040):

Tier	Penalty per Form 700 not timely filed [†]
1—Compliance in response to first PEC contact.	\$200
2—Compliance prior to issuance of a probable cause report.	\$400
3—Compliance prior to administrative hearing.	\$800
4—Compliance prior to adoption of a Commission decision.	\$1,000

- ~~b.~~ Form 700 Non-Reporter (GEA § 2.25.040):

Tier	Penalty per Form 700 that did not include all qualifying economic interests
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[†]No streamlined program penalty can exceed the statutory limit.

1—Compliance in response to first PEC contact.	\$100
2—Compliance prior to issuance of a probable cause report.	\$200
3—Compliance prior to administrative hearing.	\$400
4—Compliance prior to adoption of a Commission decision.	\$800

~~e. Gift Restrictions (GEA § 2.25.060C):~~

Tier	Penalty
1—Compliance in response to first PEC contact.	\$200
2—Compliance prior to issuance of a probable cause report.	\$400
3—Compliance prior to administrative hearing.	\$800
4—Compliance prior to adoption of a Commission decision.	\$1,000

~~d. Form 301 Non-Filer (CRA § 3.12.190):~~

Tier	Penalty
1—Compliance in response to first PEC contact.	\$200, plus 2% of contributions received over contribution limit prior to filing Form 301.
2—Compliance prior to issuance of a probable cause report.	\$400, plus 2% of contributions received over contribution limit prior to filing Form 301.
3—Compliance prior to administrative hearing.	\$800, plus 2% of contributions received over contribution limit prior to filing Form 301.
4—Compliance prior to adoption of a Commission decision.	\$1,000, plus 2% of contributions received over contribution limit prior to filing Form 301.

~~e. Campaign Statement/Report Non-Filers set forth below and Non-Reporter (CRA § 3.12.340):~~

Tier	Penalty per statement/report not timely filed or not including all required disclosure²
1—Compliance in response to first PEC contact.	\$200, plus 1% of all financial activity not timely reported.
2—Compliance prior to issuance of a probable cause report.	\$400, plus 1% of all financial activity not timely reported.
3—Compliance prior to administrative hearing.	\$800, plus 1% of all financial activity not timely reported.
4—Compliance prior to adoption of a Commission decision.	\$1,000, plus 1% of all financial activity not timely reported.

f. ~~Lobbyist Registration Non-Filer (LRA § 3.20.040):~~

Tier	Penalty
1—Compliance in response to first PEC contact.	\$200
2—Compliance prior to issuance of a probable cause report.	\$400
3—Compliance prior to administrative hearing.	\$800
4—Compliance prior to adoption of a Commission decision.	\$1,000

g. ~~Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110):~~

Tier	Penalty
1—Compliance in response to first PEC contact.	\$200, plus 1% of all financial activity not timely reported.
2—Compliance prior to issuance of a probable cause report.	\$400, plus 1% of all financial activity not timely reported.
3—Compliance prior to administrative hearing.	\$800, plus 1% of all financial activity not timely reported.
4—Compliance prior to adoption of a Commission decision.	\$1,000, plus 1% of all financial activity not timely reported.

3. Mainline Stipulation. For more serious violations, the PEC will start with a contingent upon the following “base-level” fine amount and then adjust the fine amount based on mitigating

² “Statement” refers to statements pursuant to Sections 84200 and 84200.5 of the California Political Reform Act. “Reports” refers to reports pursuant to Sections 84202.5, 84203, 84203.5, 84204, 84213, and 84511 of the California Political Reform Act.

~~and aggravating factors of the individual case, which will be articulated in the stipulation conditions:~~

Mainline penalty amounts are as follows:

- 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	Streamline Stipulation Available? <u>Compliance prior to or in response to first PEC enforcement contact</u>	Base Level Per Violation <u>Compliance prior to publication of PEC investigation report</u>	Statutory Limit Per Violation
Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040-);	Yes. <u>\$400</u>	\$1,000. <u>800</u>	\$5,000 or up to three times the amount not timely reported.
Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Revolving Door Provisions. (GEA § 2.25.050.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Misuse of City Resources Provisions. (GEA § 2.25.060A.)	No.	\$2,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Gift Restrictions. (GEA § 2.25.060C-)	Yes.	\$1,000. <u>400, plus forfeiture of unlawful gift amount</u>	\$5,000 or up to three times the unlawful amount, whichever is greater. <u>\$800</u>
Contracting Prohibition. (GEA § 2.25.060D.)	No.	\$2,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Bribery/Payment for Position. (GEA § 2.25.070A-B.)	No.	\$5,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.

Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)	No.	\$1,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Contribution Limits: Form 301 Non-Filer (CRA §§ 3.12.050–3.12.080.)190)	No.	Amount of unlawful contribution, plus forfeiture of unlawful contribution. \$400, plus 2% of contributions received over limit prior to filing form	Three times the amount of the unlawful contribution. \$800 plus 2% of contributions received over limit prior to filing form
One Bank Account Rule. (CRA § 3.12.110.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Fundraising Notice Requirement. (CRA § 3.12.140P.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Contractor Contribution Prohibition. (CRA § 3.12.140.)	No.	\$2,000.	Three times the amount of the unlawful contribution.
Officeholder Fund Requirements. (CRA § 3.12.150.)	No.	\$2,000.	Three times the amount of the unlawful expenditure.
Form 301 Requirement. (CRA § 3.12.190.)	Yes.	\$1,000.	Three times the amount of unlawful contribution or expenditure.
Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Campaign Statement/Report Non-Filer and Non-Reporter: (CRA § 3.12.340.)	Yes.	\$1,000. \$400, plus 1% of all financial activity not timely reported	Three times the amount \$800, plus 1% of all financial activity not properly timely reported, or \$2,000, whichever is greater.
Public Finance Program Requirements. (LPFA § 3.13.010.)	No.	\$1,000.	\$1,000 and repayment of funds.
Lobbyist Registration Non-Filer. (LRA § 3.20.040.)	Yes.	\$1,000.	\$5,000.
Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)	Yes.	\$1,000.	\$5,000 or up to three times the amount the not timely reported, whichever is greater.

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.

<u>Violation</u>	<u>Base-Level Per Violation</u>	<u>Statutory Limit Per Violation</u>
<u>Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.)</u>	<u>\$1,000.</u>	<u>\$5,000 or three times the amount not timely reported, whichever is greater.</u>
<u>Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)</u>	<u>\$3,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Revolving Door Provisions. (GEA § 2.25.050.)</u>	<u>\$3,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Misuse of City Resources. (GEA § 2.25.060A1.)</u>	<u>\$2,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Misuse of Position or Authority (GEA § 2.25.060A2.)</u>	<u>\$5,000</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)</u>	<u>\$3,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Gift Restrictions. (GEA § 2.25.060C.)</u>	<u>\$1,000 plus the unlawful amount.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Contracting Prohibition. (GEA § 2.25.060D.)</u>	<u>\$2,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Bribery/Payment for Position. (GEA § 2.25.070A-B.)</u>	<u>\$5,000, or three times the unlawful amount, whichever is greater</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Neptotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)</u>	<u>\$3,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)</u>	<u>\$1,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Contribution Limits. (CRA §§ 3.12.050 -3.12.080.) and Contractor Contribution Prohibition. (CRA § 3.12.140.)</u>	<u>\$1,000, plus the unlawful amount.</u>	<u>\$5,000 or three times the amount of the unlawful contribution, whichever is greater.</u>
<u>One Bank Account Rule. (CRA § 3.12.110.)</u>	<u>\$1,000.</u>	<u>\$5,000 or three times the unlawful amount, whichever is greater.</u>
<u>Fundraising Notice Requirement. (CRA § 3.12.140P.)</u>	<u>\$1,000.</u>	<u>\$5,000 or three times the unlawful expenditure, whichever is greater.</u>
<u>Officeholder Fund Requirements. (CRA § 3.12.150.)</u>	<u>\$2,000.</u>	<u>\$5,000 or three times the unlawful expenditure, whichever is greater.</u>
<u>Form 301 Requirement. (CRA § 3.12.190.)</u>	<u>\$1,000, plus 2% of contributions received over</u>	<u>\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.</u>

	<u>contribution limit prior to filing Form 301.</u>	
<u>Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.)</u>	<u>\$1,000.</u>	<u>\$5,000 or three times the unlawful expenditure, whichever is greater.</u>
<u>Contribution and Expenditure Restrictions. (CRA §§ 3.12.065 and 3.12.130.)</u>	<u>\$1,000</u>	<u>\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.</u>
<u>Campaign Statement/Report Non-Filer and Non-Reporter. (CRA § 3.12.340.)</u>	<u>\$1,000, plus 1% of the all financial activity not timely reported.</u>	<u>\$5,000 or three times the amount not properly reported, whichever is greater.</u>
<u>Public Finance Program Requirements. (LPFA § 3.13.010.)</u>	<u>\$1,000.</u>	<u>\$1,000 and repayment of public financing unlawfully received or expended.</u>
<u>Lobbyist Registration Non-Filer. (LRA § 3.20.040.)</u>	<u>\$750.</u>	<u>\$1,000.</u>
<u>Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)</u>	<u>\$750.</u>	<u>\$1,000.</u>

Application of ~~these Guidelines~~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 ~~fine~~penalty in certain types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty ~~or fine~~ 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 ~~fine~~or 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.

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</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,

(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.

CITY OF OAKLAND
Public Ethics Commission

Jonathan Stein (Chair)
Jodie Smith (Vice-Chair)
Lisa Crowfoot
James Jackson
Gail Kong
Krisida Nishioka



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: October 12, 2018
RE: 2019 Regular Meeting Schedule

Below is a proposed schedule for regular Commission meetings in 2019. Unless otherwise specified, meetings occur on the first Monday of each month.

2019 REGULAR MEETING SCHEDULE		
DATE	TIME	ROOM
January 7, 2019	6:30 PM	Hearing Room 1
February 4, 2019	6:30 PM	Hearing Room 1
March 4, 2019	6:30 PM	Hearing Room 1
April 1, 2019	6:30 PM	Hearing Room 1
May 6, 2019	6:30 PM	Hearing Room 1
June 3, 2019	6:30 PM	Hearing Room 1
July 1, 2019	6:30 PM	Hearing Room 1
August 5, 2019	6:30 PM	Hearing Room 1
<i>September Recess</i>		
October 7, 2019	6:30 PM	Hearing Room 1
November 4, 2019	6:30 PM	Hearing Room 1
December 2, 2019	6:30 PM	Hearing Room 1

CITY OF OAKLAND

Public Ethics Commission

Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Whitney Barazoto, Executive Director
DATE: October 26, 2018
RE: Disclosure Program

This memorandum provides an update of the Public Ethics Commission's (PEC or Commission) Disclosure program activities. Commission staff activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting other general PEC data and outreach efforts.

Filing Officer

Campaign disclosure – October 25 marked the second pre-election deadline for the November 2018 election. The first pre-election deadline occurred on September 27. All candidate-controlled committees with candidates on the November ballot must file pre-election statements for their campaign committees as well as any other committees that they control. Ballot measure committees and other recipient committees with fundraising or spending activity connected with the November ballot must also file by the pre-election deadlines.

All 2018 candidates have filed their September pre-election campaign statements, and the large majority were timely filed. Eighty-seven percent of the October 25 pre-election statements were timely filed (39 statements out of 45), and 93 percent before noon the day after the deadline. Commission staff have reached out to the remaining three committees to quickly gain compliance.

Commission staff completed surface review of over 119 campaign statements filed between July 31 and October 22. In addition, 203 late contribution reports and 104 late independent expenditure reports were reviewed during the same period. Amendments for missing contributor information and/or minor, technical errors were required for ten filings with eight committees coming into compliance to date.

During the 90-day period leading up to the election, late contribution and late independent expenditure reports must be filed within 24-hours whenever a committee makes or receives a contribution of \$1,000 or more or makes an independent expenditure of \$1,000 or more for a candidate or measure on the November ballot. After the second pre-election deadline, no campaign statements are due until after the election, making 24-hour late contribution and late independent expenditure reports the primary source for campaign disclosure in the days leading up to November 6. Commission staff assessed \$530 in late fees against four filers for late 24-hour reports

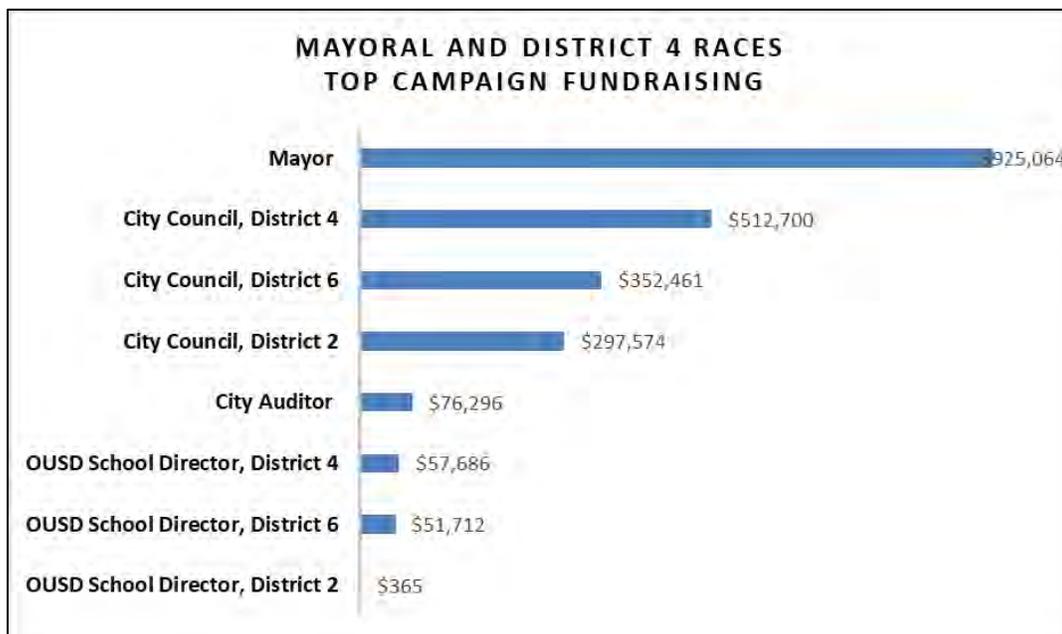
prior to October 25 and continues to closely monitor compliance with 24-hour reporting requirements.

Campaign-related inquiries continued to dominate information and advice requests during October. Three-fifths of campaign-related requests (approximately 21 out of 35) were for technical assistance understanding disclosure requirements and/or completing and amending filings using the NetFile system. Filers without professional treasurers required technical assistance using the free software for anything beyond recording simple transactions, such as how to record transactions involving intermediaries or allocating independent expenditures to multiple candidates. In comparison, NetFile recorded only seven requests for assistance by Oakland filers during the period leading up to the last deadline, and Commission staff facilitated resolution of most of those requests.

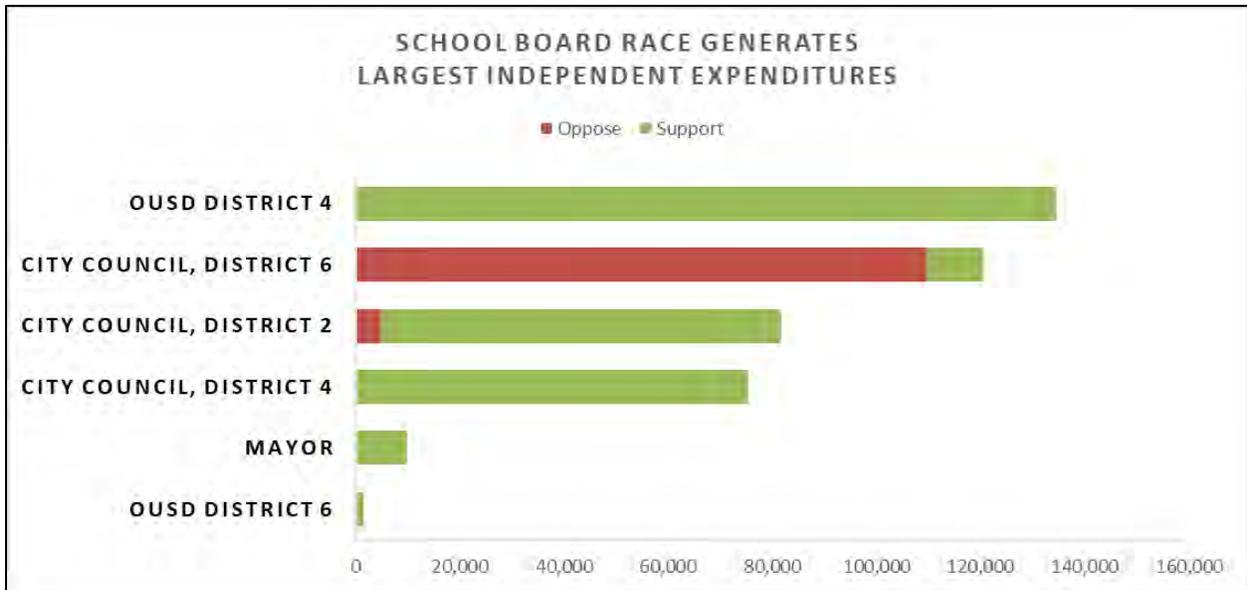
A group of filers requiring higher levels of assistance are large contributors to ballot measure campaigns that meet state major donor filing requirements. These individuals and businesses are often onetime contributors with little to no experience or understanding of state or local campaign finance law and no experience using filing software.

In addition to support by phone and email, Commission staff met with several candidates acting as their committee treasurer and other non-professional volunteer treasurers to provide one-on-one training and walk them through the process of completing their filings. Frontline staff also assisted three filers without registered committees in completing the required disclosure for candidates raising and spending under \$2,000, known as FPPC Form 470.

To date, nearly \$2.3 million in contributions and \$1.6 million in campaign expenditures have been reported by candidates running for office on the November ballot. Contributions to mayoral candidates account for almost \$1 million, with over half those contributions going to incumbent Mayor Libby Schaaf's campaign. Not surprisingly, the mayoral election saw the greatest amount of fundraising and campaign spending followed by Council Districts 4, 6 and 2, respectively.



SOURCE: FORM 460 AND FORM 497, ACCESSED 10/25/18

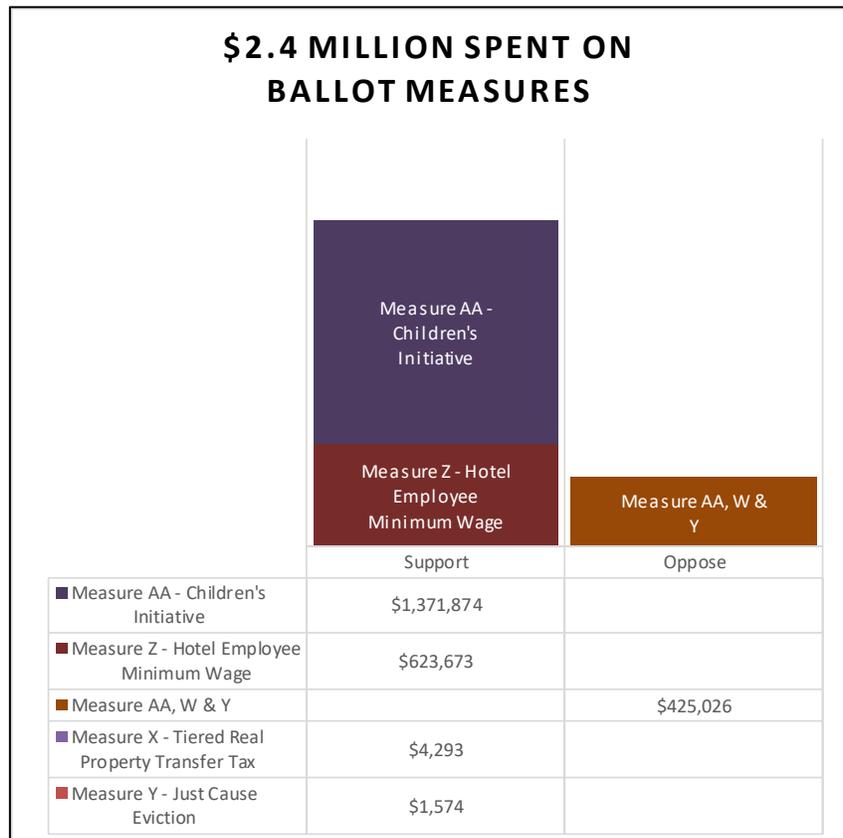


SOURCE: FORM 496, ACCESSED 10/25/18

Spending by third parties (entities that are not candidate-controlled) is now reported at \$423,621 in independent expenditures to support or oppose candidates for elective office in Oakland. By far the largest independent expenditures were to influence votes in the race for the District 4 Oakland Unified School Board seat with \$134,598 spent to date.

There are now six committees registered to support or oppose November ballot measures. Ballot measure committees reported over \$2.4 million in expenditures through October 20. In contrast with spending on candidates, there has been relatively little independent spending related to ballot measures reported.

Lobbyist disclosure – The third quarter lobbyist activity report deadline is October 30. All active registered lobbyists are compliant through the second quarter. A more detailed report of lobbyist activity will be forthcoming after the third quarter reports are processed by staff.



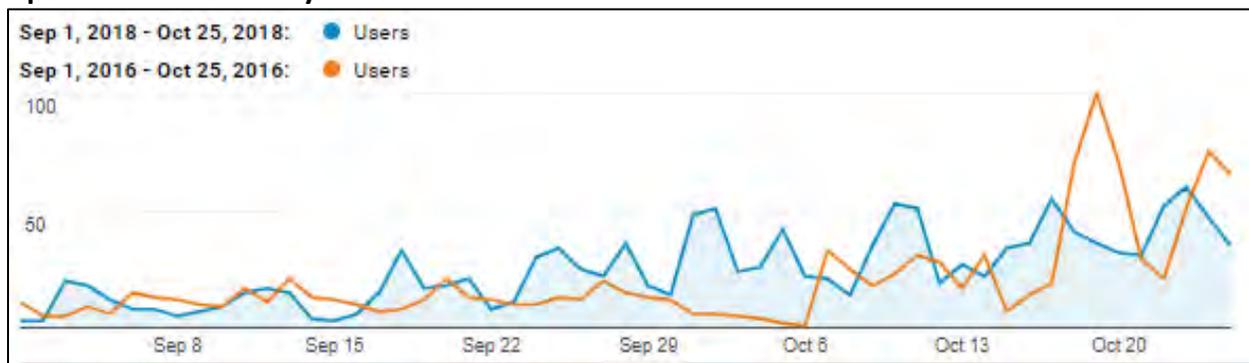
SOURCE: FORM 460 AND FORM 496, ACCESSED 10/25/18

illuminating Disclosure Data

Open Disclosure – The www.OpenDisclosure.io campaign finance app went live in September with new features and data for the 2018 election. Since the September 18 launch, the development team implemented several notable new features. The site now includes more detailed information on third-party spending on candidates and ballot measures with independent expenditures displayed alongside candidate and ballot measure committee spending. Committees making independent expenditures are displayed with links to their contributor lists. Public financing disbursed to district City Council candidates is included alongside candidate contributions so show the impact of the City’s Limited Public Financing program. More “tool tips” with information and links to the PEC website and campaign finance data portal were added to provide context to the data.

Indicators for 2018 site usage bode well. 934 new users visited the site between September 1 and October 24, a slight increase over the same period in 2016. Website data shows upticks in daily users roughly corresponding to launch events, press releases, pre-election filing deadlines, and the publication of print ads and online articles.

Open Disclosure – Daily Users



Source: Google Analytics, accessed 10/25/18

User engagement with Open Disclosure content showed significant improvement over prior elections years. Open Disclosure received 12,252 pageviews between September 1 and October 25, a 60 percent increase over 2016.

Another engagement indicator, the average time users spend during each session on the site, is up 55 percent at just over 4 minutes per session. Not surprisingly, the number of pages users visit each session also increased. After the mayoral race, the five pages generating the most visits are the District Council 4, Measure AA – Children’s Initiative, District Council 6, District Council 2, and Oakland Unified School Board District 4 pages, reflecting the most competitive races this election.

Almost one-third of Open Disclosure users accessed the site using a mobile device, such as a phone or tablet, confirming the importance of the development team’s emphasis on mobile-friendly design.

Online referrals are an important source, making up almost half of Open Disclosure users, compared with a user typing in the url or using a search tool. Almost half of those referrals are

coming from the Voter's Edge website, a voter information site produced by MapLight in partnership with the California League of Women Voters. Online news articles and local blogs are another referral source, and as part of our campaign to gain new users for the 2018 app, print ads were placed in the election issues of the East Bay Express and digital ads are running through election day. In addition, an article describing Open Disclosure appeared in Oakland North, a publication of the UC Graduate School of Journalism.

Since launching Open Disclosure in 2014, the site has reached 17,313 users with 73,309 views of Open Disclosure content. Open Disclosure is a project of Open Oakland volunteers in partnership with the Public Ethics Commission.

Online Engagement and General Outreach

Social Media – Communications in October focused on Open Disclosure, campaign filing deadlines, and recruitment for upcoming Commission vacancies.

CITY OF OAKLAND

Public Ethics Commission

Jonathan Stein, Chair
Jodie Smith, Vice-Chair
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Gail Kong
Krisida Nishioka



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: October 26, 2018
RE: Education and Outreach Update

This memorandum provides an update of the Public Ethics Commission's (PEC or Commission) education and outreach efforts as staff provides education and advice to candidates running for local office (and their campaign treasurers), City staff and officials, lobbyists, and others regulated by PEC laws. This past month, Commission education/outreach program staff has been working on a variety of activities that include the following:

Limited Public Financing Program

Since the September 19 Phase II deadline, 10 candidates filed the required documentation and met all requirements necessary to move forward in the LPF program and receive reimbursements.

To date, \$133,526 of the \$183,459 available through the election fund has been claimed and processed for reimbursements to participating candidates. Each of the 10 participating candidates can claim up to \$18,345 in reimbursements for qualified campaign expenditures.

Last Name	First Name	District	Total Amount Reimbursed
Bas	Nikki Fortunato	2	\$18,354.00
Guillen	Abel	2	\$10,969.25
Harris	Pamela	4	\$18,345.00
Hummel	Francis Matt	4	\$14,771.40
Maxson	Nayeli	4	\$14,595.20
Michelson	Charlie	4	\$15,288.00
Tanios	Joseph	4	\$7,463.26
Thao	Sheng	4	\$7,468.98
Middleton	Natasha	6	\$18,345.00
Taylor	Loren	6	\$7,935.48

On October 15, Staff was made aware that D4 candidate Charlie Michelson withdrew from the November 6 election subsequently deeming him ineligible to receive any future reimbursements. The remaining portion of LPF funds that will go unclaimed by Mr. Michelson (\$3,057) will be returned to the election fund and rolled over to a future election.

LPF participants have until Monday, November 5 to file reimbursement claims up to their allotted amount. Staff will continue to work closely with participants to process claims.

Ethics Education

Staff continues to make presentations at the City's monthly New Employee Orientations (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act. On October 17, staff trained 23 new employees on GEA provisions.

Advice and Assistance

Staff receives, responds to, and tracks various advice requests received by phone and email. As of the date of this memorandum, staff has responded to roughly 374 requests for information and advice in 2018 (compared with 251 total in 2017). Advice requests for the month of October were primarily in regards to provisions of the Oakland Campaign Reform and Limited Public Financing Acts such as independent expenditures, LPF program requirements, expenditure ceilings, and general questions about campaign rules and filing campaign forms via NetFile.

CITY OF OAKLAND

Public Ethics Commission



Jonathan Stein, Chair
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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
DATE: October 26, 2018
RE: Enforcement Program Update

Since the last Enforcement Program Update on September 21, 2018, the following status changes occurred:

1. *In the Matter of Rich Fielding (Case No. 16-11)*: Commission Staff completed its investigation and is presenting a summary of its investigation at the November 5, 2018, meeting.
2. *In the Matter of Thomas Espinosa (Case No. 16-14)*: Commission Staff completed its investigation and is presenting a summary of its investigation at the November 5, 2018, meeting.
3. *In the Matter of Oakland Planning and Building Department (Case No. 16-22M)*: Commission Staff completed its mediation efforts and is presenting a summary of its mediation efforts at the November 5, 2018, meeting.
4. *In the Matter of Oakland City Council (Case No. 17-14M)*: Commission Staff completed its mediation efforts and is presenting a summary of its mediation at the November 5, 2018, meeting.
5. *In the Matter of Sheilagh Polk "Cat Brooks" for Mayor 2018 (Case No. 18-20)*: Commission Staff completed its preliminary review and is presenting its recommendation at the November 5, 2018, meeting.
6. *In the Matter of Desley Brooks for City Council 2018 (Case No. 18-21)*: Commission Staff completed its preliminary review and is presenting its recommendation at the November 5, 2018, meeting.
7. *In the Matter of Libby Schaaf for Mayor 2018 (Case No. 18-22)*: Commission Staff completed its preliminary review and is presenting its recommendation at the November 5, 2018, meeting.

8. *In the Matter of Desley Brooks for City Council 2018 (Case No. 18-27):* Commission Staff completed its preliminary review and is presenting its recommendation at the November 5, 2018, meeting.
9. Complaint Nos. 18-30M and 18-32M: Commission Staff received two requests for mediation and started both mediation efforts.
10. Complaint No. 18-33: Commission Staff completed its preliminary review and dismissed the complaint because the allegations do not constitute a violation. (Attachment 1.)
11. *In the Matter of Sheilagh Polk “Cat Brooks” for Mayor 2018 (Case No. 18-34):* Commission Staff completed its preliminary review and is presenting its recommendation at the November 5, 2018, meeting.
12. *In the Matter of Abel Guillen for City Council 2018 (Case No. 18-36):* Commission Staff completed its preliminary review and is presenting its recommendation at the November 5, 2018, meeting.
13. Complaint Nos. 18-31, 18-35, 18-37, 18-38, 18-39, and 18-40: Commission Staff received six formal complaints and is conducting preliminary reviews of the allegations in each complaint.

Current Enforcement Priorities

Commission Staff continues to prioritize cases based on the following priority factors: 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.

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

October 22, 2018

Hayward H. Blake Jr.

[REDACTED]
Oakland, CA 94602

Re: PEC Complaint No. 18-33; Dismissal Letter

Dear Mr. Blake:

On October 8, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that the committee *Pamela Prince For Mayor 2018* received a contribution over the legal limit of \$800, in the form of a loan from Ida B. Wells, LLC, in the amount of \$2,500.00.

Section 3.12.090(A) of the Oakland Campaign Reform Act (OCRA) states that loans to a committee shall be considered contributions for purposes of contribution limits. However, contribution limits do not apply to a candidate's use of her own personal funds. Ida B. Wells, LLC, is wholly owned by the candidate, Pamela Price. Under Section 3.12.080(B) of OCRA, a contribution from an entity controlled by a single person is considered to be a contribution from that person. Therefore the contribution limits do not apply to the loan made by Ida B. Wells, LLC, to *Pamela Prince For Mayor 2018*.

Because the alleged conduct is not a violation of the contribution limit, we are dismissing your complaint pursuant to the PEC's Complaint Procedures. The PEC's Complaint Procedures are available on the PEC's website, and a copy has been included with this letter for your reference.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Milad Dalju
Chief of Enforcement

cc: *Pamela Price For Mayor 2018*

CITY OF OAKLAND

Public Ethics Commission

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Jodie Smith, Vice-Chair
Lisa Crowfoot
James E. T. Jackson
Gail Kong
Krisida Nishioka



TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: October 26, 2018
RE: Executive Director's Report

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities since the agenda posting for the Commission's last regular meeting that are not otherwise covered by staff program reports. The attached overview of Commission Programs and Priorities includes the main goals for 2018-19 for each program area.

Of particular note this month is our Commission's comprehensive work on election-related activities, including providing public funds to District City Council candidates, supporting candidates and committees in complying with campaign finance requirements, and investigating campaign finance violations in short order.

I commend our front-office team: Suzanne Doran, Jelani Killings, and Ana Lara for their outstanding customer service to candidates and committees that have been filing their forms and seeking advice in their attempts to comply with our laws. Their level of support and assistance throughout these months leading to the election has been stellar, and several candidates have expressed their gratitude. One candidate tweeted: "The city clerk handles the election. Your campaign is handled by [@OaklandEthics](#). Their office is right downstairs. They take you step by step, and provide you with these materials right away [photo of PEC Candidate Resource Binder]."

I also commend our Enforcement team for working quickly to review, obtain corrections, and recommend resolutions to seven election-related contribution limit cases for Commission closure in advance of the November election. This work is alongside the completion of a significant investigation and recommendation involving 47 ethics violations by a City employee also on the Commission's November agenda, a massive accomplishment.

Sincere thanks to our staff for their extraordinary work throughout the year, and particularly during this election season.

Attachment: Commission Programs and Priorities

PUBLIC ETHICS COMMISSION

Programs and Priorities 2018-19

Program	Goal	Desired Outcome	Key Projects for 2018-19
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. Adoption of PEC-drafted City Ticket Distribution policy and process changes 2. Campaign Finance/Public Financing Act Project to expand participation in the campaign process 3. Partner with OpenOakland on small projects
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. Online ethics training for Form 700 filers – ensure training delivered to a) staff/officials (1000), b) board/commission members, and c) consultants 2. Candidate education – 2018 Election (online, binder, in-person orientation, April FPPC training, etc.) ✓ 3. Public Financing for candidates 2018 (outreach, training/assistance, maximize use of funds, etc.) 4. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2) 5. Education materials for people doing business with the City 6. Web-based ethics materials, html Ethics Training ✓
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. Outreach to client groups: <ul style="list-style-type: none"> -2018 Candidates ✓ -Public financing program ✓ -people doing business with the City 2. Sustain/enhance general PEC social media outreach 3. PEC Roadshow – focus on CF project outreach (Commissioners) 4. PEC website upgrade ✓ 5. Establish Communications Plan ✓
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. Ongoing: Campaign Filing Officer, E-filing System Management 2. Campaign Reporting Compliance and Referral program 3. Open Disclosure 2018 – campaign data visualization project ✓ 4. Lobbyist Registration – solidify filing officer process ✓, create e-filing system 5. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility 6. Initiate/develop project plan to establish comprehensive contractor database
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates	Public servants, candidates, lobbyists, and City contractors	<ol style="list-style-type: none"> 1. Proactive investigations focusing on ethics violations 2. Share prelim review/intake among enforcement team

	complaints of non-compliance with laws within the PEC's jurisdiction.	are motivated to comply with the laws within the PEC's jurisdiction.	<ol style="list-style-type: none"> 3. Collaboration with other government law enforcement agencies 4. Track investigation steps (commencement/completion) 5. Establish process for phone/text subpoenas
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. Address complaints against the PEC v 2. Create manual for Sunshine Complaint Mediation, recruit law clerk v 3. Amend Complaint Procedures 4. Update Penalty Guidelines 5. Resolve all 2014 cases 6. Ensure completion of all case data
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. Publish performance goals and data on PEC website – dashboards 2. Review data to adjust activities throughout the year 3. Ongoing: professional development and staff reviews v 4. Staff to create position manuals to establish long-term continuity