

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, October 7, 2019
Hearing Room 1
6:30 p.m.



Commissioners: Jodie Smith (Chair), James E.T. Jackson (Vice-Chair), Jill M. Butler, Gail Kong, Nayeli Maxson Velázquez, and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; 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.**

ACTION ITEMS

- 4. Approval of Commission Meeting Draft Minutes.**
 - a. August 5, 2019 Regular Meeting Minutes ([Attachment 1 – Minutes](#))
- 5. In the Matter of Libby Schaaf for Mayor, LLC; Case No. 18-19.1.** The Commission received a complaint in 2018 alleging that the Libby Schaaf for Mayor campaign committee received campaign contributions from 11 West Partners, LLC, (11 West Partners) and its affiliated entities in violation of the Oakland Campaign Reform Act (OCRA) by receiving aggregate contributions that were \$2,400 over the legal campaign contribution limits from a single person and during a time in which 11 West Partners was a City contractor and therefore was barred from making campaign contributions. Staff completed its investigation and found that the Libby Schaaf for Mayor campaign committee received such contributions over the legal limit and in violation of the contractor ban. At its July meeting, the Commission referred the matter back to Enforcement for further negotiation of the fine amount. Staff renegotiated the fine amount according to the Commission’s directive and now recommends that the Commission adopt the revised stipulation, which includes a \$1,000 fine for Count 1 and a forfeiture of \$2,400 to the City of Oakland’s general fund, which represents the total amount of the \$3,400 in excess contributions received by the committee. ([Attachment 2 – Stipulation and Case Summary](#))



6. **In the Matter of Melanie Shelby; Case No. 15-03.** The Commission received a complaint on January 5, 2015, alleging that Melanie Shelby and Gray, Greer, Shelby & Vaughn LLC violated the Oakland Campaign Reform Act (OCRA) by making contributions above the contribution limit to Friends of Desley Brooks for City Council 2014 and to Dana King for City Council 2014. Staff investigated and determined that Ms. Shelby owned, at all relevant times, a majority of Gray, Greer, Shelby & Vaughn LLC, and that she and her company made contributions above the contribution limit to the Friends of Desley Brooks for City Council 2014 and to Dana King for City Council 2014, in violation of OCRA section 3.12.050. Staff recommends that the Commission issue a warning letter to resolve this matter. ([Attachment 3 – Staff Memorandum](#))

7. **In the Matter of Katano Kasaine, Director of the Department of Finance; Case No. M2019-04.** The Commission received a request for mediation alleging that the Finance Department failed to respond to a public records request made by the Requester on July 29, 2018. On March 28, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to the Requester’s public records request. Although the Requester received responsive records during the mediation, there was considerable delay in the receipt of the documents. The Requestor wanted the Commission to be aware of their frustration with the delayed response. Because the Requestor received responsive documents, Staff recommends that the Commission close this mediation without further action. ([Attachment 4 – Mediation Summary](#))

8. **In the Matter of Katano Kasaine, Director of the Department of Finance; Case No. M2019-12.** The Commission received a request for mediation alleging that the Finance Department failed to respond to a public records request made by the Requester on May 21, 2019. On June 26, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to the Requester’s public records request. Because the Requestor received responsive documents, the Staff recommends that the Commission close this mediation without further action. ([Attachment 5 – Mediation Summary](#))

DISCUSSION ITEMS

9. **Commission Complaint Procedures.** Chair Smith and Commission staff present a draft revision to the Commission’s Complaint Procedures to update the procedures to align references to Commission staff with the Commission’s current staffing structure and to



add sections such as a new diversion program, default procedures for a respondent who fails to respond to Commission staff, an explanation of the Commission's mediation process under the Sunshine Ordinance, and additional hearing process details, among other changes. Commissioners will review and make changes to the proposed revisions, which will come back for approval at a subsequent Commission meeting. ([Attachment 6 – Revised Draft Complaint Procedures, with changes tracked](#); [Attachment 7 – Revised Draft Complaint Procedures, clean version with changes accepted](#))

10. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work. Current or recent subcommittees include the following:
 - a. **Limited Public Finance Policy Development Subcommittee** (ad hoc) – Nayeli Maxson Velázquez (Chair), Jill M. Butler and James Jackson
 - b. **Subcommittee on Partnerships** (ad hoc) – Gail Kong and Jodie Smith

INFORMATION ITEMS

11. **Commissioner Recruitment.** The Commission is recruiting to fill two Commission-appointed vacancies that will occur in January 2020. A second vacancy to occur at the same time will be subject to appointment by the Mayor. Attached is the announcement and application that is being distributed widely via the Commission's website, email distribution lists, social media, and other channels. ([Attachment 8 – Recruitment Flyer, Announcement and Application](#))
12. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Attachment 9 – Disclosure Report](#))
13. **Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Attachment 10 – Enforcement Report](#))

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, October 7, 2019
Hearing Room 1
6:30 p.m.



14. Executive Director's Report. Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Attachment 11 – 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.oaklandca.gov/pec.



9/27/2019

Approved for Distribution

Date



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

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

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

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

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

ATTACHMENT 1

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, August 5, 2019
Hearing Room 1
6:30 p.m.

DRAFT



Commissioners: Jodie Smith (Chair), James E.T. Jackson (Vice-Chair), Jill M. Butler, Gail Kong, Nayeli Maxson, and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; 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 Smith, Jackson, Butler, Maxson, and Yan. Commissioner Kong was absent.

Staff present: Whitney Barazoto, Suzanne Doran, and Kellie Johnson. Ethics Intern Casey Petersen was also present.

City Attorney Staff: Patrick Tang

2. Staff and Commission Announcements.

There were no announcements.

3. Open Forum.

There were three public speakers.

GUEST PRESENTATION

4. Survey of Lobbyist Disclosure Requirements and Accessibility.

Casey Petersen, Commission Intern, provided an overview of her research regarding Lobbyist disclosure requirements and public access to Lobbyist data in Oakland and other California cities as part of her summer project as a volunteer with the Commission.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, August 5, 2019
Hearing Room 1
6:30 p.m.

DRAFT



There was one public speaker.

ACTION ITEMS

5. Approval of Commission Meeting Draft Minutes.

- a. June 3, 2019 Regular Meeting Minutes

Commissioner Maxson noted a minor edit needed on page 4.

There were no public speakers.

Commissioner Jackson moved, and Commissioner Maxson seconded to approve the minutes with the correction.

The motion passed 5-0.

6. In the Matter of Libby Schaaf For Mayor 2018; Case No. 18-19.1.

Kellie Johnson, Enforcement Chief, presented the report and recommendation.

The Commissioners discussed the matter and asked questions.

There were three public speakers.

Commissioner Jackson moved and Commissioner Maxson seconded to accept the recommendation with a modification to the fine and for the matter to be brought back to the Commission.

The motion passed 4-1. Commissioner Yan voted no.

7. In the Matter of the Office of Mayor Libby Schaaf; Case No. M2019-01.

Ms. Johnson presented the report and recommendation.

The Commission asked questions and discussed the matter.

Marlene Sacks, the complainant, addressed the Commission.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, August 5, 2019
Hearing Room 1
6:30 p.m.

DRAFT



There were three public speakers.

Commissioner Jackson moved to accept the recommendation to close the mediation and refer the further remaining Government Ethics Act complaint to enforcement for preliminary review.

Commissioner Smith amended the motion to refer the remaining allegations to be referred for enforcement to review the complaint for violations of any law that the Commission has the authority to enforce (not just a potential Government Ethics Act violation).

Commissioner Jackson accepted the amendment.

Commissioner Butler seconded the motion.

The motion passed 4-0.

Commissioner Yan abstained.

DISCUSSION ITEMS

8. Reports on Subcommittees and Commissioner Assignments.

- a. **Limited Public Finance Policy Development Subcommittee** (ad hoc) – Nayeli Maxson (Chair), Jill Butler and James Jackson

Commissioner Maxson shared that the Public Finance efforts may be brought as a ballot measure in 2020. If it does, the Commission will need to be mindful of its involvement in the political campaigning for the measure, if and once it becomes one. Commissioner Maxson added that, meanwhile, Commission members can work on outreach and education regarding the inequities of the current system and potential solutions for reform.

- b. **Subcommittee on Partnerships** (ad hoc) – Gail Kong (Chair) and Jodie Smith

Commissioner Smith shared that Commissioner Kong will have an update at the next meeting.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, August 5, 2019
Hearing Room 1
6:30 p.m.

DRAFT



INFORMATION ITEMS

9. Education and Engagement Program.

Suzanne Doran, Lead Analyst, provided a report of recent education, outreach, disclosure and data illumination activities. Ms. Doran shared that there is a new alert the public can sign up for to receive new campaign, lobbyist, and Statement of Economic filings.

There were two public speakers.

10. Enforcement Program.

Ms. Johnson reported on the Commission's enforcement work since the last regular Commission meeting. Ms. Johnson also shared that staff received one formal complaint and three requests for mediation.

Gene Hazard, the complainant in Case Nos. 19-11, 19-09, 18-50, addressed the Commission regarding his cases.

There were two public speakers.

11. Executive Director's Report.

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

There were two public speakers.

The meeting adjourned at 10:15 p.m.

ATTACHMENT 2

1 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
2 testify at the hearing, and to have the matter judicially reviewed;

3 4. This Stipulation is not binding on any other law enforcement agency, and does not
4 preclude the Commission or its staff from referring the matter to, cooperating with, or
5 assisting any other government agency with regard to this matter, or any other matter
6 related to it;

7 5. Respondents violated the Oakland Campaign Reform Act by receiving \$2,400 more
8 than the contribution limit of \$800 from 11 West Partners, LLC, in violation of the
9 Oakland Municipal Code section 3.12.050. (Count 1.)

10 6. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter
11 and is incorporated by reference into this Stipulation;

12 7. Respondents will forfeit \$2,400 to the City of Oakland's general fund, which represents
13 the total amount of the excess contribution they received;

14 8. The Commission will impose upon Respondents an additional administrative penalty in
15 the amount of \$1,000;

16 9. A cashier's check from Respondents, in the amount of \$3,400, made payable to the
17 "City of Oakland," is submitted with this Stipulation as full payment of the forfeiture
18 and administrative penalty, to be held by the Commission until the Commission issues
19 its decision and order regarding this matter;

20 10. In the event the Commission refuses to accept this Stipulation, it shall become null and
21 void, and within fifteen business days after the Commission meeting at which the
22 Stipulation is rejected, all payments tendered by Respondents in connection with this
23 Stipulation will be reimbursed to them; and

24 11. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
25 the Commission becomes necessary, neither any member of the Commission, nor the
26 Executive Director, shall be disqualified because of prior consideration of this
27 Stipulation.

28 ///

ATTACHMENT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

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

Dated: _____

Libby Schaaf or Treasurer, on behalf of
Libby Schaaf For Mayor 2018

Print Name: _____

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of *Libby Schaaf for Mayor 2018*, et al.,” PEC Case No. 18-19.1, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____

Jodie Smith, Chair
City of Oakland Public Ethics Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT 2

INTRODUCTION

In 2018, the City of Oakland Public Ethics Commission (“Commission”) opened an investigation into allegations that *Libby Schaaf For Mayor 2018* (“the Schaaf campaign”) may have violated the provisions of the Oakland Campaign Reform Act (OCRA) concerning the contribution limit when it accepted campaign contributions from 11 West Partners, LLC, and its affiliated business entities.

The Commission’s investigation found that 11 West Partners directed and controlled the contributions of its affiliated entities, meaning that those contributions should have been considered as coming from a single source and, when added together, exceeded the contribution limit. The investigation also found that the Schaaf campaign did not intend to violate the contribution limit, and accepted those contributions without knowing that they needed to be aggregated.

SUMMARY OF THE FACTS

Background

At all relevant times during this matter, Libby Schaaf was the Mayor of Oakland and a candidate for mayor in the 2018 election. Her candidate-controlled committee was *Libby Schaaf For Mayor 2018*. Its treasurer was Amanda Monchamp. Schaaf accepted the voluntary expenditure ceiling on April 18, 2017, meaning that a single person or entity was prohibited from contributing more than a cumulative total of \$800 to her campaign after that date.

11 West Partners is an asset management firm and consultancy. It is owned by Adam Goldenberg, along with other partners not closely involved in this matter.

Three other entities are also involved in this matter: 11 WGM Property, LP, owns the American Steel complex on Mandela Parkway in West Oakland; 1699 West Grand Property Owner, LP, owns the Gary Steel complex in West Oakland and uses Cushman & Wakefield as a property manager there; and 11 West Ninth Street Property Owner, LP, which uses CBRE as a property manager at that site.

On June 20, 2017, Goldenberg and a fundraiser for the Schaaf campaign had the following e-mail conversation under the subject line “6/30 Invitation to Libby Schaaf fundraising event”:

Fundraiser: Hi Adam, I hope all is well with you. Please see attached the attached invitation. I hope you can join us.

Goldenberg: Thanks. We'll be out of town... but very happy to support. Can I buy two host tickets, and send two of my partners...

Fundraiser: Of course Adam. This is very kind of you and we will look forward to seeing [your partners].

ATTACHMENT 2

Attached to the fundraiser's initial e-mail was an invitation to a fundraiser for Libby Schaaf's mayoral campaign, to be held on June 30, 2018.

On June 28, 2017, Monica Ng of 11 West Partners sent three e-mails to outside entities, concerning contributions to the Schaaf campaign.

The first e-mail was sent to a property manager at Cushman & Wakefield, with Goldenberg cc'd. In it, Ng stated, "Can you please issue a check to Libby Schaaf for Mayor 2018 in the amount of \$800. The attachment contains the relevant details for where to mail the check. Adam will reply to this email with his approval."

The second e-mail was sent to "American Steel Invoices". In it, Ng stated, "Please prepare a check for \$800 to Libby Schaaf for Mayor 2018. The attachment has the details for mailing the check."

The third e-mail was sent to CBRE, with Goldenberg cc'd. In it, Ng Stated, "Can you please issue a check for \$800 to Libby Schaaf for Mayor. The address and information is attached. Adam will reply to this email with his approval."

The Schaaf campaign subsequently reported receiving the following contributions:

Date Rec'd	Contributor	Address (partial) ¹	Code	Amount
06/30/2017	11 West Partners, LLC	Oakland, CA 94607	OTH	\$800
07/28/2017	11 WGM Property Owner, LP	San Francisco, CA 94115	OTH	\$800
07/28/2017	1699 West Grand Property Owner	San Francisco, CA 94105 ²	OTH	\$800
08/7/2017	11 West Ninth Street Property Owner	Minneapolis, MN 55435 ³	OTH	\$800

In an interview with the PEC, Goldenberg was asked to describe in more detail the process by which these contributions were made. Goldenberg said that, after confirming with the organizers of the Schaaf fundraiser that he could send other people in his place, he forwarded the invitation to Ng, who he described as his chief of staff who performs administrative work for 11 West Partners. He said that when he forwarded the invitation to Ng, she must have thought that he was asking her to obtain contributions to the fundraiser. He explained that "we" have four large

¹ A full street address was provided for each of these contributors on the campaign's unredacted campaign reports. However, we have only reproduced partial addresses here, for purposes of showing that the Schaaf campaign reported different street addresses for each contributor.

² The full address belongs to Cushman & Wakefield.

³ The full address belongs to CBRE.

ATTACHMENT 2

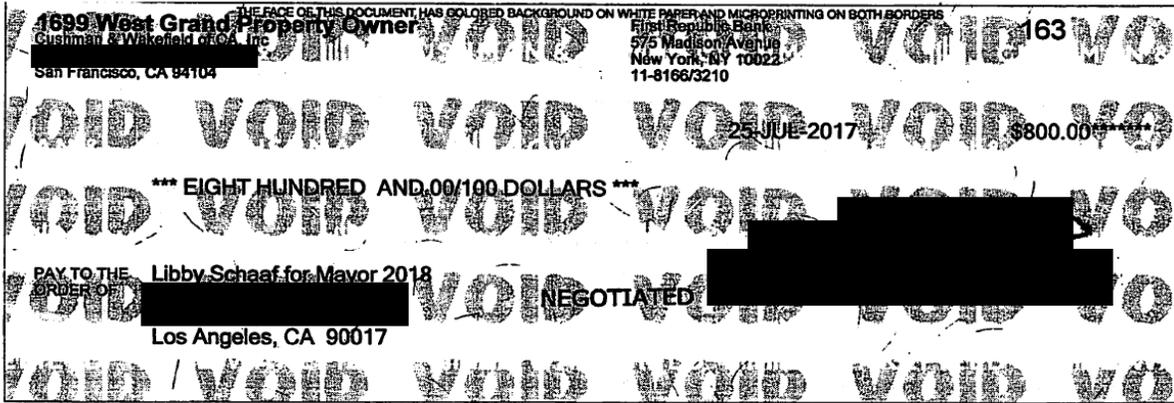
developments in Oakland, and that “we” divide things like charitable donations between those four companies.

When asked who has the authority to tell the other three companies to make a campaign contribution, Goldenberg stated that there is no formal process in place between the companies for making campaign contributions. However, regarding the e-mails from Ng to the other three companies where she asks them to write a check to the Schaaf campaign, Goldenberg said “I would perceive it to be more of an instruction” rather than a discretionary request. He said that for expenditures around \$10,000 or above, there might be more back-and-forth between the companies, but smaller expenses are routinely shared between the four companies.

The contribution checks given by these entities to the Schaaf campaign looked as follows:



ATTACHMENT 2



11 West Partners also filled out the following contributor card:

ATTACHMENT 2

Libby Schaaf for Mayor 2018

Thank you for supporting Mayor Libby Schaaf's Reelection Campaign!

State and City laws require us to collect the following information (*) from contributors:

11 West Partners LLC
Contributor Name*

476 9th St. Oakland, CA 94607
Street Address (no PO boxes)* City, State, Zip*

510-238-1630 monica@11westpartners.com
Phone Email Address

Chief of Staff 11 West Partners LLC
Occupation (if contributor is an individual)* Employer (if contributor is an individual)*
If self-employed please list name of business

Please make checks payable to: Libby Schaaf for Mayor 2018

Contributions to the Libby Schaaf for Mayor 2018 committee are not tax-deductible. Contributions to Libby Schaaf for Mayor 2018 are not deductible for federal income tax purposes. The Committee may accept up to \$800 per individual, business, organization or PAC, and up to \$1,500 from a broad-based political committee. Contributions must be made from the donors' own funds and may not be reimbursed by any other person. Contributions from foreign nationals who lack permanent residence in the United States are prohibited.

***Paid for by Libby Schaaf for Mayor 2018, FPPC # 1395968
6447 Regent St., Oakland, CA 94618***

The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§ 3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District (OMC § 3.12.140, paragraphs A., B., and C.).

Libby Schaaf For Mayor 2018 has told the PEC that it does not have contributor cards for the other three contributors.

SUMMARY OF THE LAW

Campaign Contribution Limit & Aggregation Rule

For the November 2018 election, the maximum amount that a candidate-controlled campaign committee that adopted OCRA's expenditure ceiling could receive from a single person was \$800 per election.⁴ A "person" is defined under OCRA as any individual, business entity, or other organization or group of persons acting in concert.⁵ For purposes of determining whether the contribution limit has been reached, the contributions of an entity whose contributions are directed

⁴ OMC § 3.12.050(B), (F).

⁵ OMC § 3.12.040.

ATTACHMENT 2

and controlled by any person shall be aggregated with contributions made by any other entity whose contributions are directed and controlled by that same person.⁶

VIOLATIONS

Count 1: Receiving a Campaign Contribution Over the Legal Limit

11 West Partners, 11 WGM Property, LP, 1699 West Grand Property Owner, LP, and 11 West Ninth Street Property Owner, LP, made contributions totaling \$3,200 to *Libby Schaaf For Mayor 2018*, a committee controlled by a candidate for city office who had accepted the voluntary expenditure ceiling for the November 6, 2018, election. Because 11 West Partners, via Adam Goldenberg, controlled and directed the contributions for all four entities, all four contributions made by those entities are aggregated for the purposes of the contribution limit. As such, by receiving contributions totaling \$3,200 from 11 West Partners and its affiliated entities, *Libby Schaaf For Mayor 2018* received \$2,400 in excess of the \$800 contribution limit.

CONCLUSION

According to the Enforcement Division's penalty guidelines, the baseline penalty for a violation of the contribution limit is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contribution is \$2,400, which brings the baseline penalty to \$3,400. The Commission may also seek forfeiture of the unlawful contribution amount.⁷

In determining an appropriate final penalty amount, the PEC may consider the following aggravating and mitigating 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.

Here, the seriousness of the harm caused by this violation was minimal. The amount unlawfully contributed by 11 West Partners and the other three entities represented less than 1% of the total contributions (\$262,193.66) that *Libby Schaaf for Mayor 2018* had raised by the end of 2017.

⁶ OMC § 3.12.080(C).

⁷ OMC § 3.12.290.

ATTACHMENT 2

Furthermore, there is substantial evidence that the Schaaf campaign was unaware that the contributions from the entities in this matter should have been aggregated. All of the four contribution checks were signed by different people, were not of the same color scheme/style, had different addresses printed on them, had different bank account numbers, and most were received on separate dates. Goldenberg stated to the Commission that he never had any contact with anyone on the Schaaf campaign, other than the fundraiser who sent him the invitation.

However, some basic due diligence would at least have alerted *Libby Schaaf for Mayor 2018* to the possibility that these contributions might need to be aggregated, thereby prompting further investigation on their part. Commission staff was initially alerted to the possibility of an aggregation violation in this matter based on nothing more than the Schaaf campaign's finance report (Form 460), meaning that the campaign could have spotted the same red flag as well. Preliminary online research of public records showed that all four entities listed on the Form 460 shared a common address on their California business filings, something the campaign could also have determined using the same publicly-available methods.

It should also be noted that another one of Schaaf's campaign committees was subject to a PEC enforcement action for receiving over-the-limit aggregated contributions in 2014 (PEC case #14-25), so they should have been vigilant in avoiding future violations such as this one.

The Schaaf campaign cooperated fully with this investigation.

The PEC previously dealt with an aggregation violation by one of Schaaf's campaigns in case number 14-25, *In re Libby Schaaf For Mayor 2014*. In that case, four different entities owned by the same person made contributions totaling \$2,800 to the 2014 Libby Schaaf mayoral campaign, for an overage of \$2,400.⁸ The PEC sought only a disgorgement of the overage amount, based on the Schaaf campaign's cooperation with the investigation and the absence of any evidence that the violation was intentional. Note that this case was decided before the PEC had adopted Penalty Guidelines stating that a \$1,000 penalty shall be added to the improper contribution amount when calculating a baseline fine.

PROPOSED PENALTY

In light of the mitigating factors described above, as well as the fact that this is Schaaf's second aggregation violation, staff is recommending that the Commission seek a forfeiture of \$2,400 and a reduced fine of \$1000 for Count 1.

⁸ The contribution limit at the time was \$700 to candidates who had accepted the expenditure ceiling.

CITY OF OAKLAND
Public Ethics CommissionWhitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Kellie F. Johnson, Enforcement Chief
 Simon Russell, Investigator
 DATE: September 26, 2019
 RE: Case No. 15-03; *In the Matter of Melanie Shelby*

INTRODUCTION

On or around January 2, 2015, the Public Ethics Commission (“PEC”) received a formal complaint alleging that on August 23, 2013, both Melanie Shelby and her company, Gray, Greer, Shelby, and Vaughn (“GGSV”), made \$700 contributions (the legal maximum at the time) to City Councilmember Desley Brooks. According to the complainant, these contributions should have been aggregated under the Oakland Campaign Reform Act (“OCRA”), resulting in a single contribution that was \$700 over the legal limit.

Also on or around January 2, 2015, the Commission received a formal complaint alleging that on October 3, 2014, Shelby and GGSV made \$700 contributions (the legal maximum at the time) to City Council candidate Dana King. According to the complaint, these contributions should have been aggregated under OCRA, resulting in a single contribution that was \$700 over the legal limit.

SUMMARY OF LAW

OCRA limits the total dollar amount that a person may contribute to a candidate for city office. For the November 4, 2014, election, a person was prohibited from making contributions in excess of \$700 to any single candidate for city office who accepted the voluntary expenditure ceiling.¹

A “person” is defined under OCRA as any individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.²

Per OCRA, there are various scenarios under which contributions made by multiple persons shall be aggregated. One such scenario (an “ownership or management” theory) states that contributions from different entities shall be aggregated if they share common ownership or management.³

¹ Oakland Municipal Code (“OMC”) section 3.12.050. All statutory references and discussions of law pertain to the OCRA’s provisions as they existed at the time of the violations.

² OMC section 3.12.040.

³ OMC §3.12.080(A)(1)-(4). More precisely, contributions from different entities shall be aggregated under an “ownership or management” theory if any of the following apply: the entities share the majority of members of their

ATTACHMENT 3

Another scenario (a “direction and control” theory) states that the contributions of an entity whose contributions are directed and controlled by any person shall be aggregated with contributions made by any other entity whose contributions are directed and controlled by that same person.⁴

FINDINGS

At all times relevant to this case, Shelby was the sole registered manager of GGSV. In an interview with the PEC, Shelby stated that she has always been the sole “managing director” of GGSV throughout its existence. When asked to explain how she fit into the overall leadership structure of the company, Shelby described herself as providing “leadership” for the rest of the company.

Desley Brooks was a successful incumbent candidate for Oakland City Council in the November 4, 2014, election, and accepted the voluntary expenditure ceiling for the November 4, 2014, election. At all relevant times, *Friends of Desley Brooks for City Council 2014* was Brooks’ controlled committee. Shelby made two contributions, one for \$700 from her personal account and another for \$700 from her business account, to the Brooks campaign on August 23, 2013.

Dana King was an unsuccessful candidate for Oakland City Council in the November 4, 2014, election and accepted the voluntary expenditure ceiling for the November 4, 2014, election. At all relevant times, *Dana King for City Council 2014* was King’s controlled committee. Shelby made two contributions, one for \$700 from her personal account and another for \$700 from her business account, to the Brooks campaign on October 3, 2014.

The contributions at issue in this case are the following:

Date Made	Amount	To:	From:
08/23/2013	\$700	Friends of Desley Brooks	Melanie Shelby
08/23/2013	\$700	Friends of Desley Brooks	GGSV
10/03/2014	\$700	Dana King For City Council 2014	Melanie Shelby
10/03/2014	\$700	Dana King For City Council 2014	GGSV

In an interview with the PEC, Shelby confirmed that she or GGSV made all of the contributions at issue in this case. She also stated that all contributions from GGSV required the approval of two people: herself, and the Chief Operating Officer (a position held by Kimberly Register Childs in 013-2014). No contributions from GGSV could be, or were, made unless both Shelby and Childs agreed to it. Kimberly Childs did not respond to the PEC investigator confirming or denying the respondent’s representation.

boards of directors; the entities share three or more, or a majority of, officers; the entities are owned or controlled by the same majority shareholder or shareholders; or the entities are in a parent-subsidiary relationship. *Id.*

⁴ OMC § 3.12.080(C).

ATTACHMENT 3

Shelby ran for Oakland City Council in 2010. In an interview with the PEC in 2018, she was unable to recall if she ever received any training or information packets from the City of Oakland regarding local campaign finance law. She also could not recall whether she personally completed her committee's Form 460s or did any research of her own into local campaign finance law during her campaign. She was aware that the local contribution limit was \$700 at the time she and GGSV made the contributions at issue in this case.

When asked why she believed it was legal for both her and GGSV to make contributions that, when aggregated, would exceed the local contribution limit, Shelby said that it was because her understanding was that these contributions were the result of "two separate accounts, two separate decision-making processes." This understanding was based on her experience of the similar practice of other people in Oakland making both personal and business contributions; it was not derived from research into local law. She does not recall if she consulted with an attorney before making the contributions in this case. GGSV does not have a compliance officer or general counsel.

Shelby did not discuss these contributions with Brooks, King, or their campaign staff.

The King committee terminated on June 30, 2015. The Brooks campaign was terminated in 2019.

PENALTY ANALYSIS

Count 1: Making aggregated contributions over the legal limit, OCRA 3.12.050, 3.12.080

Per the PEC's penalty guidelines, the baseline penalty for a violation of the contribution limit is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contributions is \$1,400, which brings the baseline penalty to \$2,400.

The penalty guidelines also state that a warning letter may be used for any minor violations without any aggravating circumstances. A warning letter 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." 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.

In determining an appropriate penalty amount, the PEC may consider the following aggravating and mitigating factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;

ATTACHMENT 3

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 respondent has argued, as mitigation, that the contributions to the Brooks campaign should be dismissed because they occurred outside of the statute of limitations. To the contrary, no statute of limitations applies to either contribution that the respondent made because under the 2014 Campaign Reform Act, section 3.12.280 (f) provides that, "no complaint alleging a violation of any provision of this Act shall be filed more than two years after the date the violation occurred." In this case, the contribution that was made in violation of the Campaign Reform Act occurred August 23, 2013. The PEC sent a notice of the complaint and investigation on January 12, 2015, to the respondent, she received notice of the violation well under the two-year limitation.

The respondent has also argued that she should not be found in violation because she did not knowingly or negligently violate the Campaign Reform Act. Staff disagrees. Shelby herself was once a candidate for office in Oakland (2010, just three years before she made this contribution), and therefore had a duty to review her 460s for compliance with state and local campaign law. As a candidate, Shelby was expected to perform due diligence in verifying that her campaign was complying with OCRA, including the aggregation rules. She therefore cannot reasonably argue that she did not know, or could not reasonably be expected to know, about OCRA's aggregation rule. In addition, mere ignorance of the law is not a defense to OCRA provisions.

CONCLUSION

OCRA states that contributions from an entity shall be aggregated with those of an individual, if that same individual "control[s]" the "contributions or expenditure activity" of that entity. Here, according to Shelby, she is the sole managing director of GGSV. The other relevant basis in OCRA upon which these contributions might be aggregated, is if Shelby "ha[d] more than a fifty percent share" in GGSV at the time these contributions were made. The GGSV's business filings with the Secretary of State, indicate that Shelby was the sole "manager" of GGSV at the time these contributions were made. Shelby also admits that she provided "leadership" for GGSV at the time.

Here, staff recommends issuing a warning letter to Shelby rather than pursuing a monetary fine, in the interest of justice. Shelby has no prior violations or demonstrated knowledge of the rules. While Shelby was once a candidate for local office and arguably should know the rules, she attests that

ATTACHMENT 3

she did not know that contributions from both a personal account and a business operation could be aggregated for purposes of contribution limits. Prior to 2014, there had been a lack of training for candidates regarding campaign finance rules, and this is consistent with Shelby's assertions that she does not recall receiving information about this rule. All of the contributions were reported publicly by the committees; there was no intent to conceal. Shelby cooperated with Commission staff by responding to staff questions. The amount of time that has passed since the alleged violations occurred, coupled with the fact that neither of the involved candidates is still in office, also significantly diminishes the public interest in moving forward with this case. Lastly, nothing in the history of this case indicates that any of the delays in this case were due to bad-faith actions of either party.

As for aggregation violations by candidates, the PEC's past enforcement practice for addressing first-time aggregation violations by candidate-controlled committees has alternated between issuing a warning letter, so long as the contributions were timely and accurately reported (*see* Case No. 15-02a) or seeking forfeiture of the overage amount (Case No. 14-25b).

As for why we are not obtaining forfeiture of the contributions made over the limit, the passage of time means that the King and Brooks committee is no longer in existence, so there is nothing for them to disgorge.

RECOMMENDATION

Staff recommends that we issue warning letters to Shelby for making the aggregate contributions.



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Nayeli Maxson Velázquez
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: August 14, 2019
RE: *In the Matter of Katano Kasaine, Director of the Department of Finance*
(Case No. M2019-004); Mediation Summary

I. INTRODUCTION

On March 14, 2019, the Commission received a request for mediation alleging that the City of Oakland Finance Department, the Planning and Building Department, and the Mayor's office, failed to disclose records in response to a public records request made by the Requester. On July 29, 2018, the requester submitted a public records request through NextRequest to the Finance Department. On January 13, 2019 the requester submitted a public records request through NextRequest to the Planning and Building Department and the IT Department. On February 9, 2019 the requester made two public records requests to the Planning and Building Department and the Mayor's office. Each request was past due at the time Staff initiated its mediation program on March 28, 2019, pursuant to the Oakland Sunshine Ordinance.

On August 13, 2019, Staff contacted the requester to confirm that the requestor received all responsive documents. The requestor affirmed that, although late, multiple documents were provided, and that the mediation can be closed. Staff recommends that the Commission close the mediation without further action.

II. SUMMARY OF LAW

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

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

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

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

ATTACHMENT 4

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

III. SUMMARY OF FACTS

Request 18-2182

On July 29, 2018, the City received, via NextRequest, the following public records request (No. 18-2182):

“I am interested in all documentation related to the Sinking Fund as mandated by Ordinance 17.128.030. Establishment documentation, current financial information, decision regarding its use and application, who has contributed to it, what its disbursements, where it is on the City's budget/financials/Balance Sheet. Please direct my request department if I misidentified the department who can handle this request. thanks. Timeframe: From beginning of the sinking fund to current.”

On August 22, 2018, Brittany Hines uploaded a note to the NextRequest stating, “Need additional time to research this request.”

On September 18, 2018, Brittany Hines uploaded responsive emails and closed the request and stated the following: “We released all of the requested documents.”

On September 19, 2018. the request was assigned to Planning and Building and the request was reopened.

On March 25, 2019, Building and Planning were removed from the request and the Finance Department was added.

On March 28, 2019, Staff commenced mediation proceedings.

On March 29, 2019, responsive documents were uploaded to NextRequest and the request was closed.

On August 13, 2019, Staff contacted the Requester to confirm whether they received responsive documents and the requester confirmed that the City eventually produced all responsive records but stated they were not satisfied with the lack of timeliness of the response.

Request 19-216

On January 13, 2019, the City received, via NextRequest, the following public records request (No. 19-216):

⁵ Complaint Procedures § IV (C)(5).

ATTACHMENT 4

“This request is to acquire all documentations from meeting minutes, written communications, file notes or other sources between the City and its applicants in which include the topics of:

1. applications by telecom companies which were appealed
2. the "design guidelines" used by the planning department and planning commissioners for telecom applications
3. operations of the telecom equipment specifically time of use, compliance to safety standards, test results (before and after installation), maintenance records
4. requests for use of the sinking fund to remove telecom equipment

Communications or documentation should include those from the Planning Department, Planning Commissioners, Building Department, Public Works, City Council and the Mayor. Time frame should be from 2010 to current.”

On January 13, 2019, Building and Planning was assigned to the request.

On January 22, 2019, Public works was added to the request.

On January 23, 2019, Public Works was removed, and Department of information technology was added to the request.

On March 28, 2019, Staff commenced mediation proceedings.

On April 29, 2019, David Guillory uploaded a copy of the zoning appeals.

On May 15, 2019, David Guillory uploaded all responsive documents and closed the request, noting that:

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

Request 19-719

On February 9, 2019, the City received, via NextRequest, the following public records request (#19-719):

“A list of all lobbyists working on behalf of any telecom company and acting/communicating with any City representative with their affiliation, project they lobbied for and the amount of their consideration received. I have attached your 2018 list. Please include Verizon Wireless lobbyist in this list and include those to date currently in 2019 or scheduled for 2019. Please provide for the year 2017 as well. Documentation, communications and any other correspondence between lobbyist and telecom companies and/or City officials, planners, commissioners, city council members as it pertains to telecommunications applications from November 2017 to current.”

On February 9, 2019, Building and Planning was assigned to the request. On February 13, 2019, the City Attorney and City Administrator were added to the request.

ATTACHMENT 4

On February 17, 2019, the City Administrator was removed from the request and on February 22, 2019 Office of the Mayor, Economic and Workforce Development were added.

On February 22, 2019, the City Attorney was removed from the request.

On March 28, 2019, Staff commenced mediation. On April 22, 2019 Planning and Building was removed from the request.

On April 23, 2019, Ana Lara with the Public Ethics Commission provided the requestor the following information via NextRequest:

“Please forgive our delay in responding. Our Commission staff just learned that we should be a recipient of this request last Thursday and have added ourselves to this request so we can respond. Here are your requested records:

-For 2017, you can view registered lobbyists, their clients and their filings here <https://www.oaklandca.gov/resources/lobbying-activity-2017>

-For 2018, view registered lobbyists and their clients here : <https://www.oaklandca.gov/resources/2018-registered-lobbyists-and-clients-2-22-19>

and for the total consideration received visit <https://www.oaklandca.gov/resources/2018-total-economic-consideration-received>

-For 2019, 1st quarter totals are due April 30th, but you can view registered lobbyists and their clients -for 2019 here <https://www.oaklandca.gov/topics/lobbying-activity-2019>

If you would like to view the filings submitted by the lobbyist for 2018 and 2019, you can search for it here by typing in the name of the lobbyist. <https://public.netfile.com/pub2/Default.aspx?aid=COAK&AspxAutoDetectCookieSupport=1>

Thank you for your patience. If you have further questions about how to access this information, or if ever you need lobbyist registration or reporting information in the future, please feel free to call us directly at 510-238-3593 so we can respond expeditiously.”

On April 23, 2019, additional records regarding the 2017 Lobbyist Registration Overview was uploaded to NextRequest. This public records request was closed on August 30, 2019.

Request 19-718

On February 9, 2019, the City received the following request for public records, via next request (#19-718):

“Please provide me with copies of all communications (including phone call notes) and documents between the City, On-Air/Verizon Wireless and the public regarding application PLN 18232 from July 1, 2018 to February 16, 2019. This documentation would include planning commissioner notes, building department applications/communications etc.”

ATTACHMENT 4

On March 25, 2019, the Planning and Building Department released one set of redacted records. And closed the request with the following message:

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

On March 28, 2019, Staff commenced mediation. On April 2, 2019 the request was reopened.

On July 5, 2019, redacted records were uploaded to NextRequest by Planning and Building. On that same day the request was closed with the following note:

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

IV. RECOMMENDATION

Because the Requester received all the requested records that were in the custody and control of the City, Staff recommends that the Commission close the mediation without further action.



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Nayeli Maxson Velázquez
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: August 14, 2019
RE: *In the Matter of Katano Kasaine, Director of the Department of Finance*
(Case No. M2019-12); Mediation Summary

I. INTRODUCTION

On June 26, 2019, the Commission received a request for mediation alleging that the City of Oakland's Finance Department and the Planning and Building Department failed to timely disclose records in response to three separate public records requests made by the Requester. On May 11, 2019, the requester submitted two public records requests through NextRequest to the Finance Department. On May 21, 2019, the requester submitted a public records request through NextRequest to the Planning and Building Department. Each request was past due at the time Staff initiated its mediation program on June 26, 2019, pursuant to the Oakland Sunshine Ordinance.

On August 13, 2019, Staff contacted the requester to confirm that the requestor received all responsive documents. The requester affirmed that multiple documents were provided; however, on one of the public records requests (#19-2426), the information requested was time sensitive and the delay in receiving the documents was a hindrance to the requester. The requester agreed that the mediation could be closed but wanted the Public Ethics Commission to be made aware of the undue delay. Staff recommends that the Commission close the mediation without further action.

II. SUMMARY OF LAW

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

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely

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

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

ATTACHMENT 5

inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

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

III. SUMMARY OF FACTS

Request 19-2428

On May 11, 2019, the City received, via NextRequest, the following public records request (No. 19-2428):

"I am requesting a copy of all the files for all the telecom sinking fund contributors. This is Fund 7460. Files are located in the Treasury Division.

An accompanying cover page with these documents should include:

1. Zip Code
2. Address of Equipment/Pole
3. Telecom Company
4. Amount of Funds
- 5 Date of Contribution to the Fund in order to verify that all funds are accounted for and accompanying documents are attached."

On May 21, 2019, Juliet Naishorua uploaded a note to the NextRequest stating, "Staff needs more time to assemble data."

On June 3, 2019, Juliet Naishorua uploaded a note to the requester stating: "Staff needs more time to assemble data. Thank you for your patience."

On June 26, 2019, Staff commenced mediation proceedings.

On August 13, 2019, Staff contacted the Requester to confirm whether they received responsive documents and the requester confirmed and agreed the mediation could be closed, even though the request had not been closed in the NextRequest system. The city produced all responsive records.

Request 19-2426

On May 11, 2019, the City received, via NextRequest, the following public records request (No. 19-2426):

"On Attachment B: Standard Conditions for many telecom applications/decision letters, Item #14 - Radio Frequency Emissions is a category. "Prior to the final building permit sign-off. The applicant shall submit a certified RF emissions report stating the facility is operating within the acceptable standards established by the regulatory FCC." I am requesting copies of the certified RF emissions reports for all telecom

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

ATTACHMENT 5

facilities installed in Oakland since 1996. I would like to have the reports be sorted by (1) zip code, (2) facility location address, (3) date installed and date of report, (4) facility description and (5) include the Planning and Building Departments case file identifying code and the telecom company who applied for this facility.”

On May 21, 2019, David Guillory with the Planning and Building Department uploaded the following note to NextRequest, “Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (government Code Section 6253 (c)(2).

On May 31, 2019, David Guillory uploaded the following note to NextRequest, “Good Morning Alexis, We are still researching the information you requested and will update as soon as they are available... David”

On June 26, 2019, Staff commenced mediation.

On August 13, 2019, Staff contacted the Requester to confirm whether they received responsive documents. The requester agreed the mediation could be closed; however, the requester was unsatisfied with the delay of the public records request. This request was time sensitive because it involved the Planning Department’s new guidelines for telecom facilities in the PROW. After waiting to get responsive documents, the Planning Department informed the requester that they do not possess or maintain the information that was requested and that after doing some research, they discovered that a federal agency (FCC) maintained the records the requester sought. The requester would like to see the Department held responsible for the extended delay to determine that the Department, in fact, did not possess the responsive records. On August 15, 2019, the request had not been closed in the NextRequest system.

Request 19-2604

On May 21, 2019, the City received, via NextRequest, the following public records request (#19-2604):

“Requesting all permit applications, staff reports, blue prints/plans, decision letters, conditions of approval, maps, building department documentation and sign-offs, email or any other documented correspondence between the City and any and ALL telecom companies or their agents regarding 1720 MacArthur Blvd as it pertains to telecom equipment installations (new, changed, replaced or removed).

Please provide Fund 7460 contributions or withdrawals for any project at this location.

Please provide the certified RF emission reports from each telecom company as part of the building departments sign-off for any telecom installation at this location.

Please provide a list of telecom companies who currently have permits to operate their telecom equipment at this location.”

On May 21, 2019, Building and Planning were assigned to the request.

On May 21, 2019, the requester uploaded the following note, via NextRequest, “Near, on or adjacent to 1720 MacArthur Blvd please.”

ATTACHMENT 5

On May 28, 2019, David Guillory with the Building and Planning Department sent the following note, via NextRequest: “Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253 (c)(2)).”

On June 26, 2019, Staffed commenced mediation.

On August 13, 2019, Staff contacted the Requester to confirm whether they received responsive documents. The requestor confirmed that they had received responsive documents and that the mediation could be closed.

IV. RECOMMENDATION

Staff recommends that the Commission close the mediation without further action, because the requester received all of the responsive documents that were in the City’s possession. The requester, however, asked that the Public Ethics Commission be made aware of the unreasonable delay in obtaining responsive documents to the public records request.



CITY OF OAKLAND

PUBLIC ETHICS COMMISSION

MEDIATION AND COMPLAINT PROCEDURES

Effective ~~November 5, 2016~~ DATE

I. INTRODUCTION

The Public Ethics Commission (“Commission”) adopts the following procedures applicable to the Commission’s enforcement authority as granted by the Oakland City Charter and Oakland Municipal Code.

A. Purpose. These procedures are intended to ensure a fair, just, and timely process for the review, investigation, and hearing of complaints submitted to the Public Ethics Commission by doing the following:

1. Maintain objective standards for investigations and enforcement of the law,
2. Eliminate any improper influence in the investigation and resolution of complaints,
3. Provide a fair hearing for persons and entities accused of violations,
4. Ensure timely enforcement and complaint resolution, and
5. Coordinate with other governmental agencies to share enforcement responsibility in a manner most appropriate to ensure justice is served.

B. Enforcement Authority. These procedures are applicable to potential violations of the following laws:

1. The Oakland Campaign Reform Act;
- ~~2. The Oakland City Council Code of Conduct/Code of Ethics;~~
- ~~3.2. Conflict of interest regulations as they pertain to City of Oakland elected officials, officers, employees, and members of boards and commissions~~ The Oakland Government Ethics Act;
- ~~4.3.~~ The Oakland Limited Public Financing Ordinance;
- ~~5.4.~~ The Oakland Sunshine Ordinance;
- ~~6.5.~~ The Oakland Lobbyist Registration Act;
- ~~7.6.~~ The Oakland False Endorsement in Campaign Literature Act; and
- ~~8.7.~~ Any other law or policy over which the ~~Public Ethics~~ Commission has jurisdiction or with which the Commission is charged with overseeing compliance.

II. DEMAND FOR MEDIATION OF PUBLIC RECORD REQUEST UNDER THE OAKLAND SUNSHINE ORDINANCE

ATTACHMENT 6

- A. Scope of Section.** This section applies only to a demand for mediation of an unfulfilled public records request under the Oakland Sunshine Ordinance. All other complaints are subject to the procedures in the subsequent sections of these Complaint Procedures, starting with Section III.
- B. Mediation.** A person whose public records request was denied, in whole or in part, by a local agency or department may demand mediation of their request.¹ To begin mediation, a requestor should complete the Commission's Mediation Request Form and submit it to Commission staff.
1. The Executive Director of the Commission, his or her designee who may be a Commissioner, or a mutually agreed upon volunteer mediator, may serve as mediator.²
 2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable.³
 3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendation is not binding on any party.⁴
 4. Statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.⁵
 5. At the conclusion of mediation, the mediator shall close the mediation and issue a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts the mediator would recommend to resolve the dispute. The report shall be filed with the Commission, provided to all parties, and made available for public inspection.
- C. Additional Remedies.** After the Commission closes a mediation:
1. The requestor may file a formal complaint requesting that the Commission investigate whether the local agency's or department's actions violated the Oakland Sunshine Ordinance. (See procedures beginning in Section III.). In that case, the mediator will offer to pre-fill a formal complaint form based on the information provided in the Mediation Request Form and provide a copy to the requestor.
 2. If the requestor does not wish to submit a formal complaint, the mediator may submit an informal complaint. (See procedures beginning in Section III.)
 3. No person may 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 mediation.⁶ Participation in mediation is satisfied when the complainant was responsive to the mediator and willing to take action to complete the mediation.
 4. In order to prevent statements obtained during mediation from being used in any related proceeding, the mediator will not participate in any subsequent investigation.⁷

¹ OMC 2.20.270(C)(1).

² OMC 2.20.270(C)(1).

³ OMC 2.20.270(C)(2).

⁴ OMC 2.20.270(C)(3).

⁵ OMC 2.20.270(C)(3).

⁶ OMC 2.20.270(F).

⁷ OMC 2.20.270(C)(3).

5. This mediation process constitutes the administrative process for review and enforcement required by the Oakland Sunshine Ordinance.⁸ Upon closure of mediation, the requestor may seek injunctive relief, declaratory relief, or a writ of mandate in any court of competent jurisdiction, whether or not the person also files a complaint with the Commission.⁹

H.III. SUBMITTING A COMPLAINT/INTAKE

A. Complaints. A complaint alleging a violation of any law listed above may be submitted by any person, including a member of the public, any employee or official of the City of Oakland, or any member of the Commission.

1. Formal Complaints. A formal complaint must be submitted either 1) in writing on a complaint form as prescribed by ~~the Executive Director of the Commission~~Commission staff, or 2) in a manner designated as a method for submitting a formal complaint as determined by ~~the Executive Director~~Commission staff. The forms and instructions will be available at the ~~City Clerk~~Commission's office, on the Commission website, and upon request to any other location as determined by the Executive DirectorCommission staff.

a. Contents of Formal Complaints. A formal complaint must be signed or verified by the complainant under penalty of perjury. A formal complaint also must include the following information:

- i. name, address, and phone number of complainant,
- ii. name of the respondent, and any known addresses or phone numbers,
- iii. the facts of the alleged violation,
- iv. area of law allegedly violated, if known,
- v. names and addresses of any witnesses, if known, and
- vi. any documentation that might aid in the investigation of the alleged violation.

b. Effect of Formal Complaints.

- i. Upon receipt of a formal complaint, Commission staff will make a reasonable effort to acknowledge receipt of the complaint.
- ii. ~~The Executive Director~~Commission staff shall process and review all formal complaints.

2. Informal Complaints. An informal complaint may be submitted by telephone, in person, or in writing.

⁸ OMC 2.20.270(A)(3).

⁹ OMC 2.20.270(B).

ATTACHMENT 6

- a. **Contents of Informal Complaints.** An informal complaint ~~must~~should include the name of the person or organization believed to have violated the law and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not meet the requirements of a formal complaint will be considered as an informal complaint.
 - b. **Effect of Informal Complaints.** ~~The Executive Director~~Commission staff has no obligation, but retains discretion, to process and review informal complaints. In exercising discretion to process and review informal complaints, ~~the Executive Director~~Commission staff should consider the nature of the alleged violation, whether the information contained in the complaint permits review and investigation of the alleged violations, and whether the complainant is justified in submitting the complaint in a form other than the proscribed form.
 - c. **Anonymous Complaints.** A complaint may be submitted without a name or without identifying the complainant, and these complaints will be considered anonymous complaints. An anonymous complaint shall be considered an informal complaint, whether submitted on a formal complaint form or in another form, and the processing of these complaints will be at the discretion of ~~the Executive Director~~Commission staff.
3. **Commission-initiated Complaints.** ~~Commission staff~~ ~~The Executive Director~~ may initiate an investigation ~~complaint~~ without conforming to any formal complaint requirements. A Public Ethics Commission member of the Commission may submit a formal or informal complaint. A member of the Commission will be recused from all consideration, review, investigation, or hearing of any complaint submitted by the member, but may provide information or be called as a witness at any hearing on the complaint.
 4. **Withdrawal of a Complaint.** If a complainant requests that his or her complaint be dismissed or withdrawn, the Commission may continue to review, investigate, and hold hearings or proceedings regarding the violations alleged in the complaint.
 5. **Repetitive and Unmeritorious Complaints.** Any person who has submitted four (4) complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a “repetitive unmeritorious complainant.” Any subsequent complaint submitted by a “repetitive unmeritorious complainant” during the twelve month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. The Commission Chair’s decision shall be final and shall be reflected in the Commission’s public report on pending complaints, and ~~the Executive Director~~Commission staff shall notify the complainant of the determination. If the Commission Chair determines that there are grounds to investigate any subsequent complaint, the complaint shall be forwarded to ~~the Executive Director~~Commission staff to receive and process the complaint.
 6. **Ex-Parte Communications.** Once a complaint is submitted, ~~the matter will be deemed an enforcement action.~~ ~~None~~ Commissioner shall engage in oral or written communications, outside a hearing, ~~or Commission meeting, or other meeting that~~

ATTACHMENT 6

~~provides all relevant parties with proper notice and opportunity to be heard; interview or settlement conference regarding the substance of the merits of an enforcement action—the complaint~~ with the respondent, ~~or~~ complainant, ~~witnesses,~~ or any person communicating on behalf of the respondent or complainant, unless the communication is necessary to investigate, remediate, enforce or enter into a stipulated order regarding the alleged violation.

B. Preliminary Review of Complaints. Upon receipt of a formal complaint, Commission staff shall conduct a preliminary review of the complaint to determine whether to open an investigation. The preliminary inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the person or entity accused of a violation, and any other reasonable inquiry to determine whether a full investigation is warranted.

IV. PRELIMINARY REVIEW/INTAKE OF COMPLAINTS

A. Intake Resolution. After conducting a preliminary review of a complaint, ~~the Executive Director~~ Commission staff shall open a case for investigation, resolve the complaint by way of dismissal, or recommended closure. ~~The Executive Director~~ Commission staff shall notify the complainant of the result of the preliminary review in writing.

1. **Dismissal.** ~~The Executive Director~~ Commission staff may dismiss a complaint if the allegations do not warrant further action for reasons that may include, but are not limited to the following:
 - a. The allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction.
 - b. The complaint does not include enough information to support further investigation.
 - c. The allegations in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
 - d. The complaint should be referred to another governmental or law enforcement agency better suited to address the issue.
2. **Closure.** ~~The Executive Director~~ Commission staff may recommend closure of a complaint ~~upon intake~~ if it falls within the Commission's jurisdiction but there is reason to support closure ~~as an alternative to opening an investigation~~. The Commission shall review ~~the Executive Director~~ Commission staff's determination at a subsequent Commission meeting and must take formal action in order to close the complaint. ~~The Executive Director~~ Commission staff's recommendation to close the complaint may include one or more of the following actions:
 - a. Close with no action
 - b. Close with advisory letter
 - c. Close with warning letter

ATTACHMENT 6

- d. Close with additional Commission action, such as holding an informational hearing or providing follow-up diversion requirements, training or communications on a matter

3. Referral. ~~The Executive Director~~Commission staff may refer a complaint to the appropriate enforcement authority instead of or in addition to dismissal, closure, or the opening of an investigation.

4. Complaints Against the Public Ethics Commission. Within 90 days of receiving a complaint against the Commission, Commission members, or Commission staff, Commission staff will reply to the complainant with the name and address of the entities that have concurrent or overlapping jurisdiction and inform the complainant that they have the right to file a civil action. In most instances, the Commission will close the complaint. However, where a single respondent Commissioner or staff can be walled off entirely from the investigation and approval process, the Commission may continue adjudicating the complaint, in addition to making a referral to an alternate entity.

B. Report to the Commission. ~~The Executive Director~~Commission staff shall notify the Commission of all dismissals by reporting the information, including the action taken and the reason for dismissal, on the next complaint tracking document enforcement program report posted in advance of the Commission's subsequent Commission meeting.

C. Notification to Respondent. After the preliminary review of the complaint, if ~~the Executive Director~~Commission staff dismisses the complaint, then ~~the Executive Director~~Commission staff may notify the respondent of the receipt and dismissal of the complaint. If ~~the Executive Director~~Commission staff recommends closure, ~~referral~~, or the opening of an investigation, then ~~the Executive Director~~Commission staff shall notify the respondent of the complaint and the issue(s) to be investigated status in writing.

D. Notification to Complainant. After the preliminary review of the complaint, Commission staff shall notify the complainant of its decision to dismiss, close, make a referral, or open an investigation. If Commission staff opens an investigation, Commission staff shall also provide to the complainant a copy of the notice to the respondent. The complainant shall have 10 days to respond to Commission staff concerning the scope of the investigation, and Commission staff may alter the scope of the investigation based on feedback from the complainant.

D.E. Final Closure. A dismissal, after notification to the Commission pursuant to subsection ~~H(D)~~IV.B, or a closure of a complaint is a final decision and represents closure of the administrative process for that complaint, and no further action shall be taken other than possible notification to the complainant or respondent or referral of the matter to another entity.

V. INVESTIGATION OF COMPLAINTS

A. Investigation. -If ~~the Executive Director~~Commission staff determines that the allegations in the complaint warrant further inquiry, ~~the Executive Director~~Commission staff shall open an investigation regarding the violations alleged in the complaint. An investigation may include, but not be limited to, interviews of the complainant, respondent, and any witnesses,

ATTACHMENT 6

and the review of documentary and other evidence. Commission staff, and anyone conducting interviews on behalf of Commission staff, may administer oaths and affirmations for interviewees to tell the truth under penalty of perjury.

B. Subpoenas During Investigation. - The Executive Director may issue a subpoena on behalf of the Commission if he or she finds, based on the information submitted to him or her in writing, that the information requested in the subpoena is material to a specific matter under investigation and is under the control of the person or entity being subpoenaed. The Executive Director shall report each subpoena he or she issues on behalf of the Commission to the Commission Chair within 7 days of issuing the subpoena.

B.C. Contacting the Complainant. If Commission staff's attempt to contact a person or entity accused of a violation is unsuccessful, Commission staff will pursue other methods of contact, including formal methods, such as certified mail, and informal methods, such as social media channels or neighborhood contacts, as appropriate.

~~— **Written Summary.** After an investigation, the Executive Director Commission staff shall 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. The probable cause report shall be submitted to the Commission for consideration.~~

~~C. **Notification.** When Commission staff submits a probable cause report to the Commission for consideration, Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.~~

D. Audit Program. Commission staff may initiate routine investigations or audits as part of its enforcement program. Such investigations may use a streamlined review process to determine compliance with City ordinances and need not include a full investigation or written summary. Commission staff may create standard forms for summarizing and communicating the audit findings.

E. Written Summary. After an investigation, Commission staff shall 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. The probable cause report shall be submitted to the Commission for consideration.

F. Notification. When Commission staff submits a probable cause report to the Commission for consideration, Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.

~~D.~~

VI. RESOLUTION OF COMPLAINTS

A. Written Summary. After an investigation, Commission staff shall 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. The probable cause report shall be submitted to the Commission for consideration.

ATTACHMENT 6

B. Notification. When Commission staff submits a probable cause report to the Commission for consideration, Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.

A.C. Commission Review. Upon review of ~~the Executive Director~~ Commission staff's written report and recommendation of whether there is probable cause to believe that a violation occurred, the Commission may decide to ~~dismiss~~, close the matter, request further investigation, and/or request that ~~the Executive Director~~ Commission staff or designee seek a stipulated settlement, ~~or refer the matter to an administrative hearing.~~ In addition, the Commission may refer the matter to an administrative hearing, but only if the Commission staff has determined that probable cause exists to believe that a respondent violated a law listed in Section I.B. The Commission may issue a warning letter, ~~or~~ advisory letter, or diversion agreement at any phase of the Commission's review, in conjunction with another remedy or as a stand-alone resolution.

B.D. Stipulated Settlement. At any time after a complaint has been submitted, ~~the Executive Director~~ Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulated agreement, followed by Commission approval of the decision. The Commission's Enforcement Penalty Guidelines outline the principles that guide Commission staff in determining fine amounts to pursuing via stipulations.

1. **Stipulation.** Any proposed stipulation shall explicitly state that:

- a. The proposed stipulation is subject to approval by the Commission;
- b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
- c. The respondent understands and acknowledges that any stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- d. The respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and,
- e. In the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

2. Commission Decision and Order. The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority. Stipulated agreements must be approved by the Commission and, upon approval, be announced publicly.

2.3. Concurrent Referral to Commission. Commission staff may submit a probable cause report to the Commission for the Commission's consideration of other

methods of resolution, including referring the matter to an administrative hearing, concurrently or in lieu of with Commission staff's pursuit of a stipulated settlement. Commission staff may submit a probable cause report to the Commission for concurrent consideration, especially where doing so may result in more timely resolution of the matter.

E. Diversion Agreement. At any time after a complaint has been submitted, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a diversion agreement, followed by Commission approval of the agreement.

1. Any proposed diversion agreement shall explicitly state that:

- a. The proposed diversion is subject to approval by the Commission;
- b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
- c. The respondent understands and acknowledges that any diversion agreement is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
- d. The respondent agrees that in the event the Commission refuses to approve the proposed diversion agreement, it shall become null and void; and,
- e. In the event the Commission rejects the proposed diversion agreement and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the diversion agreement.

4. Commission Decision and Order. The diversion agreement shall set forth the pertinent facts and may include an agreement as to anything that facilitates the Commission's goals and that is agreed to by the respondent. Diversion agreements must be approved by the Commission and, upon approval, be announced publicly.

F. Default Decision. When a Respondent has failed to respond to or otherwise defend the complaint, or when a respondent waives his or her right to a hearing, the PEC may make a final decision against the respondent through the following default process:

1. Upon a finding of probable cause by the Commission, Commission staff shall prepare a written summary report, which shall include the charges, a summary of the evidence to support the charges, and an explanation of the default process, and shall serve the complaint on the Respondent via personal or substitute service.
2. A Respondent has 30 days from the date he or she is served with the staff summary report to file a written response. The PEC may still accept a response from the respondent after 30 days, if Commission staff has not yet filed a written request for default with the Commission.
3. After the 30 day response period has passed, Commission staff shall submit the summary report and a request for default decision to the Commission for review and decision at a subsequent Commission meeting. The request for default shall

include an affidavit signed by Commission staff that attests to and includes the following:

- a. Commission staff had attempted to notify the respondent on multiple prior occasions as specified, or the respondent has waived his or her right to a hearing;
 - b. The Commission made a determination of probable cause on a date specified;
 - c. Commission staff served the Respondent with notice of the complaint and pending default process; and
 - d. the documentation establishes enforcement's entitlement to default. Commission Staff shall sign, serve, and file an affidavit with the same content.
4. The request for default submitted to the Commission shall include the range of enforcement options available to the Commission, and it may include a recommendation by Commission staff for corrective, remedial or punitive actions (penalties and fines).
- ~~C.~~5. The Commission shall determine whether to adopt, amend, or reject the findings and conclusions in Commission staff's summary report and recommendation, if any, including making a decision regarding corrective, remedial or punitive actions (penalties and fines) to impose on the Respondent in accordance with the adopted findings and consistent with the Commission's authority. The Commission's decision following approval of a default shall be final and shall constitute closure of the administrative process with respect to the complaint.
- 4.6. The Commission can set aside a default decision upon written request of a Respondent, if the Respondent can show cause as to why the default decision should not have been approved.

VII. ADMINISTRATIVE HEARING PROCESS

~~A.~~ **A. Selection of Hearing Panel or ~~Officer~~ Examiner.** If the Commission decides to schedule a hearing pursuant to Section ~~VIV(BD)~~(3), the Commission 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~~ officer.

1. If the Commission decides that the full Commission will not sit as a hearing panel, decides to utilize a hearing examiner officer, the Executive Director shall select the hearing examiner at random from a pre-approved list. The selected hearing examiner shall disclose any actual or potential conflicts of interest he or she might have with the City of Oakland, the parties, or a Commissioner. In the event a hearing examiner is unavailable or conflicted, another hearing examiner shall be randomly selected from the pre-approved list. It shall appoint the hearing officer. If the Commission elects to use a hearing officer provided by an outside entity, that entity shall appoint the hearing officer(s). The selected hearing examiner officer shall disclose any actual or potential conflicts of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, he or she might have with the City of Oakland, the parties, or a Commissioner.

ATTACHMENT 6

~~A.~~

B. Notice of Administrative Hearing. The Executive Director shall provide notice of the date, time and location of the hearing to ~~the each party respondent~~ at least ~~thirty (30)~~ days prior to the date of the hearing. A copy of the notice shall be posted publicly, sent to the complainant, and filed with the Office of the City Clerk at least seven ~~(7)~~ days before the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a hearing will be held before the Ethics Commission [or name of the hearing ~~examiner-officer, entity,~~ or assigned Commissioner(s)] on ____ (date) at the hour of ____, at ____ (location), upon the charges made in Complaint No. _____. At the hearing, you may, but need not, be represented by counsel, and you may present any relevant evidence. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of documents by applying to the Commission on or before _____.”

C. Subpoenas of Persons or Documents. Any party requesting subpoenas to bring people or documents to the hearing shall notify ~~the Commission’s staff~~ the Executive Director no later than ~~fourteen (14)~~ days before the hearing date. The request shall ~~include be accompanied by~~ a written statement specifying the name and address of the witnesses, and the ~~reason for importance of~~ their testimony. If the request is for a document subpoena, it shall be accompanied by a statement which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued by ~~the Commission Chair or his or her designee~~ the Executive Director, or the hearing officer only upon the above showing of good cause. The party requesting the subpoena shall be responsible for its service on the appropriate persons and shall provide a copy to all opposing parties.

D. Resolution of Preliminary Matters. No later than seven ~~(7)~~ days before the hearing date, any party may submit in writing preliminary matters for determination by the hearing ~~examiner-officer or entity~~. If the complaint is to be heard by the full Commission, or by one or more Commissioners, preliminary matters shall be determined by the Commission Chair or his or her designee. The party submitting any preliminary matter for determination shall demonstrate that an attempt to resolve the preliminary matter was made with any opposing party and that copies of the request were delivered to any opposing party. The opposing party shall be allowed to address a request to hear a preliminary matter. The hearing ~~examiner-officer~~ or the Commission Chair may determine preliminary matters upon submission of the written requests and without an oral hearing. Preliminary matters may include, but are not limited to, the following:

1. Whether multiple claims within a single complaint may be scheduled separately;
2. Whether similar complaints filed by separate individuals or entities may be joined;
3. Scheduling of witnesses;

ATTACHMENT 6

4. Production of documents and issuance of subpoenas;
5. Scheduling of pre-hearing conferences;
6. Disqualification of any member of the Commission from participation in the hearing on the merits; and
7. Any other matters not related to the truth or falsity of the factual allegations in the accusation.

E. Conduct of Hearings; Submission of Written Materials. All materials to be considered at a hearing and not otherwise subpoenaed shall be submitted to the person(s) conducting the hearing, the Executive Director, and to all opposing parties no later than five ~~(5)~~ days prior to the hearing. A written argument need not be submitted. Any written argument submitted shall not exceed ~~fifteen (15) pages, including all supporting documentation.~~ Documentation ~~A written argument in excess of fifteen (15) pages is allowed only except upon prior approval of the Commission Chair or his or her designee~~ person(s) conducting the hearing. When prior approval has not been granted, the person(s) conducting the hearing shall disregard all pages of a written argument beyond the 15th page. The relevance of each item submitted shall be clearly indicated.

F. Conduct of Hearings; Presentation of Testimony: Rules of Evidence. The hearing on the complaint shall be open to the public, provided that witnesses may be excluded at the discretion of the person(s) conducting the hearing. ~~A period of time will be allowed for public comment.~~ The person(s) conducting the hearing (Hearing Officer) shall brief the ~~parties~~ audience at the beginning of the hearing on applicable procedures. The Presiding Hearing Officer will conduct a fair and impartial hearing on the record, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order.

1. The hearing shall not be subject to the formal rules of evidence. Documentation and written testimony not in compliance with subsection (E) above may be excluded at the discretion of the person(s) conducting the hearing.
2. The Commission, and any individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
3. Oral and written testimony shall be received under penalty of perjury. Although the proceedings are informal, testimony shall be brief and confined to the issues. Oral testimony may be excluded if duplicative, irrelevant, or disruptive to the conduct of the meeting. The person(s) conducting the hearing may ask questions of both sides to further clarify facts and viewpoints. Any party may bring a representative and/or interpreter to speak on his or her behalf, but the person(s) conducting the hearing retains the authority to put questions to any party.

~~3.4.~~ If the hearing is conducted by a Commissioner, the following procedure applies: the Commission staff will be the first to call witnesses and present evidence of the violation. After the Commission staff presents its case, the Respondent -will also have the opportunity to call witnesses, present evidence and present argument. After both sides have presented their case, the hearing officer will open the hearing to take public testimony/ statements/comment. After public statements, either the

ATTACHMENT 6

Respondent or Commission staff or legal counsel will have an opportunity to present rebuttal information and present an oral summation of the case.

4.5. Special accommodations for disabled persons may be made by providing the Executive Director 72 hours advanced notice.

6. While there is no right to cross-examination, the parties shall be allowed the opportunity for rebuttal, and the parties, through the person(s) conducting the hearing, may ask questions of any witness. Except for raising preliminary matters as provided by these procedures, no party may communicate with any Commissioner or hearing ~~examiner~~ officer regarding a complaint outside of the formal public hearing.

7. If the Commission refers a matter to the California Office of Administrative Law, or another administrative law judge or entity, that entity's administrative process rules shall apply, with these complaint procedures providing guidance where there are gaps or questions in that administrative process.

5-8. If the respondent fails to appear at a properly noticed hearing, Commission staff may proceed with presenting the Commission's case or may request to submit a written summary in lieu of a verbal presentation. The hearing officer may proceed with issuing findings and recommendations based solely on the information received from Commission staff.

G. Record of Proceedings. Proceedings shall be recorded on audio and/or videotape and made available upon request. A party electing to have a stenographer present to record the proceedings may do so upon providing at least three full business days' notice to Commission staff, and at that party's own expense.

H. Continuation and Postponement of Hearings. A postponement may be granted prior to the hearing only upon written request to the Commission Chair or hearing ~~examiner~~ officer. At the hearing a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.

I. Action upon Conclusion of Hearing. Upon hearing all evidence submitted at the hearing and any arguments by the parties or comments by the public, the hearing shall be closed.

1. If the complaint was heard by a hearing ~~examiner~~ officer, single member of the Commission or Commission panel, he, she or they may take the matter under submission for a period of no more than ~~fourteen~~ (14) days before delivering to the Executive Director proposed Findings of Fact and Conclusions. Any deliberations by two or more Commissioners shall be done publicly. Upon receipt, the Executive Director shall deliver a copy of the proposed Findings of Fact and Conclusions to all parties.

a. No later than seven ~~(7)~~ days after delivery, any party may submit a written request to the Commission Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint. The Commission Chair may accept the proposed Findings of Fact and

ATTACHMENT 6

Conclusions as correct unless the party making the request for re-hearing demonstrates that: 1) the proposed Findings of Fact contain one or more material error(s) of fact that necessarily affects one or more Conclusions, or 2) the Conclusions are not supported by substantial evidence.

- b. The party making the request shall provide a complete copy of the written request to all other parties by the time the written request is submitted to the Commission Chair. Any other party shall have seven (7) days from receipt of the written request to submit written opposition or support to the Commission Chair.
 - c. If the Commission Chair determines there are no grounds to rehear all or portions of the complaint, he or she shall notify the Executive Director, who shall place the proposed Findings of Fact and Conclusions on the agenda for approval at the next regular Commission meeting or any special meeting called by the Commission Chair.
 - d. If the Commission Chair determines that grounds exist to rehear all or portions of the complaint, the Commission Chair may specify what facts need to be established or reviewed, the form and under what circumstances any new evidence shall be received, and a timetable for re-submitting any revised Findings of Fact and Conclusions to the Executive Director.
 - e. The decision of the Commission Chair on any request for re-hearing shall be final.
2. After notifying all parties and the complainant of the date, time, and location of its meeting, ~~the~~ Commission shall either adopt the proposed Findings of Fact and Conclusions in their entirety or adopt the Findings of Fact and reach additional or different conclusions consistent with the Findings of Fact. The Commission's discretion to reach additional or different conclusions consistent with the Findings of Fact includes the full range of options from dismissal, with or without a warning letter, through assessment of maximum penalties, including other remedial measures.
 3. If the complaint was heard by the full Commission, the Commission shall decide, upon conclusion of the hearing and by ~~majority an affirmative~~ vote of a majority of those at least four Commissioners ~~who have heard the evidence~~, whether a violation has occurred. The Commission may, in the alternative, direct the Executive Director to prepare a Findings of Fact and Conclusions for consideration at the next Commission meeting.
 4. The Commission shall determine that a violation of City law over which the Commission has jurisdiction has occurred only if the weight of the evidence shows that it was more likely than not that a violation has occurred.
 5. Any Findings of Facts and Conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions (penalties and fines) in accordance with the adopted findings and consistent with Commission authority. The Commission will make its findings and recommendations public.

ATTACHMENT 6

- J. **Decision and Order:** The Commission's decision and order on a complaint following a hearing or default proceeding shall be final and shall constitute closure of the administrative process with respect to any for that complaint.

VIII. COURT REVIEW

Remedies.—Upon conclusion of the administrative process ~~— whether via default or an administrative hearing,~~ any party contesting a decision of the Commission may file suit for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction, within ~~ninety days.ninety (90) the applicable statute of limitations—days~~ as provided by law.

IX. COMMISSIONER RECUSAL

~~**Conflict of Interest or Bias.**~~—A Commissioner or a member of the Commission's ~~S~~staff shall recuse himself or herself from participating in the resolution of any complaint in which he or she has a conflict of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, or in which he or she, by reason of interest or prejudice, cannot perform his or her duties in an impartial and unbiased manner. ~~and free from bias.~~

X. REPEAL, SEVERABILITY, CONFLICT, AND COMMISSION AUTHORITY

- A. **Repeal.** Upon adoption of these procedures, all prior procedures regulating the administration of complaints filed with the Commission including are hereby repealed.
- B. **Severability.** If the legislature, court or other entity determines that any portion of these rules is invalid, the other remaining rules shall not be affected and will continue in effect.
- C. **Conflict with Law.** To the extent a law or regulation set forth above contains specific procedures or rules that conflict with these General Complaint Procedures, the more specific provisions provided in the laws or regulations set forth above shall control.
- D. **Commission Authority.** Nothing in these complaint procedures limits the Commission's ability to review, refer, make recommendations, or take other actions regarding an issue that does not fall within its enforcement authority, but which may fall within its general authority to ensure fairness, openness, honesty, and integrity in City government.

DRAFT



CITY OF OAKLAND

PUBLIC ETHICS COMMISSION

MEDIATION AND COMPLAINT PROCEDURES

Effective [DATE]

I. INTRODUCTION

The Public Ethics Commission (“Commission”) adopts the following procedures applicable to the Commission’s enforcement authority as granted by the Oakland City Charter and Oakland Municipal Code.

A. Purpose. These procedures are intended to ensure a fair, just, and timely process for the review, investigation, and hearing of complaints submitted to the Public Ethics Commission by doing the following:

1. Maintain objective standards for investigations and enforcement of the law,
2. Eliminate any improper influence in the investigation and resolution of complaints,
3. Provide a fair hearing for persons and entities accused of violations,
4. Ensure timely enforcement and complaint resolution, and
5. Coordinate with other governmental agencies to share enforcement responsibility in a manner most appropriate to ensure justice is served.

B. Enforcement Authority. These procedures are applicable to potential violations of the following laws:

1. The Oakland Campaign Reform Act;
2. The Oakland Government Ethics Act;
3. The Oakland Limited Public Financing Ordinance;
4. The Oakland Sunshine Ordinance;
5. The Oakland Lobbyist Registration Act;
6. The Oakland False Endorsement in Campaign Literature Act; and
7. Any other law or policy over which the Commission has jurisdiction or with which the Commission is charged with overseeing compliance.

II. DEMAND FOR MEDIATION OF PUBLIC RECORDS REQUEST UNDER THE OAKLAND SUNSHINE ORDINANCE

A. Scope of Section. This section applies only to a demand for mediation of an unfulfilled public records request under the Oakland Sunshine Ordinance. All other complaints are subject to the procedures in the subsequent sections of these Complaint Procedures, starting with Section III.

B. Mediation. A person whose public records request was denied, in whole or in part, by a local agency or department may demand mediation of their request.¹ To begin mediation, a requestor should complete the Commission's Mediation Request Form and submit it to Commission staff.

1. The Executive Director of the Commission, his or her designee who may be a Commissioner, or a mutually agreed upon volunteer mediator, may serve as mediator.²
2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable.³
3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendation is not binding on any party.⁴
4. Statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.⁵
5. At the conclusion of mediation, the mediator shall close the mediation and issue a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts the mediator would recommend to resolve the dispute. The report shall be filed with the Commission, provided to all parties, and made available for public inspection.

C. Additional Remedies. After the Commission closes a mediation:

1. The requestor may file a formal complaint requesting that the Commission investigate whether the local agency's or department's actions violated the Oakland Sunshine Ordinance. (See procedures beginning in Section III.). In that case, the mediator will offer to pre-fill a formal complaint form based on the information provided in the Mediation Request Form and provide a copy to the requestor.
2. If the requestor does not wish to submit a formal complaint, the mediator may submit an informal complaint. (See procedures beginning in Section III.)
3. No person may 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 mediation.⁶ Participation in mediation is satisfied when the complainant was responsive to the mediator and willing to take action to complete the mediation.
4. In order to prevent statements obtained during mediation from being used in any related proceeding, the mediator will not participate in any subsequent investigation.⁷
5. This mediation process constitutes the administrative process for review and enforcement required by the Oakland Sunshine Ordinance.⁸ Upon closure of mediation, the requestor may seek injunctive relief, declaratory relief, or a writ of

¹ OMC 2.20.270(C)(1).

² OMC 2.20.270(C)(1).

³ OMC 2.20.270(C)(2).

⁴ OMC 2.20.270(C)(3).

⁵ OMC 2.20.270(C)(3).

⁶ OMC 2.20.270(F).

⁷ OMC 2.20.270(C)(3).

⁸ OMC 2.20.270(A)(3).

mandate in any court of competent jurisdiction, whether or not the person also files a complaint with the Commission.⁹

III. SUBMITTING A COMPLAINT

A. Complaints. A complaint alleging a violation of any law listed above may be submitted by any person, including a member of the public, any employee or official of the City of Oakland, or any member of the Commission.

1. Formal Complaints. A formal complaint must be submitted either 1) in writing on a complaint form as prescribed by Commission staff, or 2) in a manner designated as a method for submitting a formal complaint as determined by Commission staff. The forms and instructions will be available at the Commission's office, on the Commission website, and upon request to Commission staff.

a. Contents of Formal Complaints. A formal complaint must be signed or verified by the complainant under penalty of perjury. A formal complaint also must include the following information:

- i. name, address, and phone number of complainant,
- ii. name of the respondent, and any known addresses or phone numbers,
- iii. the facts of the alleged violation,
- iv. area of law allegedly violated, if known,
- v. names and addresses of any witnesses, if known, and
- vi. any documentation that might aid in the investigation of the alleged violation.

b. Effect of Formal Complaints.

- i. Upon receipt of a formal complaint, Commission staff will make a reasonable effort to acknowledge receipt of the complaint.
- ii. Commission staff shall process and review all formal complaints.

2. Informal Complaints. An informal complaint may be submitted by telephone, in person, or in writing.

a. Contents of Informal Complaints. An informal complaint must include the name of the person or organization believed to have violated the law and the facts of the alleged violation. A complaint submitted on the prescribed complaint form that does not meet the requirements of a formal complaint will be considered as an informal complaint.

b. Effect of Informal Complaints. Commission staff has no obligation, but retains discretion, to process and review informal complaints. In exercising discretion to process and review informal complaints, Commission staff

⁹ OMC 2.20.270(B).

should consider the nature of the alleged violation, whether the information contained in the complaint permits review and investigation of the alleged violations, and whether the complainant is justified in submitting the complaint in a form other than the proscribed form.

- c. **Anonymous Complaints.** A complaint may be submitted without a name or without identifying the complainant, and these complaints will be considered anonymous complaints. An anonymous complaint shall be considered an informal complaint, whether submitted on a formal complaint form or in another form, and the processing of these complaints will be at the discretion of Commission staff.
 3. **Commission-initiated Complaints.** Commission staff may initiate an investigation without conforming to any formal complaint requirements. A member of the Commission may submit a formal or informal complaint. A member of the Commission will be recused from all consideration, review, investigation, or hearing of any complaint submitted by the member, but may provide information or be called as a witness at any hearing on the complaint.
 4. **Withdrawal of a Complaint.** If a complainant requests that his or her complaint be dismissed or withdrawn, the Commission may continue to review, investigate, and hold hearings or proceedings regarding the violations alleged in the complaint.
 5. **Repetitive and Unmeritorious Complaints.** Any person who has submitted four (4) complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a “repetitive unmeritorious complainant.” Any subsequent complaint submitted by a “repetitive unmeritorious complainant” during the twelve month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. The Commission Chair’s decision shall be final and shall be reflected in the Commission’s public report on pending complaints, and Commission staff shall notify the complainant of the determination. If the Commission Chair determines that there are grounds to investigate any subsequent complaint, the complaint shall be forwarded to Commission staff to receive and process the complaint.
 6. **Ex-Parte Communications.** Once a complaint is submitted, no Commissioner shall engage in oral or written communications, outside a hearing, Commission meeting, or other meeting that provides all relevant parties with proper notice and opportunity to be heard regarding the substance of the complaint with the respondent, complainant, witnesses, or any person communicating on behalf of the respondent or complainant, unless the communication is necessary to investigate, remediate, enforce or enter into a stipulated order regarding the alleged violation.
- B. Preliminary Review of Complaints.** Upon receipt of a formal complaint, Commission staff shall conduct a preliminary review of the complaint to determine whether to open an investigation. The preliminary inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the person or entity accused of a violation, and any other reasonable inquiry to determine whether a full investigation is warranted.

IV. PRELIMINARY REVIEW OF COMPLAINTS

A. Intake Resolution. After conducting a preliminary review of a complaint, Commission staff shall open a case for investigation, resolve the complaint by way of dismissal, or recommend closure. Commission staff shall notify the complainant of the result of the preliminary review in writing.

- 1. Dismissal.** Commission staff may dismiss a complaint if the allegations do not warrant further action for reasons that may include, but are not limited to the following:
 - a. The allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction.
 - b. The complaint does not include enough information to support further investigation.
 - c. The allegations in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.
 - d. The complaint should be referred to another governmental or law enforcement agency better suited to address the issue.
- 2. Closure.** Commission staff may recommend closure of a complaint if it falls within the Commission's jurisdiction but there is reason to support closure. The Commission shall review Commission staff's determination at a subsequent Commission meeting and must take formal action in order to close the complaint. Commission staff's recommendation to close the complaint may include one or more of the following actions:
 - a. Close with no action
 - b. Close with advisory letter
 - c. Close with warning letter
 - d. Close with additional Commission action, such as holding an informational hearing or providing follow-up diversion requirements, training or communications on a matter
- 3. Referral.** Commission staff may refer a complaint to the appropriate enforcement authority instead of or in addition to dismissal, closure, or the opening of an investigation.
- 4. Complaints Against the Public Ethics Commission.** Within 90 days of receiving a complaint against the Commission, Commission members, or Commission staff, Commission staff will reply to the complainant with the name and address of the entities that have concurrent or overlapping jurisdiction and inform the complainant that they have the right to file a civil action. In most instances, the Commission will close the complaint. However, where a single respondent Commissioner or staff can be walled off entirely from the investigation and approval process, the

Commission may continue adjudicating the complaint, in addition to making a referral to an alternate entity.

- B. Report to the Commission.** Commission staff shall notify the Commission of all dismissals by reporting the information, including the action taken and the reason for dismissal, on the next enforcement program report posted in advance of the Commission's subsequent Commission meeting.
- C. Notification to Respondent.** After the preliminary review of the complaint, if Commission staff dismisses the complaint, then Commission staff may notify the respondent of the receipt and dismissal of the complaint. If Commission staff recommends closure or the opening of an investigation, then Commission staff shall notify the respondent of the complaint and the issue(s) to be investigated in writing.
- D. Notification to Complainant.** After the preliminary review of the complaint, Commission staff shall notify the complainant of its decision to dismiss, close, make a referral, or open an investigation. If Commission staff opens an investigation, Commission staff shall also provide to the complainant a copy of the notice to the respondent. The complainant shall have 10 days to respond to Commission staff concerning the scope of the investigation, and Commission staff may alter the scope of the investigation based on feedback from the complainant.
- E. Final Closure.** A dismissal, after notification to the Commission pursuant to subsection IV.B, or a closure of a complaint is a final decision and represents closure of the administrative process for that complaint.

V. INVESTIGATION OF COMPLAINTS

- A. Investigation.** If Commission staff determines that the allegations in the complaint warrant further inquiry, Commission staff shall open an investigation regarding the violations alleged in the complaint. An investigation may include, but not be limited to, interviews of the complainant, respondent, and any witnesses, and the review of documentary and other evidence. Commission staff, and anyone conducting interviews on behalf of Commission staff, may administer oaths and affirmations for interviewees to tell the truth under penalty of perjury.
- B. Subpoenas During Investigation.** The Executive Director may issue a subpoena on behalf of the Commission if he or she finds, based on the information submitted to him or her in writing, that the information requested in the subpoena is material to a specific matter under investigation and is under the control of the person or entity being subpoenaed. The Executive Director shall report each subpoena he or she issues on behalf of the Commission to the Commission Chair within 7 days of issuing the subpoena.
- C. Contacting the Complainant.** If Commission staff's attempt to contact a person or entity accused of a violation is unsuccessful, Commission staff will pursue other methods of contact, including formal methods, such as certified mail, and informal methods, such as social media channels or neighborhood contacts, as appropriate.

- D. Audit Program.** Commission staff may initiate routine investigations or audits as part of its enforcement program. Such investigations may use a streamlined review process to determine compliance with City ordinances and need not include a full investigation or written summary. Commission staff may create standard forms for summarizing and communicating the audit findings.
- E. Written Summary.** After an investigation, Commission staff shall 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. The probable cause report shall be submitted to the Commission for consideration.
- F. Notification.** When Commission staff submits a probable cause report to the Commission for consideration, Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.

VI. RESOLUTION OF COMPLAINTS

- A. Written Summary.** After an investigation, Commission staff shall 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. The probable cause report shall be submitted to the Commission for consideration.
- B. Notification.** When Commission staff submits a probable cause report to the Commission for consideration, Commission staff shall notify the respondent and the complainant of the report's submission and of the time, date, and location at which the Commission will consider the report.
- C. Commission Review.** Upon review of Commission staff's written report and recommendation of whether there is probable cause to believe that a violation occurred, the Commission may decide to close the matter, request further investigation, and/or request that Commission staff seek a stipulated settlement. In addition, the Commission may refer the matter to an administrative hearing, but only if the Commission has determined that probable cause exists to believe that a respondent violated a law listed in Section I.B. The Commission may issue a warning letter, advisory letter, or diversion agreement at any phase of the Commission's review, in conjunction with another remedy or as a stand-alone resolution.
- D. Stipulated Settlement.** At any time after a complaint has been submitted, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulated agreement, followed by Commission approval of the decision. The Commission's Enforcement Penalty Guidelines outline the principles that guide Commission staff in determining fine amounts to pursue via stipulations.
 - 1. **Stipulation.** Any proposed stipulation shall explicitly state that:
 - a. The proposed stipulation is subject to approval by the Commission;
 - b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;

- c. The respondent understands and acknowledges that any stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
 - d. The respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and,
 - e. In the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.
 2. **Commission Decision and Order.** The stipulation shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority. Stipulated agreements must be approved by the Commission and, upon approval, be announced publicly.
 3. **Concurrent Referral to Commission.** Commission staff may submit a probable cause report to the Commission for the Commission's consideration of other methods of resolution, including referring the matter to an administrative hearing, concurrently or in lieu of Commission staff's pursuit of a stipulated settlement. Commission staff may submit a probable cause report to the Commission for concurrent consideration, especially where doing so may result in more timely resolution of the matter.
- E. **Diversion Agreement.** At any time after a complaint has been submitted, Commission staff may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a diversion agreement, followed by Commission approval of the agreement.
 1. Any proposed diversion agreement shall explicitly state that:
 - a. The proposed diversion is subject to approval by the Commission;
 - b. The respondent knowingly and voluntarily waives any and all procedural rights under the law and under these procedures;
 - c. The respondent understands and acknowledges that any diversion agreement is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;
 - d. The respondent agrees that in the event the Commission refuses to approve the proposed diversion agreement, it shall become null and void; and,
 - e. In the event the Commission rejects the proposed diversion agreement and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the diversion agreement.

4. **Commission Decision and Order.** The diversion agreement shall set forth the pertinent facts and may include an agreement as to anything that facilitates the Commission's goals and that is agreed to by the respondent. Diversion agreements must be approved by the Commission and, upon approval, be announced publicly.
- F. Default Decision.** When a Respondent has failed to respond to or otherwise defend the complaint, or when a respondent waives his or her right to a hearing, the PEC may make a final decision against the respondent through the following default process:
1. Upon a finding of probable cause by the Commission, Commission staff shall prepare a written summary report, which shall include the charges, a summary of the evidence to support the charges, and an explanation of the default process, and shall serve the complaint on the Respondent via personal or substitute service.
 2. A Respondent has 30 days from the date he or she is served with the staff summary report to file a written response. The PEC may still accept a response from the respondent after 30 days, if Commission staff has not yet filed a written request for default with the Commission.
 3. After the 30 day response period has passed, Commission staff shall submit the summary report and a request for default decision to the Commission for review and decision at a subsequent Commission meeting. The request for default shall include an affidavit signed by Commission staff that attests to and includes the following:
 - a. Commission staff had attempted to notify the respondent on multiple prior occasions as specified, or the respondent has waived his or her right to a hearing;
 - b. The Commission made a determination of probable cause on a date specified;
 - c. Commission staff served the Respondent with notice of the complaint and pending default process; and
 - d. the documentation establishes enforcement's entitlement to default. Commission Staff shall sign, serve, and file an affidavit with the same content.
 4. The request for default submitted to the Commission shall include the range of enforcement options available to the Commission, and it may include a recommendation by Commission staff for corrective, remedial or punitive actions (penalties and fines).
 5. The Commission shall determine whether to adopt, amend, or reject the findings and conclusions in Commission staff's summary report and recommendation, if any, including making a decision regarding corrective, remedial or punitive actions (penalties and fines) to impose on the Respondent in accordance with the adopted findings and consistent with the Commission's authority. The Commission's decision following approval of a default shall be final and shall constitute closure of the administrative process with respect to the complaint.
 6. The Commission can set aside a default decision upon written request of a Respondent, if the Respondent can show cause as to why the default decision should not have been approved.

VII. ADMINISTRATIVE HEARING PROCESS

- A. Selection of Hearing Panel or Officer.** If the Commission decides to schedule a hearing pursuant to Section VI(B)(3), the Commission shall decide 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 officer. If the Commission decides that the full Commission will not sit as a hearing panel, it shall appoint the hearing officer. If the Commission elects to use a hearing officer provided by an outside entity, that entity shall appoint the hearing officer(s). The selected hearing officer shall disclose any actual or potential conflicts of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, he or she might have with the City of Oakland, the parties, or a Commissioner.
- B. Notice of Administrative Hearing.** The Executive Director shall provide notice of the date, time and location of the hearing to the respondent at least 30 days prior to the date of the hearing. A copy of the notice shall be posted publicly, sent to the complainant, and filed with the Office of the City Clerk at least seven days before the hearing. The notice shall be in substantially the following form:

“You are hereby notified that a hearing will be held before the Ethics Commission [or name of the hearing officer, entity, or assigned Commissioner(s)] on ____ (date) at the hour of ____, at ____ (location), upon the charges made in Complaint No. _____. At the hearing, you may, but need not, be represented by counsel, and you may present any relevant evidence. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of documents by applying to the Commission on or before _____.”

- C. Subpoenas of Persons or Documents.** Any party requesting subpoenas to bring people or documents to the hearing shall notify the Executive Director no later than 14 days before the hearing date. The request shall include a written statement specifying the name and address of the witnesses, and the reason for their testimony. If the request is for a document subpoena, it shall be accompanied by a statement which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued by the Executive Director, or the hearing officer upon the above showing of good cause. The party requesting the subpoena shall be responsible for its service on the appropriate persons and shall provide a copy to all opposing parties.
- D. Resolution of Preliminary Matters.** No later than seven days before the hearing date, any party may submit in writing preliminary matters for determination by the hearing officer or entity. If the complaint is to be heard by the full Commission, or by one or more Commissioners, preliminary matters shall be determined by the Commission Chair or his or her designee. The party submitting any preliminary matter for determination shall demonstrate that an attempt to resolve the preliminary matter was made with any opposing party and that copies of the request were delivered to any opposing party. The opposing

party shall be allowed to address a request to hear a preliminary matter. The hearing officer or the Commission Chair may determine preliminary matters upon submission of the written requests and without an oral hearing. Preliminary matters may include, but are not limited to, the following:

1. Whether multiple claims within a single complaint may be scheduled separately;
2. Whether similar complaints filed by separate individuals or entities may be joined;
3. Scheduling of witnesses;
4. Production of documents and issuance of subpoenas;
5. Scheduling of pre-hearing conferences;
6. Disqualification of any member of the Commission from participation in the hearing on the merits; and
7. Any other matters not related to the truth or falsity of the factual allegations in the accusation.

E. Conduct of Hearings; Submission of Written Materials. All materials to be considered at a hearing and not otherwise subpoenaed shall be submitted to the person(s) conducting the hearing, the Executive Director, and to all opposing parties no later than five days prior to the hearing. A written argument need not be submitted. Any written argument submitted shall not exceed 15 pages except upon prior approval of the person(s) conducting the hearing. When prior approval has not been granted, the person(s) conducting the hearing shall disregard all pages of a written argument beyond the 15th page.

F. Conduct of Hearings; Presentation of Testimony; Rules of Evidence. The hearing on the complaint shall be open to the public, provided that witnesses may be excluded at the discretion of the person(s) conducting the hearing. The person(s) conducting the hearing (Hearing Officer) shall brief the parties at the beginning of the hearing on applicable procedures. The Presiding Hearing Officer will conduct a fair and impartial hearing on the record, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order.

1. The hearing shall not be subject to the formal rules of evidence. Documentation and written testimony not in compliance with subsection (E) above may be excluded at the discretion of the person(s) conducting the hearing.
2. The Commission, and any individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.
3. Oral and written testimony shall be received under penalty of perjury. Although the proceedings are informal, testimony shall be brief and confined to the issues. Oral testimony may be excluded if duplicative, irrelevant, or disruptive to the conduct of the meeting. The person(s) conducting the hearing may ask questions of both sides to further clarify facts and viewpoints. Any party may bring a representative and/or interpreter to speak on his or her behalf, but the person(s) conducting the hearing retains the authority to put questions to any party.

4. If the hearing is conducted by a Commissioner, the following procedure applies: the Commission staff will be the first to call witnesses and present evidence of the violation. After the Commission staff presents its case, the Respondent will have the opportunity to call witnesses, present evidence and present argument. After both sides have presented their case, the hearing officer will open the hearing to take public testimony/ statements/comment. After public statements, either the Respondent or Commission staff or legal counsel will have an opportunity to present rebuttal information and present an oral summation of the case.
 5. Special accommodations for disabled persons may be made by providing the Executive Director 72 hours advanced notice.
 6. While there is no right to cross-examination, the parties shall be allowed the opportunity for rebuttal, and the parties, through the person(s) conducting the hearing, may ask questions of any witness. Except for raising preliminary matters as provided by these procedures, no party may communicate with any Commissioner or hearing officer regarding a complaint outside of the formal public hearing.
 7. If the Commission refers a matter to the California Office of Administrative Law, or another administrative law judge or entity, that entity's administrative process rules shall apply, with these complaint procedures providing guidance where there are gaps or questions in that administrative process.
 8. If the respondent fails to appear at a properly noticed hearing, Commission staff may proceed with presenting the Commission's case or may request to submit a written summary in lieu of a verbal presentation. The hearing officer may proceed with issuing findings and recommendations based solely on the information received from Commission staff.
- G. Record of Proceedings.** Proceedings shall be recorded on audio and/or videotape and made available upon request. A party electing to have a stenographer present to record the proceedings may do so upon providing at least three full business days' notice to Commission staff, and at that party's own expense.
- H. Continuation and Postponement of Hearings.** A postponement may be granted prior to the hearing only upon written request to the Commission Chair or hearing officer. At the hearing a matter may be postponed or continued only for good cause shown upon approval of the person(s) conducting the hearing.
- I. Action upon Conclusion of Hearing.** Upon hearing all evidence submitted at the hearing and any arguments by the parties or comments by the public, the hearing shall be closed.
1. If the complaint was heard by a hearing officer, single member of the Commission or Commission panel, he, she or they may take the matter under submission for a period of no more than 14 days before delivering to the Executive Director proposed Findings of Fact and Conclusions. Any deliberations by two or more Commissioners shall be done publicly. Upon receipt, the Executive Director shall deliver a copy of the proposed Findings of Fact and Conclusions to all parties.

ATTACHMENT 7

DRAFT

- a. No later than seven days after delivery, any party may submit a written request to the Commission Chair that that the person(s) who conducted the hearing be directed to re-hear all or portions of the complaint. The Commission Chair may accept the proposed Findings of Fact and Conclusions as correct unless the party making the request for re-hearing demonstrates that: 1) the proposed Findings of Fact contain one or more material error(s) of fact that necessarily affects one or more Conclusions, or 2) the Conclusions are not supported by substantial evidence.
 - b. The party making the request shall provide a complete copy of the written request to all other parties by the time the written request is submitted to the Commission Chair. Any other party shall have seven days from receipt of the written request to submit written opposition or support to the Commission Chair.
 - c. If the Commission Chair determines there are no grounds to rehear all or portions of the complaint, he or she shall notify the Executive Director, who shall place the proposed Findings of Fact and Conclusions on the agenda for approval at the next regular Commission meeting or any special meeting called by the Commission Chair.
 - d. If the Commission Chair determines that grounds exist to rehear all or portions of the complaint, the Commission Chair may specify what facts need to be established or reviewed, the form and under what circumstances any new evidence shall be received, and a timetable for re-submitting any revised Findings of Fact and Conclusions to the Executive Director.
 - e. The decision of the Commission Chair on any request for re-hearing shall be final.
2. After notifying all parties and the complainant of the date, time, and location of its meeting, the Commission shall either adopt the proposed Findings of Fact and Conclusions in their entirety or adopt the Findings of Fact and reach additional or different conclusions consistent with the Findings of Fact. The Commission's discretion to reach additional or different conclusions consistent with the Findings of Fact includes the full range of options from dismissal, with or without a warning letter, through assessment of maximum penalties, including other remedial measures.
 3. If the complaint was heard by the full Commission, the Commission shall decide, upon conclusion of the hearing and by an affirmative vote of a majority of Commissioners, whether a violation has occurred. The Commission may, in the alternative, direct the Executive Director to prepare a Findings of Fact and Conclusions for consideration at the next Commission meeting.
 4. The Commission shall determine that a violation of City law over which the Commission has jurisdiction has occurred only if the weight of the evidence shows that it was more likely than not that a violation has occurred.
 5. Any Findings of Facts and Conclusions adopted by the Commission may include orders for corrective, remedial or punitive actions (penalties and fines) in accordance

with the adopted findings and consistent with Commission authority. The Commission will make its findings and recommendations public.

- J. Decision and Order:** The Commission's decision and order on a complaint following a hearing or default proceeding shall be final and shall constitute closure of the administrative process for that complaint.

VIII. COURT REVIEW

Upon conclusion of the administrative process – whether via default or an administrative hearing, any party contesting a decision of the Commission may file suit for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction, within ninety days, as provided by law.

IX. COMMISSIONER RECUSAL

A Commissioner or a member of the Commission Staff shall recuse himself or herself from participating in the resolution of any complaint in which he or she has a conflict of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, or in which he or she, by reason of interest or prejudice, cannot perform his or her duties in an impartial and unbiased manner.

X. REPEAL, SEVERABILITY, CONFLICT, AND COMMISSION AUTHORITY

- A. Repeal.** Upon adoption of these procedures, all prior procedures regulating the administration of complaints filed with the Commission including are hereby repealed.
- B. Severability.** If the legislature, court or other entity determines that any portion of these rules is invalid, the other remaining rules shall not be affected and will continue in effect.
- C. Conflict with Law.** To the extent a law or regulation set forth above contains specific procedures or rules that conflict with these General Complaint Procedures, the more specific provisions provided in the laws or regulations set forth above shall control.
- D. Commission Authority.** Nothing in these complaint procedures limits the Commission's ability to review, refer, make recommendations, or take other actions regarding an issue that does not fall within its enforcement authority, but which may fall within its general authority to ensure fairness, openness, honesty, and integrity in City government.

DEADLINE: OCT. 25, 2019

ATTACHMENT 8

APPLY FOR A SEAT ON THE PUBLIC ETHICS COMMISSION

**BE A PART OF ACCOUNTABLE
GOVERNMENT!**

Want to learn more?
Visit: www.oaklandca.gov/pec

Apply online:
<https://tinyurl.com/y5jymd8y>

For inquiries, please contact:
(510) 238-3593 or
ethicscommission@oaklandca.gov.



Photo: Greg Lybar



PASSIONATE ABOUT GOVERNMENT INTEGRITY? JOIN OUR TEAM!

The Public Ethics Commission is an independent commission made up of Oakland residents and charged with ensuring fairness, openness, honesty and integrity in Oakland City government. The Commission has transformed significantly in recent years toward becoming a guiding light and a watchdog to ensure compliance with government ethics, campaign finance, lobbying, and transparency laws. The Commission:

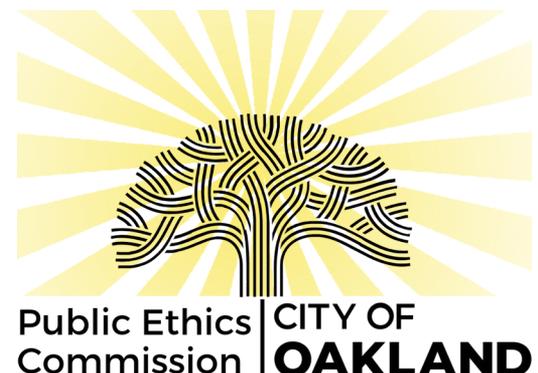
- Educates residents and City staff on ethics-related issues
- Conducts investigations, audits and public hearings
- Imposes fines and penalties as part of enforcement activities
- Provides policy direction to Commission staff

HELP LEAD THE PUBLIC ETHICS COMMISSION TO EVEN GREATER IMPACT

Want to learn more?
Visit: www.oaklandca.gov/pec

Apply online:
<https://tinyurl.com/y5jymd8y>

For inquiries, contact: (510) 238-3593 or
ethicscommission@oaklandca.gov.



CITY OF OAKLAND PUBLIC ETHICS COMMISSION

Jodie Smith (Chair)
James E.T. Jackson (Vice-Chair)
Jill M. Butler
Gail Kong
Nayeli Maxson Velázquez
Jerett Yan



Whitney Barazoto, Executive Director

Public Ethics Commission Commissioner Vacancy Announcement September 20, 2019

The City of Oakland Public Ethics Commission (PEC) is now accepting applications to fill two PEC-appointed Commissioner positions, to begin in January 2020, as part of its seven-member volunteer citizen board. Applications are due on or before **Friday, October 25, 2019.**

Background

The Public Ethics Commission is a seven-member board of volunteers dedicated to the City Charter goal of ensuring ***fairness, openness, honesty, and integrity*** in City government. Guided by duties and authority set out by City ordinance, the Commission works to achieve its goals through a three-pronged approach that focuses on prevention, enforcement, and collaboration. Specifically, the following local laws are the foundation of the Commission's responsibilities in three general areas – campaign finance, ethics, and transparency:

- Oakland Government Ethics Act
- Oakland Campaign Reform Act
- Conflict of Interest Code
- Sunshine Ordinance
- Limited Public Financing Act
- Lobbyist Registration Act
- Oakland's False Endorsement in Campaign Literature Act

Commission Members

Each member of the Commission must be an Oakland resident who is registered to vote in Oakland. Three Commissioners are appointed respectively by the Mayor, City Attorney, and City Auditor. The remaining four are appointed by the full Commission on a rotating schedule. Once appointed, a Commissioner is expected to participate in monthly meetings and occasional subcommittee meetings to provide guidance to staff in the conduct of the Commission's business, make final decisions on enforcement matters, and serve as an adjudicative body/hearing officer (neutral judge) in cases that require an administrative hearing.

Commissioners are appointed for a term of 3 years, and during his or her tenure a Commissioner may not do any of the following:

1. Have an employment or contractual relationship with the City during the member's tenure and for one year after the date of separation;

ATTACHMENT 8

2. Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for one year after the date of separation;
3. Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, or participate in or contribute to an Oakland municipal campaign;
4. Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

Commissioners receive no compensation and may serve no more than two consecutive three-year terms.

Selection Process

Following the application deadline, a subcommittee of three Commissioners will review applications and conduct oral interviews of candidates in early to mid-November. The subcommittee will select the top several candidates who will be introduced and briefly interviewed by the full Commission at the Commission's **December 2, 2019**, evening meeting. The term begins **January 22, 2020** and expires **January 21, 2023**.

Desired Skills and Abilities

Commissioners should represent a variety of backgrounds and professions so that the Commission, as a whole, provides a well-rounded perspective on Oakland City government, law, community building and engagement, leadership, program administration, enforcement, and policies related to campaign finance, ethics and transparency. Specifically, a Commissioner should be able to do the following:

- Read, analyze, and understand written information and make decisions based on the information
- Listen to public input, assess community needs, and make decisions about how to best accomplish the Commission's goals
- Understand the context in which the Commission operates within City government and the broader community
- Communicate orally during a public, televised meeting
- Collaborate effectively with other Commissioners, the public, City officials, and staff
- Interpret rules, laws and policies and objectively apply a rule to a particular set of facts
- Identify personal conflicts of interest or other factors that could lead to actual or perceived improper influence
- Serve with fairness, openness, honesty, and integrity
- Complete a *Form 700 – Statement of Economic Interests* annually, disclosing information such as one's financial interests in investments, property, income, and gifts (to view a copy of a Form 700, contact Commission staff or visit www.fppc.ca.gov)
- Adhere to all Commission-related laws and policies, including but not limited to the Oakland City Charter, Oakland Government Ethics Act, Oakland Sunshine Ordinance, Commission Complaint Procedures, and Commission Operations Policies (by-laws).
- Must attend at least one Public Ethics meeting before appointment. The next meetings are **October 7, and November 4, 2019**, at 6:30 p.m. at City Hall.

For More PEC Information

For more about the Public Ethics Commission, visit us online at www.oaklandca.gov/pec. We also suggest you attend a City Council meeting in person or watch one on local television (Channel 10). For more information about the Commission or this position, contact Whitney Barazoto at wbarazoto@oaklandca.gov or (510) 238-6620.

ATTACHMENT 8

CITY OF OAKLAND PUBLIC ETHICS COMMISSION

Commissioner Application



Name: _____

Mailing Address: _____

Daytime Phone: _____ Evening Phone: _____

Email: _____ City Council District: _____

Are you an Oakland resident? Yes No Years of Residency in Oakland: _____

List any City of Oakland Boards or Commissions (including this Commission) on which you currently or have previously served:

Please answer yes or no to all the following questions:

1. Are you currently employed by the City or have any direct and substantial financial interest in any work, business, or official action by the City? Yes No
2. Are you currently or planning to seek election to any other public office, participate in, or contribute to an Oakland municipal campaign? Yes No
3. Are you currently or planning to endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election? Yes No
4. Are you an Oakland lobbyist or required to register as a lobbyist, or do you receive gifts or compensation from an Oakland lobbyist? Yes No
5. Have you attended a Public Ethics Commission meeting? Yes No If yes, when? _____
6. List any languages other than English that you speak fluently. _____
7. How did you hear about this vacancy? _____

List the names, addresses and telephone numbers of two references:

1. Name: _____
Address: _____
Phone: _____ Email: _____
2. Name: _____
Address: _____
Phone: _____ Email: _____

By signing below, I certify that all of the information included in this application and supporting materials is true to the best of my knowledge. I also understand that this application packet is a public record, subject to public inspection, and that if I proceed to the final interview with the Commission, the packet will be distributed publicly as part of the selection process.

Signature: _____ Date: _____

See Supplemental Questions on next page →

ATTACHMENT 8

Supplemental Questions

On a separate page, please answer the following four questions:

1. **Why do you want to serve on the Public Ethics Commission?**
2. **What skills and experience will you bring to the Commission?** (Include any governmental experience, activities with civic and business organizations, neighborhood groups, or any other experience that would contribute to your effectiveness as a Commissioner.)
3. **What issues, projects, or goals would you like to pursue while serving on the Commission?**
4. **What do you think are the City's most pressing ethics, campaign finance, or transparency challenges?**
5. **What else would you like the subcommittee to know as your application is considered?**

Applications are due by 5:00 p.m. on **Friday, October 25, 2019**, and must include the following materials:

1. Signed Application.
2. Answers to the Supplemental Questions
3. Your resume

Applications may be submitted by mail, email or fax to PEC staff:

Public Ethics Commission
Attn: Whitney Barazoto
1 Frank Ogawa Plaza, Room 104
Oakland, CA 94612
ethicscommission@oaklandca.gov
Fax: (510) 238-3315

For questions, please call (510) 238-3593.
Web: www.oaklandca.gov/pec

ATTACHMENT 9



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Nayeli Maxson Velázquez
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: September 27, 2019
RE: Disclosure and Engagement Report

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

Improving Filing Tools and Access to Disclosure Data

Lobbyist e-filing – Commission staff began meeting regularly with the Information Technology Department (ITD) this summer to build an online lobbyist filing system utilizing the [OakApps](#) portal. OAKAPPS offers the residents of Oakland secure and private online access to participating City programs and services. With one OAKAPPS account, users can sign into multiple applications, eliminating the need to provide duplicate information to city services. The PEC-ITD team reached its first milestone in September, completing the lobbyist portion of our PEC database. Moving to a single database increases efficiency in processing registrations and quarterly disclosure reports and enables automation for publication of the data. The team is now focused on the user-side of the filing process, mainly, the design for the webpages where lobbyists register and submit their reports. Our approach is user-centered and intended to produce an application that makes the compliance simple and convenient while providing accurate and timely data to the public. The project is on schedule for beta testing by November.

Open Data and Transparency Working Group – In July 2019, the City Administrator's Office convened an Open Data Committee comprised of a group of core City staff which included PEC staff selected by the Office of the City Administrator. The Open Data Committee aims to meet at least quarterly to inform and assist in implementing parts of the City's Open Data plan, including the following:

- Developing regulations establishing the technical requirements and standards for publishing Open Data sets in raw or unprocessed formats;
- Contributing to an ongoing inventory of the City's data;

- Identifying “high value” and “high interest” data sets to be prioritized for public release and dissemination;
- Determining methods of community engagement and outreach.

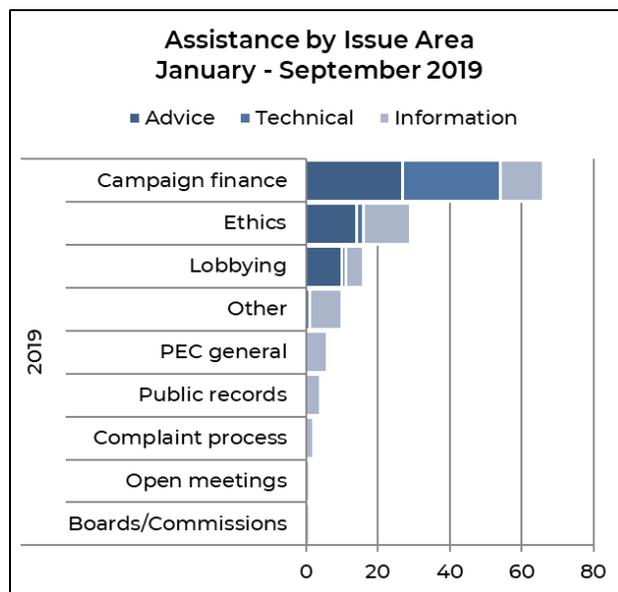
Participation in the working group provides a valuable opportunity to advance the PEC’s collaborative transparency approach sharing City data, engage with key City staff in productive dialogue, gain support for PEC data projects, and contribute to innovative solutions.

Open Disclosure – [Open Disclosure](#) is a website that helps Oaklanders understand the role of money in their local politics using campaign finance data collected by the Public Ethics Commission. By analyzing campaign finance disclosures for candidates seeking public office, Open Disclosure presents a user-friendly overview of who is raising money, from where, and how much. Open Disclosure is developed by [OpenOakland](#) volunteers in partnership with Commission staff. Candidates are already filing statements of intent to run for next year’s Oakland election, and the Open Disclosure team is beginning planning for the Open Disclosure 2020 update. Meanwhile, team members continue to work on several side projects focused on creating more user-friendly access to Oakland disclosure data including daily email alerts to new Oakland ethics-related filings, including campaign finance statements, lobbyist reports, payments at the behest of elected officials, and statements of economic interest by public officials and a survey to gain insight into how people currently use Oakland disclosure data and what new features to prioritize.

Engagement and Outreach

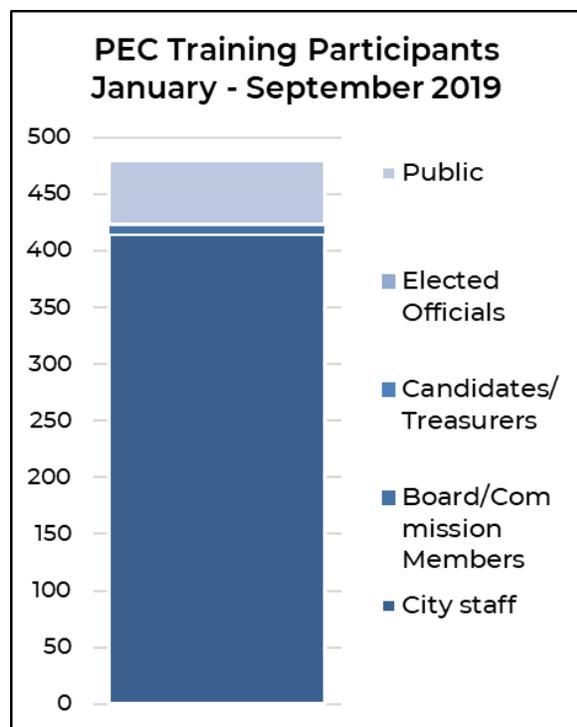
Advice and Technical Assistance – To date, Commission staff has fielded 135 requests for information, informal legal advice, or technical assistance this year.

Ethics Training – Staff continued working with elected officials and their staff to ensure their completion of the PEC’s online Ethics Training for Form 700 Filers. The training, specifically for Form 700 filers, includes an extensive and interactive online learning module that provides case studies, hypothetical scenarios, and short quizzes to engage public servants and increase comprehension of local and state ethics laws. To date, 10 out of 11 City elected officials as well as members of their staff have completed the training.



Staff also corresponds with local elected officials throughout the year to ensure compliance with AB 1234, the state law requiring all local officials to complete ethics training every two years. To date, six out of eleven elected officials have submitted a current certificate of completion. Four officials elected in November 2018 have until January 2020 to complete the training. Only one official’s certification is past due. Staff posts the compliance list on the PEC [website](#).

On September 26, staff facilitated an ethics discussion at the City’s quarterly Supervisory Academy. The discussions are intended to allow for more meaningful dialogue concerning ethical values in



decision making with a focus on identifying ethical dilemmas that City staff face in carrying out their daily duties.

Staff also continued 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. Since the last education report, staff has trained a total of 42 new employees on GEA provisions.

Board and Commission Compliance – As part of a Sunshine compliance project, Staff conducted a series of interviews with several support staff for City boards and commissions in conjunction with an online agenda posting audit. The purpose of the audit was to ensure that all boards and commissions are following state and local transparency requirements per California’s Brown Act and the Oakland Sunshine Ordinance. To date, 26 of 34 City boards and commissions are meeting the online

agenda posting requirements. Staff is compiling a summary of its findings and has been working with board support staff to obtain compliance.

Newsletter – Staff prepared the eighth issue of the PEC newsletter **Public Trust** for publication in October. The latest newsletter covers the expanded breadth and efficacy of the enforcement division, PEC Commissioner recruitment, and highlights recent PEC program activities.

Website – The City’s Digital Services department is working on service categories to improve the navigability of the City website. PEC staff collaborated with Digital Services to design and conduct user research to test menu labels to make it much easier to find our resources. Test results will be used by Digital Services to provide a website service menu so PEC client groups such as candidates, lobbyists, and residents can quickly locate PEC-related services. Testing will include a brief online trial as well as longer in-person interviews. Anyone interested in volunteering for upcoming user tests is encouraged to contact ethicscommission@oaklandca.gov and include “user testing” in the subject line.

Social media – Each month, Commission staff selects focus areas to promote in posts to the Commission’s social media accounts. August and September focused on introducing Commissioners, raising awareness of PEC accomplishments, and Commissioner recruitment.

ATTACHMENT 10



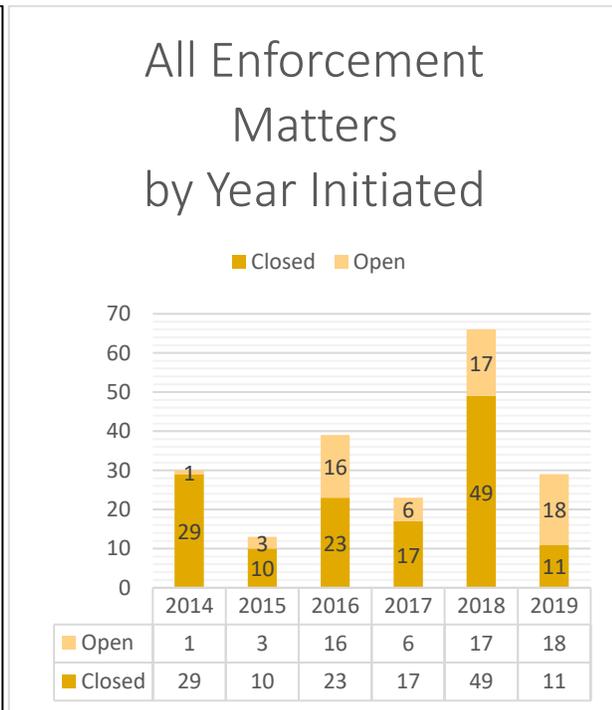
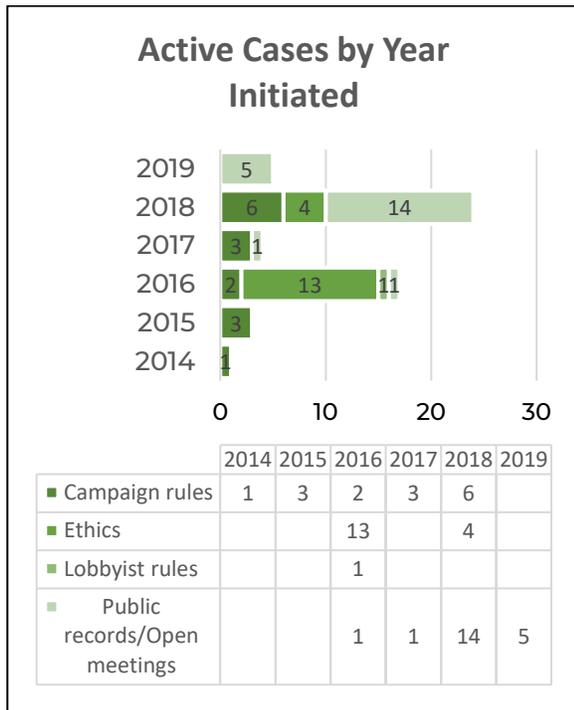
Jodie Smith, Chair
 James E.T. Jackson, Vice-Chair
 Jill M. Butler
 Gail Kong
 Nayeli Maxson Velázquez
 Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Kellie Johnson, Enforcement Chief
 DATE: September 23, 2019
 RE: Enforcement Program Update

Current Enforcement Activities:

Since the last Enforcement Program Update on July 3, 2019, Commission staff received one formal complaint and three requests for mediation. This brings the total Enforcement caseload to 14 matters in the intake or preliminary review stage, 9 matters under active investigation, 19 matters under post-investigation analysis, and 6 matters in settlement negotiations or awaiting an administrative hearing. Enforcement’s caseload also includes 20 ongoing records requests for mediation.



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.

Complaint Procedures:

Commission Staff will present for review proposed revisions to the PEC's enforcement procedures to ensure they are clear, reflective of best practices in our industry, and aligned with the Commission's vision for swift, effective, and fair enforcement. Thank you to members of the regulated community and the public who emailed Commission staff with suggested changes to our PEC Complaint Procedures.

Summary of Cases:

Since the last Enforcement Program Update in July 2019, the following status changes occurred:

1. *In the Matter of Libby Schaaf for Mayor* (Complaint No. 18-19.1): Staff received this informal complaint on July 13, 2018, conducted a preliminary review, intake, investigation and settlement discussions. Stipulation, Decision and Order was signed by the respondent on June 7, 2019. At the July meeting the Commission referred the matter back to Enforcement for further negotiation. (See Action Items)
2. *In the Melanie Shelby* (Complaint No. 15-03): A formal complaint was filed in January 2015. Staff conducted a preliminary review, intake, investigation and issued a warning letter. The Staff recommends that the Commission issue a warning letter and close the matter with no further action. (See Action Items)
3. *In the Matter of Katano Kasaine, Director of the Department of Finance* (Complaint No. M2019-04): On March 28, 2019, Staff initiated mediation pursuant to the Oakland Sunshine Ordinance. At the time Staff initiated mediation each of the Requestor's public records requests were several weeks past due. Eventually, the requestor received multiple responsive documents and the request was closed by the Finance Department. Staff recommends that the Commission close the mediation without further action (See Action Items).
4. *In the Matter of Katano Kasaine, Director of the Department of Finance* (Complaint No. M2019-12): On June 26, 2019, Staff initiated mediation pursuant to the Oakland Sunshine Ordinance. At the time Staff initiated mediation each of the Requestor's public records requests were past due. After mediation commenced, the requestor received multiple responsive documents and the request was closed by the Finance Department. Staff recommends that the Commission close the mediation without further action (See Action Items).

ATTACHMENT 11



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Nayeli Maxson Velázquez
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: September 26, 2019
RE: Executive Director's Report

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities since the Commission's last regular meeting that are not otherwise covered by other staff program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and activities for 2019-20 for each program area.

OCRA Legislation Implementation

In July 2019, City Council adopted legislation to impose a new requirement on City staff to disclose campaign contribution solicitations the City staff makes on behalf of any campaign committee to anyone who contract with or is seeking to contract with the City employee's department and that results in a contribution of \$5,000 or more to the committee. The intent of the recent legislation is to provide transparency to significant campaign-related activities by City staff who may be in a position to leverage their City position to benefit a candidate, ballot measure, or other committee. Commission staff created a form for submission of this information by City staff as well as educational materials to spread the word about the new requirement.

Commissioner Recruitment

The Commission has opened recruitment for two PEC-appointed Commissioner positions that become vacant in January, 2019. Staff have begun marketing for these positions, sharing information via email, library distribution, and social media. Applications are due October 25, 2019. The Commission will create a recruitment subcommittee in October, will conduct resume reviews and interviews in November, and plans to bring new candidates for final selection at the December 2018 Commission meeting.

International Association of Public Participation Conference

In early September, Commission staff attended a 2-day public engagement workshop designed for people working in and around government. Conference topics included public engagement as an organizational value, building relationships as the focus of public engagement rather than gathering data, making government more visible and understood, designing non-meeting centric community engagement activities, identifying and overcoming barriers to participation, and engaging residents through citizen academies and neighborhood leadership programs. Racial equity and inclusion was a major theme across the conference, with many cities across the United States focusing on this area.

Attachment: Commission Programs and Priorities

ATTACHMENT 11

ATTACHMENT 11

PUBLIC ETHICS COMMISSION Programs and Priorities 2018-19

Program	Goal	Desired Outcome	Key Projects for 2019-20
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. Government Integrity Data partnership
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) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Board/Commission member/liaison support/guidance 3. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2) 4. Sunshine and Lobbyist education materials
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: -City staff/officials -people doing business with the City 2. Sustain/enhance general PEC social media outreach 3. PEC Roadshow – focus on CF project outreach (Commissioners) 4. Engage Boards/Commissions regarding Sunshine requirements (ensure/review agenda postings online)
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. Lobbyist Registration – pilot new e-filing system, create online open data format for public accessibility 2. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility 3. Initiate/develop project plan to establish contractor database 4. Open Disclosure 2020 – campaign data visualization project 5. Government Integrity Data Project planning and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Focus on ethics violations, proactive investigations 2. Conduct complaint intakes within 2 weeks 3. Collaborate with other government law enforcement agencies

ATTACHMENT 11

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	4. Conduct audits to identify common, across-the-board compliance issues
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct hearings on two cases 2. Complete City ticket cases 3. Expedite Sunshine Mediations 4. Amend Complaint Procedures 5. Resolve all 2014 and 2015 cases 6. Streamline and expand enforcement systems to incorporate broader tools
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