

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, November 4, 2019
Hearing Room 1
6:30 p.m.



Commissioners: Jodie Smith (Chair), James E.T. Jackson (Vice-Chair), Jill M. Butler, Gail Kong, Joseph Tuman, 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. October 1, 2019 Regular Meeting Minutes ([Attachment 1 – Minutes](#))
- 5. *In the Matter of Dana King for City Council 2014; Case No. 15-03(b)*.** The Commission received a complaint on January 5, 2015, alleging that Dana King for City Council 2014 campaign committee received contributions from Melanie Shelby and from Gray Greer, Shelby & Vaughn LLC that, together, violated the Oakland Campaign Reform Act contribution limit. Commission staff reviewed the matter and found one reported contribution over the limit due to personal and business contributions being aggregated under the law. Staff recommends that the Commission close the matter with an advisory letter to memorialize the violation and educate the candidate who has since closed the campaign committee. ([Attachment 2 – Staff Memorandum](#))
- 6. *In the Matter of Friends of Desley Brooks for City Council 2014; Case No. 15-04*.** The Commission received a complaint on January 5, 2015, alleging that the Friends of Desley Brooks for City Council 2014 campaign committee received contributions from Melanie Shelby and from Gray Greer, Shelby & Vaughn LLC that, together, violated the Oakland Campaign Reform Act contribution limit. Commission staff reviewed the matter and found one reported contribution over the limit due to personal and business

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contributions being aggregated under the law. Staff recommends that the Commission close the matter with an advisory letter to memorialize the violation and educate the candidate who has since closed the campaign committee. ([Attachment 3 – Staff Memorandum](#))

7. ***In the Matter of the City of Oakland Finance Department; Case No. 18-37M.*** On October 17, 2016, Staff initiated mediation pursuant to the Oakland Sunshine Ordinance. The requester alleged that the City Finance Department unlawfully redacted documents that were requested pursuant to the Sunshine ordinance. Staff conducted a preliminary review of the allegations and determined that the requester is entitled to and received responsive documents except for those that were lawfully marked confidential or redacted pursuant to O.M.C. 5.04.060. Staff recommends that the Commission close the mediation without further action ([Attachment 4 – Mediation Summary](#)).
8. ***In the Matter of the Oakland Police Department; Case No. M2019-13.*** On July 23, 2019, Staff initiated mediation pursuant to the Oakland Sunshine Ordinance. At that time, each of the Requestor’s public records requests were past due. After mediation commenced, the requestor received a notice from OPD that the request was closed and denied because, pursuant to California Government Code 6254 (f), the case is pending/still active/ or under appeal and may be recharged. Staff recommends that the Commission close the mediation without further action ([Attachment 5 – Mediation Summary](#)).
9. **Commission Complaint Procedures.** Chair Smith and Commission staff present an updated draft revision to the Commission’s Complaint Procedures that incorporates Commissioner comments from the October 1, 2019, Commission meeting. This revision to the Complaint Procedures aims to align references to Commission staff with the Commission’s current staffing structure and to add new sections creating a diversion program, default procedures for a respondent who waives hearing or 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 and will consider adopting the procedures as final. ([Attachment 6 – Revised Draft Complaint Procedures, with recent edits highlighted](#); [Attachment 7 – Revised clean version with recent edits and earlier tracked changes accepted](#); [Attachment 8 – Revised Draft Complaint Procedures, as posted with tracked changes at the October 1, 2019, meeting](#))

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DISCUSSION ITEMS

- 10. City Attorney Presentation: Rules Regarding Commissioner and Staff Work on Ballot Measure Activities.** Deputy City Attorney Trish Hynes will provide an overview of the legal restrictions regarding Commissioner and Staff involvement in ballot measure research, drafting, communications, and advocacy. These include City Charter section 603(e) (Commissioner Qualifications and Restrictions), as well as Government Ethics Act section 2.25.060 (Misuse of City Resources or Position).
- 11. 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
 - c. **Commissioner Recruitment Subcommittee** (ad hoc) – James Jackson, Gail Kong, and Jodie Smith

INFORMATION ITEMS

- 12. Public Ethics Commission Regular Meeting Schedule 2020.** The Commission will review a proposed schedule of regular Commission meetings planned for 2020. ([Attachment 9 – PEC Meeting Schedule 2020](#))
- 13. Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Attachment 10 – Disclosure Report](#))
- 14. Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Attachment 11 – Enforcement Report](#))

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- 15. Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Attachment 12 – 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.



10/25/2019

Approved for Distribution

Date



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ATTACHMENT 1

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6:30 p.m.

DRAFT



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

Commission Staff: 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 6:32 p.m.

Members present: Commissioners Smith, Jackson, Kong, and Yan. Commissioner Maxson Velázquez arrived at 6:34 p.m.

Commissioner Butler was absent.

Staff present: Whitney Barazoto, Suzanne Doran, and Kellie Johnson.

City Attorney Staff: Trish Hynes, Deputy City Attorney

2. Staff and Commission Announcements.

Commissioner Smith announced two commission seats open for recruitment.

3. Open Forum.

There was one public speaker.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

- a. August 5, 2019 Regular Meeting Minutes

Commissioner Jackson moved, and Commissioner Yan seconded to approve the August 5, 2019 Regular Meeting Minutes

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The motion passed 4-0.

Commissioner Kong abstained since she was not present at that meeting.

There were no public speakers.

5. In the Matter of Libby Schaaf for Mayor, LLC; Case No. 18-19.1.

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 recommended that the Commission adopt the revised stipulation.

Commissioner Maxson Velázquez moved and Commissioner Jackson seconded to approve the updated stipulation.

The motion passed 5-0.

It was brought to attention that public comment had not been taken.

Chair Smith moved to cure and correct motion to allow public comment.

There were no public speakers.

Commissioner Maxson Velázquez moved and Commissioner Jackson seconded to approve the updated stipulation.

The motion passed 5-0.

6. In the Matter of Melanie Shelby; Case No. 15-03.

Kellie Johnson, Enforcement Chief, presented the matter to the Commission and recommended that the Commission issue a warning letter to resolve this matter. Commissioners discussed the recommendation.

There was one public speaker.

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Commissioner Kong moved, and Commissioner Jackson seconded to accept the recommendation. The motion passed 5-0.

7. In the Matter of Katano Kasaine, Director of the Department of Finance; Case No. M2019-04.

Staff recommended that the Commission close this mediation without further action.

There was one public speaker.

Commissioner Jackson moved and Commissioner Maxson Velázquez seconded to accept the recommendation. The motion passed 5-0.

8. In the Matter of Katano Kasaine, Director of the Department of Finance; Case No. M2019-12.

Staff recommended that the Commission close this mediation without further action. The requestor, Alexis Schroeder, commented on the matter.

There was one public speaker.

Commissioner Jackson moved and Commissioner Maxson Velázquez seconded to accept the recommendation. The motion passed 5-0.

DISCUSSION ITEMS

9. Commission Complaint Procedures.

Chair Smith and Commission staff presented a draft revision to the Commission's Complaint Procedures to align the procedures 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.

The matter will be brought back for approval from the Commission.

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Commissioners discussed the procedures and asked questions of staff.

There was one public speaker.

10. Reports on Subcommittees and Commissioner Assignments.

Chair Smith created a new *ad hoc* Recruitment Subcommittee. Members are Commissioner Smith, Kong and Jackson.

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

Commissioner Maxson Velázquez gave an update. Three workshops are being planned which will be co-hosted by the ACLU of Northern California, the Alameda County Labor Council, Ella Baker Center, and Alliance of Californians for Community Empowerment (ACCE).

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

Commissioner Kong gave an update, and mentioned that she reached out to Seattle to get information about organizational funding and support for public engagement related to their voucher system.

INFORMATION ITEMS

11. Commissioner Recruitment.

The Commission is recruiting to fill two Commission-appointed vacancies that will occur in January 2020. The application packet is online.

There were no public speakers.

12. Disclosure and Engagement.

Suzanne Doran, Lead Analyst, referred to her written report of recent education, outreach, disclosure and data illumination activities.

There was one public speaker.

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13. Enforcement Program.

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

There were no public speakers.

14. Executive Director's Report.

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

There were no public speakers.

The meeting adjourned at 8:46 p.m.

CITY OF OAKLAND
Public Ethics CommissionWhitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Kellie F. Johnson, Enforcement Chief
 Simon Russell, Investigator
 DATE: October 21, 2019
 RE: Case No. 15-03 (b); *In the Matter of Dana King for City Council 2014*

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 two \$700 contributions (the legal maximum at the time) to City Council candidate Dana King. According to the complainant, these contributions that the *Dana King for City Council 2014* campaign committee received should have been aggregated under the Oakland Campaign Reform Act (“OCRA”). As a result, the King 2014 campaign received 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 Another scenario (a “direction and control” theory) states that the contributions of an entity whose

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 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-subsidary relationship. *Id.*

ATTACHMENT 2

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.

Dana King was a 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 King campaign on October 3, 2014.

The contributions at issue in this case are the following:

Date Made	Amount	To:	From:
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.

The King campaign was terminated on June 30, 2015.

PENALTY ANALYSIS

Count 1: Receiving 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 \$700, which brings the baseline penalty to \$1,700. The Commission would generally seek forfeiture of the unlawful contribution amount but in this case, the Dana King campaign has been terminated and the account closed.

⁴ OMC § 3.12.080(C).

ATTACHMENT 2

The penalty guidelines also state that an advisory or warning letter may be used for any minor violations without any aggravating circumstances. An advisory 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.”

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;
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 and the age of the case may detrimentally impact the Staff’s ability to complete a review of the allegations in light of the Respondent’s terminated campaign.

VIOLATIONS

Count 1: Receiving a Campaign Contribution Over the Legal Limit

Melanie Shelby and, Gray, Greer, Shelby & Vaughn LLC, made contributions totaling \$1400 to *Dana King for City Council 2014*, a committee controlled by a candidate for city office who had accepted the voluntary expenditure ceiling for the November 2014, election. Because Melanie Shelby, controlled and directed the contributions for the entity, both contributions made by those entities are aggregated for the purposes of the contribution limit. As such, by receiving contributions totaling \$1400 from Melanie Shelby and her company, *Dana King for City Council 2014* received \$700 in excess of the \$700 contribution limit.

CONCLUSION

ATTACHMENT 2

For the November 2014 election, the maximum amount that a candidate-controlled campaign committee that adopted OCRA's expenditure ceiling could receive from a single person was \$700 per election.⁵

Here, staff recommends issuing an advisory letter to the King Campaign rather than pursuing a monetary fine, in the interest of justice. Prior to 2014, there had been a lack of training for candidates regarding campaign finance rules. All of the contributions were reported publicly by the committees; there was no intent to conceal. The amount of time that has passed since the alleged violations occurred, coupled with the fact that King is no longer 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 the investigation or interviews of the King campaign in this case were due to bad-faith actions of either party.

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

RECOMMENDATION

Staff recommends issuing an advisory letter to Dana King Campaign for receiving the aggregate contributions.

⁵ Oakland Municipal Ordinance § 3.12.050(B)(F).

CITY OF OAKLAND
Public Ethics CommissionWhitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Kellie F. Johnson, Enforcement Chief
 Simon Russell, Investigator
 DATE: October 21, 2019
 RE: Case No. 15-04; *In the Matter of Friends of Desley Brooks for City Council 2014*

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 two \$700 contributions (the legal maximum at the time) to City Councilmember Desley Brooks. According to the complainant, these contributions that the Desley Brooks campaign received should have been aggregated under the Oakland Campaign Reform Act (“OCRA”). As a result, the Brooks 2014 campaign received 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 Another scenario (a “direction and control” theory) states that the contributions of an entity whose

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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 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-subsidary relationship. *Id.*

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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.

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

In an interview with the PEC, Shelby confirmed that she or GGSV made all of the contributions at issue in this case.

The Brooks campaign was terminated in 2019.

PENALTY ANALYSIS

Count 1: Receiving 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 \$700, which brings the baseline penalty to \$1,700. The Commission would generally seek forfeiture of the unlawful contribution amount but in this case, the Desley Brooks Campaign has been terminated and the account closed.

⁴ OMC § 3.12.080(C).

ATTACHMENT 3

The penalty guidelines also state that an advisory or warning letter may be used for any minor violations without any aggravating circumstances. An advisory 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.”

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;
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 and the age of the case may detrimentally impact the Staff’s ability to complete a review of the allegations in light of the Respondent’s terminated campaign.

VIOLATIONS

Count 1: Receiving a Campaign Contribution Over the Legal Limit

Melanie Shelby and Gray, Greer, Shelby & Vaughn LLC, made contributions totaling \$1400 to *Friends of Desley Brooks for City Council 2014*, a committee controlled by a candidate for city office who had accepted the voluntary expenditure ceiling for the November 2014, election. Because Melanie Shelby controlled and directed the contributions for the entity, both contributions made by those entities are aggregated for the purposes of the contribution limit. As such, by receiving contributions totaling \$1400 from Melanie Shelby and her company, *Desley Brooks for City Council 2014* received \$700 in excess of the \$700 contribution limit.

CONCLUSION

ATTACHMENT 3

For the November 2014 election, the maximum amount that a candidate-controlled campaign committee that adopted OCRA's expenditure ceiling could receive from a single person was \$700 per election.⁵

Here, staff recommends issuing an advisory letter to the Brooks Campaign rather than pursuing a monetary fine, in the interest of justice. Prior to 2014, there had been a lack of training for candidates regarding campaign finance rules. All of the contributions were reported publicly by the committees; there was no intent to conceal. The amount of time that has passed since the alleged violations occurred, coupled with the fact that Brooks is no longer 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 the investigation or interviews of the Brooks campaign in this case were due to bad-faith actions of either party.

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

RECOMMENDATION

Staff recommends issuing an advisory letter to the *Friends of Desley Brooks for City Council 2014* campaign committee for receiving the aggregate contributions.

⁵ Oakland Municipal Ordinance § 3.12.050(B)(F).



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: October 23, 2019
RE: *In the Matter of the City of Oakland Finance Department (Case No. 18-37M);*
Mediation Summary

I. INTRODUCTION

On October 16, 2018, the Commission received a request for mediation from the requestor alleging that an employee from the Finance Department improperly redacted a business tax statement. The mediation request had the business tax statement attached but did not identify the record request where the City provided the statement. The requestor stated in her mediation request, “ please note that I am not interested in seeing the employee disciplined, but in getting confirmation from the PEC that this information, which is available in the Assessor database, is public and should not have been redacted.”

Staff determined that the Requester is entitled to the information on the statement identified in O.M.C. 5.04.060 that is not confidential. In this case, the Requester received this public information in an excel spreadsheet in response to a separate public records request 18-2484 as part of Staff’s mediation efforts in PEC Case No. 18-24M. In response to that mediation, the Requester confirmed that she was satisfied that the City provided all responsive records.

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

Failure to Release Documentary Public Information. Sunshine Act section 2.20.190 states that the release of public records by a local body shall be governed by the California Public Records Act (Government Code Section 6250 *et seq.*) ("CPRA") in any particulars not addressed by Article III of the Sunshine Act (which governs the release of public information).

CPRA section 6253 states that non-exempt public records shall be made "promptly" available to a requestor, except with respect to public records exempt from disclosure by express provisions of law.

Business Tax Statement. Oakland Municipal Code (O.M.C.) section 5.04.090 requires every person who is conducting business activities to file with the Business Tax Section of the Department of Finance a "written statement setting forth the then applicable factor or factors that constitute the measure of the tax ... The written statement provided for herein shall be on a form prescribed by the Business Tax Section and shall include a declaration substantially as follows: I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct."

O.M.C. section 5.04.140 states that "statements filed pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to public inspection." O.M.C. section 5.04.60 provides that the following information from these statements is subject for public inspection: (1) the name and address of the business; (2) The name of the owner of the business, if such name is shown on the records filed pursuant to this chapter; (3) Industrial classification; (4) expiration date; and (5) account number.

III. SUMMARY OF FACTS

Once we received the complaint on October 16, 2018, Staff contacted the requester to seek additional information about the complaint and retrieve the case number for the requester's public records request. The requester stated during an oral interview on October 17, 2018 that they did not remember which records request the City responded to by providing the attached business tax statement. Staff conducted a search of all record requests using queries such as "rental property business tax" and "2015 business tax" but was unable to locate the request in which the attached statement had been produced in response.

The business tax statement was sent to a property owner in 2015, and informed the owner that the Department of Finance identified their property as a "possible" rental property; the statement required the property owner to state the use of the property if it was not a rental property and to sign the notice below the following statement: "I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct/complete."

The business tax statement attached to the mediation request was filed pursuant to chapter 5.04 of the Oakland Municipal Code and therefore is labelled confidential per O.M.C. 5.04.140. Because the

⁵ Complaint Procedures § IV (C)(5).

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statement is exempt from disclosure under express provisions of law, it is not subject to public inspection pursuant to CPRA section 6253. This analysis has been confirmed by Patrick Tang, outside counsel for the City Attorney's Office.

IV. CONCLUSION

Even under the assumption that the requester had standing to request mediation, this request for mediation should be dismissed because the redactions on the business tax statement were proper. The business tax statement attached to the mediation request was filed pursuant to chapter 5.04 of the Oakland Municipal Code and therefore is labelled confidential per O.M.C. 5.04.140. Because the statement is exempt from disclosure under express provisions of law, it is not subject to public inspection pursuant to CPRA section 6253.

V. RECOMMENDATION

Since the finance department's redaction did not violate the Sunshine Ordinance, and the requester received all responsive documents that were not protected by confidentiality, Staff recommends that the Commission close the mediation without further action.

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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: October 21, 2019
RE: *In the Matter of Oakland Police Department (Case No. M2019-13); Mediation Summary*

I. INTRODUCTION

On July 23, 2019, the Commission received a request for mediation alleging that the Oakland Police Department (OPD) failed to respond to a public records request made by the Requester on February 27, 2019. On August 1, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the OPD Records Division posted on September 23, 2019, that the Request was closed because the case was still pending, still active, under appeal or may be recharged.

OPD, albeit months later, did release some documents in response to the requester's request on September 23, 2019. Because OPD has asserted a legal basis for the denied request¹, Staff recommends that the Commission close the mediation.

II. SUMMARY OF LAW

One of the primary purposes of the Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records are open to inspection by the public unless there is a specific reason not to allow inspection.² The CPRA requires each agency to make public records promptly available to any person upon request.³

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.⁴ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in the Commission's mediation program.⁵

¹ California Government Code 6254 (f) The case is pending, still active, under appeal or may be recharged; or the release may deprive a person(s) of a fair trial.

² Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

³ Government Code § 6253(b).

⁴ O.M.C. § 2.20.270(C)(1).

⁵ O.M.C. § 2.20.270(F).

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Once the 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.⁶

The Sunshine Ordinance provides that City Agency directors shall designate a person knowledgeable about the affairs of the respective agency to provide oral public information about agency operations, plans, policies, and positions.⁷

III. SUMMARY OF FACTS

On February 27, 2019 the requestor made an in person public records request, (No.(s) 19-001779, 19001011, 16-055528 and 16-015035): “all police reports.”

On March 7, 2019, OPD did not provide or indicate whether they possessed responsive documents, instead OPD extended the due date of the request without providing an estimate of when the records would be produced.

On July 23, 2019, the requester sought assistance from the Public Ethics Commission and had a lawyer make a formal request for mediation.

On August 1, 2019, Staff initiated mediation.

On August 16, 2019, OPD did not provide or indicate whether they possessed responsive documents, instead OPD extended the due date of the request without providing an estimate of when the records would be produced.

On September 23, 2019, the OPD Records Division released some records via NextRequest in response to the requester’s original public records request.

On that same day, the OPD Records Division closed the request citing that the request is denied due to CGC 6254(f).

In October 2019, Staff notified the Requester that further mediation efforts were unlikely to result in any further release of records due to the California Government Code. Staff notified the Requester that Staff will recommend closure of the mediation.

IV. RECOMMENDATION

Pursuant to OPD’s invocation of the California Government Code, Staff recommends that the Commission close this mediation without further action.

⁶ Complaint Procedures § IV (C)(5).

⁷ O.M.C. § 2.20.200(A)

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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. Mediation is the first step in the process of submitting a matter to the Commission; mediation must be requested and completed before submission of a formal complaint to the Commission.
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).

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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 A requestor must complete the administrative process before seeking court action.¹⁰

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 Director 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. ~~The Executive Director~~ Commission staff shall process and review all formal complaints.

⁸ OMC 2.20.270(A)(3).

⁹ OMC 2.20.270(B).

¹⁰ OMC 2.270(B)(1).

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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~~^{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.

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6. **Ex-Parte Communications.** Once a complaint is submitted, ~~the matter will be deemed an enforcement action. No~~ Commissioner shall engage in oral or written communications, outside a hearing, ~~or Commission meeting, or other meeting that 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 decide whether to 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

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- 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. ~~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

ATTACHMENT 6

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, 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 Respondent. 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.

VI. RESOLUTION OF COMPLAINTS

A. Probable Cause Report. After an investigation, and, in the absence of a stipulated agreement or other recommended resolution, 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. At the time that Commission staff submits a probable cause report to the Commission for consideration (per the advanced-notice requirements for the public meeting), 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.

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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, 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 refer the matter to an administrative hearing or, for probable violations of the Oakland Sunshine Ordinance, may decide to file a court proceeding seeking injunctive relief, declaratory relief, or writ of mandate.¹¹ ~~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.

¹¹ [OMC 2.20.270\(B\)](#).

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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.

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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 explains how Commission staff has met all of the default process requirements.
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, such as 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.

F. Court Proceeding. After the Commission has reviewed a probable cause report from Commission staff concerning an alleged violation of the Oakland Sunshine Ordinance, the Commission may decide to initiate court proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to obtain a Respondent's compliance with the Oakland Sunshine Ordinance.¹²

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~~

¹² OMC 2.20.270(B), OMC 2.24.020(E).

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~~examiner is unavailable or conflicted, another hearing examiner shall be randomly selected from the pre-approved list.~~ it the Commission shall appoint the hearing officer(s). If the Commission elects to use a hearing officer(s) 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, in which case, the appointing authority shall consider whether to appoint an alternative hearing officer(s).

~~A.~~

B. 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

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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;
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

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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,- the Respondent and Commission staff or it's 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

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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 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~~ 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 has discretion to reach additional or different conclusions consistent with the Findings of Fact, including 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.

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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 with respect to anyfor 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.

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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 RECORD 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.

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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. Mediation is the first step in the process of submitting a matter to the Commission; mediation must be requested and completed before submission of a formal complaint to the Commission.

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.

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).

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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 mandate in any court of competent jurisdiction, whether or not the person also files a complaint with the Commission.⁹ A requestor must complete the administrative process before seeking court action.¹⁰

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.

⁷ OMC 2.20.270(C)(3).

⁸ OMC 2.20.270(A)(3).

⁹ OMC 2.20.270(B).

¹⁰ OMC 2.270(B)(1).

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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 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.

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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 decide whether to 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

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- 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

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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 Respondent.** 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.

VI. RESOLUTION OF COMPLAINTS

- A. Probable Cause Report.** After an investigation, and, in the absence of a stipulated agreement or other recommended resolution, 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.** At the time that Commission staff submits a probable cause report to the Commission for consideration (per the advanced-notice requirements for the public meeting), 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, 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 refer the matter to an administrative hearing or, for probable violations of the Oakland Sunshine Ordinance, may decide to file a court proceeding seeking injunctive relief, declaratory relief, or writ of mandate.¹¹ 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.

¹¹ OMC 2.20.270(B).

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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;

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- 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

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- d. the documentation explains how Commission staff has met all of the default process requirements.
 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, such as 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.
- G. Court Proceeding.** After the Commission has reviewed a probable cause report from Commission staff concerning an alleged violation of the Oakland Sunshine Ordinance, the Commission may decide to initiate court proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to obtain a Respondent's compliance with the Oakland Sunshine Ordinance.¹²

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.
1. If the Commission decides that the full Commission will not sit as a hearing panel, the Commission shall appoint the hearing officer(s).
 2. If the Commission elects to use a hearing officer(s) provided by an outside entity, that entity shall appoint the hearing officer(s).
 3. 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, in which case, the appointing authority shall consider whether to appoint an alternative hearing officer(s).
- 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,

¹² OMC 2.20.270(B), OMC 2.24.020(E).

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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.

1. 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.
2. Subpoenas may be issued by the Executive Director, or the hearing officer upon the above showing of good cause.
3. 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;

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

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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.
 - 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

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- 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 has discretion to reach additional or different conclusions consistent with the Findings of Fact, including 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.

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- 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.

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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

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- 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).

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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).

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- 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~~

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~~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

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- 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,

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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.

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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

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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

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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 8

~~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 8

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 8

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 8

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 8

- 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.

ATTACHMENT 9

CITY OF OAKLAND Public Ethics Commission

Jodie Smith (Chair)
James E.T. Jackson (Vice-Chair)
Jill Butler
Gail Kong
Nayeli Maxson Velázquez
Jerett Yan
Whitney Barazoto, Executive Director



TO: Public Ethics Commission
FROM: Ana Lara-Franco, Commission
Whitney Barazoto, Executive Director
DATE: October 25, 2019
RE: 2020 Regular Meeting Schedule

Below is a proposed schedule for regular Commission meetings in 2020. Unless otherwise specified, meetings occur on the first Monday of each month.

2020 REGULAR MEETING SCHEDULE		
DATE	TIME	ROOM
January 6, 2020	6:30 PM	Hearing Room 1
February 3, 2020	6:30 PM	Hearing Room 1
March 2, 2020	6:30 PM	Hearing Room 1
April 6, 2020	6:30 PM	Hearing Room 1
May 4, 2020	6:30 PM	Hearing Room 1
June 1, 2020	6:30 PM	Hearing Room 1
July 6, 2020	6:30 PM	Hearing Room 1
August 3, 2020	6:30 PM	Hearing Room 1
<i>September Recess</i>		
October 5, 2020	6:30 PM	Hearing Room 1
November 2, 2020	6:30 PM	Hearing Room 1
December 7, 2020	6:30 PM	Hearing Room 1

ATTACHMENT 10



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Joseph Tuman
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: October 25, 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.

Filing Officer

Lobbyist Registration Program – The deadline for third quarter Lobbyist Activity Reports is October 30. There are presently 40 registered Oakland lobbyists. Members of the public can access a list of [registered lobbyists](#) on the PEC website and all lobbyist disclosure reports are searchable by the filer's name on our [Public Portal for Campaign Finance and Lobbyist Disclosure](#), where copies are available in PDF file format.

Improving Filing Tools and Access to Disclosure Data

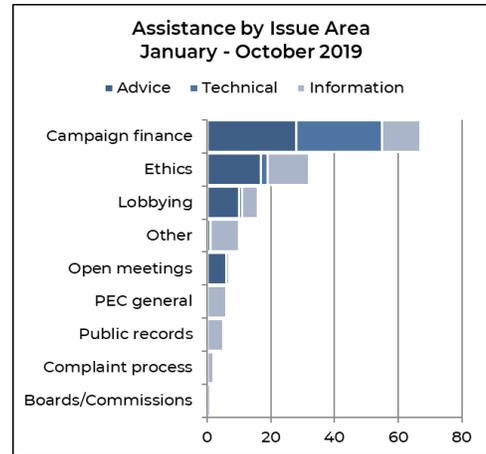
Lobbyist e-filing – Commission staff continued working with Information Technology Department (ITD) staff to design the online form where lobbyists will register and submit their reports for the lobbyist filing system utilizing the [OakApps](#) portal. Added features to simplify reporting and provide meaningful and timely reports to the public include the ability to create and edit draft reports, tools to upload client data to lobbyist accounts, as well as drop down categories and look-up tables to speed data entry and provide information in more standardized formats.

Engagement and Outreach

Ethics Training – On October 2, staff made an ethics presentation at the request of the Oakland Fund for Children and Youth Planning and Oversight Committee. Staff provided board members with information about the Commission and its services and gave an overview of the Government Ethics Act including Form 700 filing requirements.

Advice and Technical Assistance – To date, Commission staff has fielded 146 requests for information, informal legal advice, or technical assistance this year.

Staff drafted an advisory explaining new disclosure requirements resulting from the recent amendments to OCRA adopted by the City Council. City officials that solicit contributions to political campaigns from individuals or entities doing business with the City must now disclose any contributions of \$5,000 or more to the PEC within 30 days of the contribution. In addition, all non-candidate-controlled committees must list at least one and up to three principal officers on their Statement of Organization (Form 410).



Website – PEC staff collaborated with Digital Services to design and conduct user research on how easy it is to find PEC services online and develop effective menu categories to assist our website users. The online trial and in-person tests were completed in October and the results shared with PEC staff for feedback. Next steps entail developing recommendations for new headings and re-labeling services based on the results.

Social media – Each month, Commission staff selects focus areas to promote in posts to the Commission’s social media accounts. October focused on Commissioner recruitment, upcoming community meetings, raising awareness of filing deadlines, and PEC news.



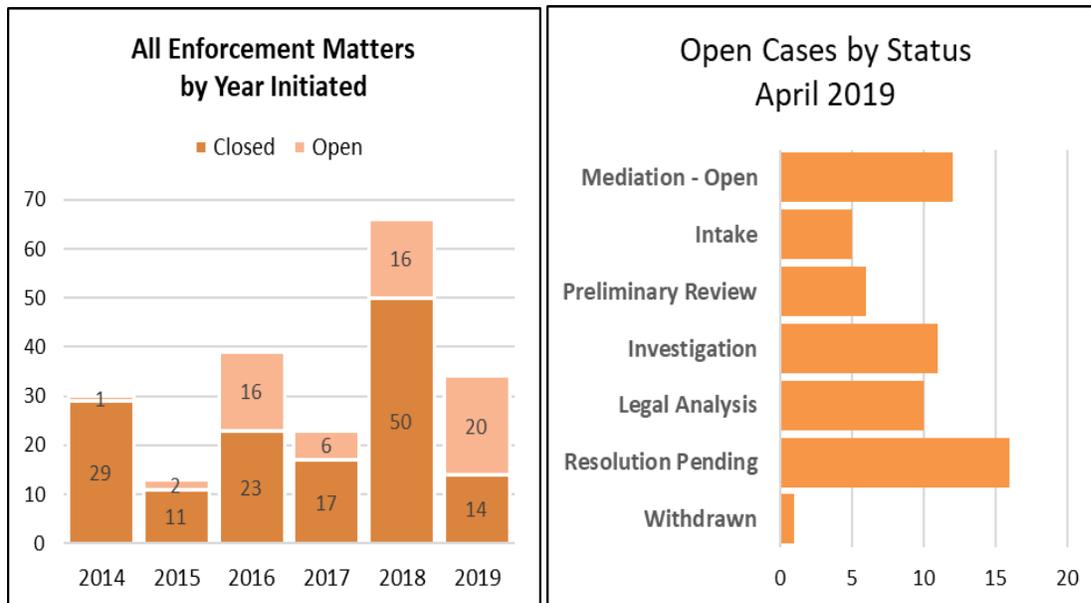
Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill M. Butler
Gail Kong
Joseph Tuman
Nayeli Maxson Velázquez
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: October 21, 2019
RE: Enforcement Program Update

Current Enforcement Activities:

Since the last Enforcement Program Update on September 23, 2019, Commission staff received four formal complaint and two requests for mediation. This brings the total Enforcement caseload to 17 matters in the intake or preliminary review stage, 11 matters under active investigation, 12 matters under post-investigation analysis, and 10 matters in settlement negotiations or awaiting an administrative hearing. Enforcement’s caseload also includes 7 ongoing records requests for mediation.



Enforcement Priorities:

The Enforcement Staff continue to streamline and fast track minor cases with a focus on prioritizing multi-issued and complex ethics cases. To date this year, Enforcement has resolved/brought closure to a total of 34 complaints/requests for mediation.

Summary of Cases:

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

1. *In the Matter of Amber Todd (Complaint No. 19-02)*: On January 18, 2019, Staff received this formal complaint. This complaint was withdrawn by the complainant. Staff issued notice of the withdrawal to the respondent and closed the matter. (Attachment)
2. *In the Matter of the City Auditor Brenda Roberts (Complaint No. 18-28)* On September 25, 2018, after conducting a preliminary review, Staff dismissed the complaint after determining that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)
3. *In the Matter of the City Auditor Brenda Roberts (Complaint No. 18-29)* On September 20, 2018, Staff received this complaint that alleged the same allegations in Complaint No. 18-28. Staff dismissed this complaint for the same legal analysis provided in the companion case that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)
4. *In the Matter of Dana King (Complaint No. 15-03(b))*: The Commission received a complaint on January 5, 2015, alleging that Dana King's campaign received a campaign contribution that was an over the limit aggregate contribution in violation of the Oakland Campaign Reform Act (OCRA). Staff recommends that the Commission issue an Advisory Letter and close the matter without further action. (See Action Items)
5. *In the Matter of Friends of Desley Brooks for City Council 2014 (Complaint No. 15-04)*: The Commission received a complaint on January 5, 2015, alleging that the Friends of Desley Brooks for City Council 2014 received a campaign contribution that was an over the limit aggregate contribution in violation of the Oakland Campaign Reform Act (OCRA). Staff recommends that the Commission issue an Advisory Letter and close the matter without further action. (See Action Items)
6. *In the Matter of the City of Oakland Finance Department (Complaint No. 18-37M)*: On October 17, 2016, Staff initiated mediation pursuant to the Oakland Sunshine Ordinance. We conducted a preliminary review of the allegations that the City Finance Department improperly redacted a public records request document. Staff determined that the Requester is entitled to and received responsive documents except for those that were lawfully marked confidential. Staff recommends that the Commission close the mediation without further action (See Action Items).
7. *In the Matter of Alameda County Taxpayers Association (Complaint No. 18-38)*: Staff received a formal complaint on October 18, 2018, that alleged Alameda County taxpayers Association (ACTA) failed to register as a campaign committee, and put out three mailers re: Oakland taxes that lacked property disclosures under the Oakland Campaign Reform Act. Staff referred this matter to the California Fair Political Practices Commission (FPPC) for their determination. The FPPC determined that the mailers did not qualify as campaign mailers. The FPPC, however, did issue an advisory letter to the ACTA, informing them of the law and

to be cautious in the future with advertisements. In August 2019, Staff sent a letter informing the complainant of the FPPC's decision and action. Staff dismissed the matter after it determined the FPPC's decision rendered the complaint such that it did not warrant any further investigation by the PEC. (Attachment)

8. *In the Matter of the Oakland Police Department* (Complaint No. M2019-13): On July 23, 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 a notice from OPD that the request was closed and denied because pursuant to California Government Code 6254 (f) the case is pending/still active/ or under appeal and may be recharged. Staff recommends that the Commission close the mediation without further action (See Action Items).

ATTACHMENT 11



CITY OF OAKLAND

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

Public Ethics Commission
Enforcement Unit

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

October 21, 2019

Amber Todd
Assistant to the Director, Finance Department
1923, 1 Frank H Ogawa Plaza,
Oakland, CA 94612
atodd@oakland.gov

Re: PEC Complaint No. 19-02; Notice of Withdrawn Complaint

Dear Ms. Todd:

The City of Oakland Public Ethics Commission received the attached complaint against you (19-02), alleging violations of the Oakland Sunshine Ordinance. However, the complainant has since informed us that she wishes to withdraw the complaint. As such, the PEC is considering this complaint withdrawn and resolved. No action is necessary on your part; this is just a courtesy notice.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting on November 4, 2019, as part of our regular monthly update on Enforcement actions. This is purely informational, and no action will be taken by the Commission regarding this matter. You are welcome to attend that meeting and/or give public comment if you wish, but not required to do so. This letter serves as formal notice that the matter is now closed. If you have any questions, you can reach me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

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

ATTACHMENT 11



CITY OF OAKLAND

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Public Ethics Commission
Enforcement Unit

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

October 21, 2019

Elise Ackerman



Re: PEC Complaint No. 19-02; Dismissal Letter

Dear Ms. Ackerman:

On January 18, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that Amber Todd, Assistant to the Director of the City of Oakland's Finance Department, deliberately failed to disclose documents subject to a Public Records Request. After reviewing the allegation in your complaint, further discussing the matter with you, and confirming your request to withdraw the matter, we are dismissing your complaint.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Chief of Enforcement

cc: Amber Todd, City of Oakland Finance Department

ATTACHMENT 11



CITY OF OAKLAND

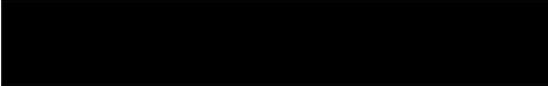
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Public Ethics Commission
Enforcement Unit

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

October 21, 2019

Brenda Roberts



Re: PEC Complaint No. 18-28 and 18-29; Dismissal

Dear Ms. Roberts:

The City of Oakland Public Ethics Commission received the attached complaints against you (18-28 and 18-29), alleging violations of the Government Ethics Act. The complaint alleged that you misused your position and City resources by providing false statements in the City Auditor's Impartial Financial Analysis of Just Cause Measures to mislead voters in support of 2018 Ballot Measure Y in exchange for an increased opportunity for future political favors from politicians who support the Measure.

We have reviewed the complaint and are dismissing it because the alleged conduct, even if true, does not constitute a violation of law within the PEC's enforcement jurisdiction.

A copy of the dismissal letter is attached. If you have any questions regarding this matter, please feel free to contact me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

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

ATTACHMENT 11



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Public Ethics Commission
Enforcement Unit

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

October 21, 2019

Elise Cox



Re: PEC Complaint No. 18-28 and 18-29; Dismissal Letter

Dear Ms. Cox:

On September 20th and 25th, 2018, the City of Oakland Public Ethics Commission (PEC) received duplicate complaints (#18-28 and 18-29) alleging that Brenda Roberts misused her position and City resources by providing false statements in the City Auditor's Impartial Financial Analysis of Just Cause Measures to mislead voters in support of 2018 Ballot Measure Y in exchange for an increased opportunity for future political favors from politicians who support the Measure. After reviewing your complaint and the law, we have determined that the allegation you set forth does not establish sufficient evidence to constitute a violation of the Government Ethics Act and therefore are dismissing the complaint.

Specifically, the complaint alleges the following statements in the Impartial Analysis are incorrect: "Per O.M.C. Section 8.22.500 (Rent Program Service Fee), fees are charged against residential rental units that are subject to either the Rent Adjustment Ordinance, the Just Cause for Eviction Ordinance, or both. Currently, the annual service fee is \$68 per rental unit (of which owners may pass through one-half of the annual fee to the tenant). Under this Measure, we estimate the City would collect additional revenues between \$612,000 and \$748,000 annually."

The Government Ethics Act Section (GEA) 2.25.060(A)(1) states that no Public Servant may use or permit others to use public resources for personal or non-City purposes not authorized by law. "Personal purpose," as defined under GEA 2.25.060(A)(1)(a)(i), means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business; it does not include the incidental and minimal use of public resources for personal purposes, including an occasional telephone call. "Public resources," as defined under GEA 2.25.060(A)(1)(a)(iii), means any property or asset owned by the City, including but not limited to City-compensated time.

Also, in GEA Section 2.25.060(A)(2) states that no Public Servant may use their prospective position, or the power or authority of his or her office or position, in any manner intended to

induce or coerce any person to provide any private advantage, benefit, or economic gain to the Public Servant or any other person.

O.M.C. 3.08.210 states that the City Auditor shall determine whether, in his or her opinion, the adoption of the measure will increase or decrease the cost of city government or the city tax rate, and the City Auditor shall prepare an impartial analysis of the measure covering its financial impact upon the city government. In preparing the financial analysis the City Auditor shall consult with the Director of Finance and the City Council Rules Committee.

The City Auditor submitted the financial analysis to the City Clerk on August 7, 2018. The City Auditor provided the following disclaimer at the end of the analysis: The Office of the City Auditor has not audited and, as such, has not validated the City of Oakland Housing and Community Development Department's housing data and salary analysis that supports this Measure. References to this data in our independent analysis represent the best data available at this time.

There is no evidence provided in the complaint that Brenda Roberts allocated any public resources (specifically City compensated time) for any purpose "not authorized by law." O.M.C. 3.08.210 requires the City Auditor to prepare an impartial financial analysis of each measure qualifying for ballot placement. Therefore, this use of City resources was authorized by law.

Moreover, the City compensated time and hardware were not utilized for a "personal purpose" but rather to compensate the City Auditor for her services to the City, and therefore were not used for "personal enjoyment, private gain or advantage, or an outside endeavor not related to City business." The complaint fails to provide any evidence of a private gain or advantage beyond speculation that the City Auditor may have received political favor for the audit. This is unlikely because Brenda Roberts lost reelection in the November 2018 election and no longer holds public office.

Likewise, there is no evidence provided in the complaint that any Public Servant used their position or authority in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to any person. As described above, the City Auditor followed the correct procedure for providing an impartial financial analysis of Measure Y.

Because your complaint failed to establish a violation to the Government Ethics Act, we must dismiss your complaint pursuant to our Complaint Procedures. The PEC's Complaint Procedures are available on the PEC's website, and a copy has been included with this letter for your reference.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on November 4, 2019, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

ATTACHMENT 11

PEC Complaint No. 18-28 and 18-29; Dismissal Letter
Page 2

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

Sincerely,

Kellie F. Johnson, Enforcement Chief

ATTACHMENT 11



CITY OF OAKLAND

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

Public Ethics Commission
Enforcement Unit

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

October 21, 2019

Alameda County Taxpayers Association
[REDACTED]

Re: PEC Complaint No. 18-38; Dismissal Letter

Dear Alameda County Taxpayers Association:

On October 19, 2018, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that, among other things, you violated Oakland Campaign Reform Act when your organization Citizens for Oakland (“Committee”) failed to register as a campaign committee, and put out three mailers re: Oakland taxes that lacked proper disclosures required by law.

We have reviewed the complaint and although the allegations raised by the complainant are enough to warrant an investigation to determine whether the facts resulted in a violation to the Oakland Campaign Reform Act, we are aware that the same allegations were investigated and adjudicated by the California Fair Political Practices Commission in January 2019. We are dismissing this complaint because the conduct has been addressed by a separate state regulatory agency.

A copy of the dismissal letter is attached. If you have any questions regarding this matter, please feel free to contact me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

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

Enclosure

ATTACHMENT 11



CITY OF OAKLAND

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

Public Ethics Commission
Enforcement Unit

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

August 08, 2019

Dan Kalb

Re: PEC Complaint No. 18-38; Dismissal Letter

Dear Mr. Kalb:

On October 19, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (#18-38) alleging that an organization called the Alameda County Taxpayers Association (ACTA) failed to register as a campaign committee, and put out three mailers re: Oakland taxes that lacked proper disclosures under the Oakland Campaign Reform Act (OCRA). The purpose of this letter is to inform you that we are dismissing your complaint, for the reasons described below.

Regarding the allegation that the ACTA failed to register as a campaign committee, we referred this allegation to the state Fair Political Practices Commission (FPPC) for their determination. The FPPC determined that, per the requirements of the California Government Code, the mailers put out by the ACTA do not qualify as campaign mailers, because a reasonable person could interpret these mailers as encouraging “some other kind of action on a legislative, executive, or judicial matter or issue” beyond voting against tax-related measures on the Oakland ballot. As such, in the FPPC’s view, the ACTA was under no legal obligation to register as a campaign committee in connection with producing these mailers.

However, the FPPC did issue an advisory letter to the ACTA in this matter, informing them of the law and advising them to “be cautious in the future that an advertisement that states that the jurisdiction has too many taxes while multiple tax measures are on the ballot could be interpreted as unambiguously urging voters to reject all ballot

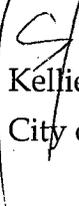
measures that propose tax increases," and might therefore trigger registration and disclosure requirements under the law.

This FPPC determination also affects your second allegation, that the ACTA failed to put the proper OCRA disclosure on these mailers. OCRA disclosures are not required on mailers that do not qualify as campaign literature. Because the FPPC addressed the crux of the allegations in your complaint, we are dismissing the matter.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on May 6, 2019, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

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

Sincerely,


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

ATTACHMENT 12



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: October 25, 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.

Ethics Analyst III Classification

In recent months, Commissions staff has been in the process of creating a new, additional job classification to expand the Ethics Analyst series to include a third level of analyst position. This step will provide the Commission with an additional, higher level analyst position that reflects the Commission's growth in its filing officer and technological responsibilities. The new position, Ethics Analyst III, will expand advancement opportunities within the staff team and is anticipated to facilitate staff development, retention, and secession planning. The new job classification requires approval by the Civil Service Board and will likely be considered by that board in the next month or two.

PEC Enabling Ordinance

Commission staff has been working with the City Attorney's office to draft revisions to Public Ethics Commission enabling ordinance (OMC 2.24). The City Charter changes in 2014 placed much of the language of the ordinance into the Charter, and the enabling ordinance had not been amended to account for the City Charter changes. Staff is drafting amendments to delete obsolete and duplicative language, add new operational and enforcement-related sections, and better reflect the Commission's current authority and process. Staff will bring draft amendments to the Commission for consideration at its December meeting.

Attachment: Commission Programs and Priorities

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ATTACHMENT 12

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 12

	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 as needed 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. Revise PEC Enabling Ordinance 2. Publish performance goals and data on PEC website – dashboards 3. Review data to adjust activities throughout the year 4. Ongoing: professional development and staff reviews