



In-Person Meetings: Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check www.oaklandca.gov for the latest news and important information about the City's [return to in-person meetings](#).

Public Comment: 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 Chair allocates additional time.

Members of the public may also submit written comments in advance of the meeting to EthicsPublicComment@oaklandca.gov. Please indicate the agenda item # you are commenting on in the subject line of the email.

Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Charlotte Hill, Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Simon Russell, Enforcement Chief; and Alex Van Buskirk, Ethics Analyst.

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION REGULAR MEETING AGENDA

PRELIMINARY ITEMS

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**
 - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
 - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at ethicscommission@oaklandca.gov for assistance filing a complaint.

ACTION ITEM

4. **Approval of Commission Meeting Draft Minutes.**
 - a. April 10, 2024, Regular Meeting Minutes. ([Meeting Minutes](#))



- b. May 22, 2024, Special Meeting Minutes. ([Meeting Minutes](#))

INFORMATION ITEMS

5. **Goldman Student Presentation on Transparency.** UC Berkeley Goldman School of Public Policy students Chelsea Hall, Kelsey Perez, D. Azarmi, and Ryan Manriquez present on the findings in their report “Open By Default: A Best Practices Analysis for Meaningful Transparency in the City of Oakland.” ([Report; Presentation](#))
6. **Disclosure and Engagement.** Commission staff provides a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting. ([Disclosure Report](#))
7. **Enforcement Program.** Enforcement Chief Simon Russell provides a summary of the Commission’s enforcement process, caseload, enforcement-related litigation, and case closures or dismissals. ([Enforcement Report](#))
8. **Executive Director’s Report.** Executive Director Nicolas Heidorn reports on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives not covered in other staff reports. ([Executive Director’s Report; Matrix](#))
Supplemental Material added on 6/7/24 – ([Councilmember Kalb's Proposed Revisions to PEC Ballot Measure Proposal: Kalb Staff Report & Draft Measure Language](#))

ACTION ITEMS

9. **Probable Cause Report: In the Matter of Michael Dabney (PEC # 23-28).** On October 2, 2023, the PEC opened an investigation into allegations that a mobile food vendor named Michael Dabney attempted to bribe a City inspector. Enforcement staff has completed its investigation and recommends that the Commission (1) find probable cause that the violations described in the Investigation Summary occurred, and (2) order that the administrative hearing be held before an outside hearing officer. ([Investigation Summary \(Probable Cause Report\)](#))
10. **Proposed Settlement Agreement: In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc.; Lyft Inc. (PEC # 20-41.2).** On February 22, 2021, the PEC opened an investigation into allegations that a campaign committee called “The Committee For An Affordable East Bay” had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled



committees, including the prohibition on receiving contributions from City contractors at certain times. Respondents were a City contractor and its sponsored committee, who made a contribution to The Committee For An Affordable East Bay. Respondents have agreed to settle this matter with regard to their own alleged actions, without admitting liability. Enforcement staff recommends that the Commission approve the settlement agreement in the amount of \$50,000. ([Proposed Settlement Agreement](#))

11. Proposed Settlement Agreement (Streamlined): In the Matter of Michelle Phillips (PEC # 24-04). On March 15, 2024, the PEC initiated a proactive complaint alleging that Inspector General Michelle Phillips received a gift valued at \$300 from Campaign Zero, which was in excess of the local gift limit of \$250. Respondent has agreed to settle this matter under the PEC’s streamlined settlement program. Due to Respondent’s senior-level status, this streamlined agreement requires Commission approval under our Complaint Procedures. Enforcement staff recommends that the Commission approve the settlement agreement, impose a financial penalty in the amount of \$50, and order Respondent to take a diversion training concerning the local gift rules. ([Proposed Settlement Agreement](#))

12. Case Closure Recommendation: In the Matter of Jesse Boudart (PEC # 23-38). On February 2, 2024, the PEC opened an investigation into allegations that City employee Jesse Boudart misused City resources and his City position when he used his City email account to campaign for election to a board seat with a private organization. Enforcement staff has completed its investigation and recommends that the Commission find (1) that no violation of any of the PEC’s laws occurred, and (2) that Respondent be issued an advisory letter. (Investigation Summary ([Closure Recommendation](#)))

13. Form 700 Enforcement Update and Closure Recommendation (PEC ## 23-16.1, 23-16.2, 23-16.5, 23-16.6, 23-16.7, 24-05.2, 24-05.7, 24-05.9, 24-05.15, 24-05.17, 24-05.20, 24-05.25, 24-05.48, 24-05.53, 24-05.64). Enforcement Chief Simon Russell presents an update on PEC staff’s enforcement efforts regarding alleged non-filers of the 2022 Annual Form 700 (PEC # 23-16) and 2023 Annual form 700 (PEC #24-05), as well as recommending closure of cases against alleged non-filers with valid reasons for non-filing. ([Memorandum and Closure Recommendations](#))

14. Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.” Enforcement Chief Simon Russell presents staff’s proposed amendment to the PEC’s Penalty Guidelines expressly allowing for the avoidance of undue financial hardship to



respondents as a mitigating factor when determining appropriate fines. ([Memo and Proposed Penalty Guidelines Amendment](#))

DISCUSSION ITEMS

15. Reports on Subcommittees and Commissioner Assignments. Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission’s last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission’s work.

a. Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints, and Campaign Finance Subcommittee. (ad hoc, created August 25, 2023) - Vincent Steele (Chair), Alea Gage, and Ryan Micik. ([Calendar of Events](#))

b. Charter Review Subcommittee (ad hoc, created December 13, 2023) - Ryan Micik (Chair), Charlotte Hill, and Karun Tilak. ([Minutes](#))

INFORMATION ITEM

16. Future Meeting Business. Commissioners and staff may propose topics for action or discussion at future Commission meetings.

The meeting will adjourn upon the completion of the Commission’s business.

The following options for public viewing are available:

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference (via ZOOM):** Click on the link to join the webinar: <https://us02web.zoom.us/j/89169308829>. Please note: the Zoom link and access number are to view/listen to the meetings only. Public comment via Zoom is not supported at this time.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 669 444 9171 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 931 3860 or +1 689 278 1000 or +1 929 205 6099 or +1 301 715 8592 or +1 305

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Hearing Room 1
Wednesday, June 12, 2024
6:30 p.m.



224 1968 or +1 309 205 3325 or +1 312 626 6799 Webinar ID: 891 6930 8829

- **International numbers available: <https://uso2web.zoom.us/j/kc69Y2Mnzf>**

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

Nicolas Heidorn

5/31/24

Approved for Distribution

Date

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Hearing Room 1
Wednesday, June 12, 2024
6:30 p.m.



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

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

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

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

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



DRAFT

Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Charlotte Hill Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Simon Russell, Enforcement Chief; and Alex Van Buskirk, Compliance and Disclosure Lead Analyst

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

PRELIMINARY ITEMS

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:37 p.m.

Members present: Vice Chair Upton IV, Gage, Steele, and Tilak.

Members absent: Chair Micik, Hill

Staff present: Nicolas Heidorn, Suzanne Doran, Simon Russell, and Alex Van Buskirk

Legal Counsel: Christina Cameron

2. Staff and Commission Announcements.

There were no announcements.

Public Comment: none.

3. Open Forum.

Public Comment: Seneca Scott.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.

ACTION ITEM

4. Approval of Commission Meeting Draft Minutes.



DRAFT

Tilak moved, and Steele seconded, to adopt the March 13, 2024, regular meeting minutes.

Ayes: Upton IV, Gage, Steele and Tilak.

Noes: None.

Vote: Passed 4-0.

Public Comment: None.

INFORMATION ITEMS

5. Oakland Fire Department (OFD) Public Records Presentation.

Chief of Staff and Assistant to the Director Michael Hunt, and OFD Operations Administrative Aid Randy Stukes of the Oakland Fire Department provided information on the Department's process, successes, and challenges in responding to public records requests, and answered Commissioners' questions.

Public Comment: An anonymous written public comment was received prior to the meeting.

Written public comments are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.

6. Disclosure and Engagement.

Lead Analyst Alex Van Buskirk provided a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting.

Public Comment: None.

7. Democracy Dollars Implementation.

Program Manager Suzanne Doran provided a summary of significant developments in the implementation of the Democracy Dollars Public Financing Program, which will be used in the 2026 election.



DRAFT

Public Comment: None.

8. Enforcement Program.

Enforcement Chief Simon Russell provided a summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals, as well as an update on enforcement work since the last Commission meeting.

Public Comment: None

9. Executive Director's Report.

Executive Director Nicolas Heidorn reported on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives not covered in other staff reports.

Public Comment: None.

10. Oakland Campaign Reform Act (OCRA) Guide 2024.

Executive Director Heidorn presented the updated guide to the Oakland Campaign Reform Act, including new content explaining recent amendments to the Act enacted with the passage of Measure W (2022).

Public Comment: None.

ACTION ITEMS

11. Oakland City Auditor Salary Adjustment.

Executive Director Heidorn presented on, and Commissioners discussed, adjusting the salaries of the Oakland City Auditor as required by the City Charter.

Tilak moved, seconded by Upton IV, to approve the proposed resolution adopting the Public Ethic Commission staff's recommendation to increase the City Auditor salary to



DRAFT

\$226,612.19.

Ayes: Upton IV, Steele, and Tilak.

Noes: Gage.

Vote: Passed 3-1.

Public Comment: None

12. Oakland City Attorney Salary Adjustment.

Executive Director Heidorn presented on, and Commissioners discussed, adjusting the salaries of the Oakland City Attorney as required by the City Charter.

Steele moved, seconded by Gage, to approve the proposed resolution adopting the Public Ethic Commission staff's recommendation to increase the City Attorney salary to \$320,958.84.

Ayes: Upton IV, Gage, Steele, and Tilak.

Noes: None.

Vote: Passed 4-0.

Public Comment: None

13. Review and Recommend Amendments to the City Charter and/or OMC Relating to the Ethics Commission.

Executive Director Heidorn presented on, and Commissioners considered recommending to the City Council that it place a measure on the ballot amending the City Charter and the Oakland Municipal Code (OMC) to change the Commission's structure, processes, powers, and responsibilities, and laws the Commission enforces.

8:53 p.m. – Upton IV called for a recess.

9:00 p.m. – The meeting returned from recess.



DRAFT

Upton IV moved, seconded by Steele, to approve the Public Ethic Commission staff's recommendation to endorse the policy recommendations listed in Table 1 of the staff memo and the Draft Amendment Language attached to the staff memo and to direct staff, in coordination with the Chair, to request that the City Council place a measure on the November 2024 ballot that includes one or more of the policy recommendations listed in Table 1 and using the language in the Draft Amendment Language, or substantially similar language.

Ayes: Upton IV, Gage, Steele, and Tilak.

Noes: None.

Vote: Passed 4-0.

Public Comment: An anonymous written public comment was received prior to the meeting. A written public comment from David Shor was received prior to the meeting.

DISCUSSION ITEMS

Reports on Subcommittees and Commissioner Assignments.

a. Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints, and Campaign Finance Subcommittee.

Steele shared there were no updates.

Public Comment: None.

b. Charter Review Subcommittee.

Tilak noted the Subcommittee's updates were included in Agenda Item 13, Review and Recommend Amendments to the City Charter and/or OMC Relating to the Ethics Commission.

Public Comment: None.

INFORMATION ITEM

14. Future Meeting Business.

Tilak asked about the timing of future steps in the process of adopting the Charter

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Hearing Room 1
Wednesday, April 10, 2024
6:30 p.m.

Item 4A - April 10, 2024, Regular Meeting Minutes



DRAFT

reform proposals.

Gage asked if the Goldman students currently assisting the Public Ethics Commission will present at a future meeting.

Public Comment: None.

The meeting adjourned at 9:34 p.m.



DRAFT

Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Charlotte Hill, Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director;

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION SPECIAL MEETING MINUTES

PRELIMINARY ITEMS

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:32 p.m.

Members present: Chair Micik, Vice Chair Upton IV, Gage, Hill, Steele, and Tilak.

Members absent: None.

Staff present: Nicolas Heidorn.

Legal Counsel: Christina Cameron.

2. Staff and Commission Announcements.

There were no announcements.

Public Comment: None.

3. Open Forum.

Public Comment: None.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec. Written public comments are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.



DRAFT

ACTION ITEM

4. Oakland City Auditor Salary Adjustment.

Executive Director Heidorn presented on, and Commissioners discussed, adjusting the salary of the Oakland City Auditor as required by the City Charter.

Chair Micik moved, seconded by Steele, to adopt Resolution 24-04, pursuant to the Public Ethic Commission staff's recommendation, to increase the City Auditor salary to \$226,612.19.

Ayes: Micik, Upton IV, Hill, Steele, and Tilak.

Noes: Gage.

Vote: Passed 5-1.

Public Comment: None.

5. Debate Policy.

Executive Director Heidorn presented on, and Commissioners discussed, adopting a policy describing what events qualify as a "public debate or forum" for the purposes of candidate eligibility to participate in the Limited Public Financing Program of 2024 (LPF) or the Democracy Dollars Program.

Upton IV moved, seconded by Tilak, to approve the proposed policy with the following amendments:

On page 1, for Section B. Eligible Debates, amend the introductory sentence to specify a candidate must give a "live" speech as follows (addition underlined):

"For the purposes of the Oakland Fair Elections Act Democracy Dollars program and the Limited Public Financing Act program, a "public debate or forum" means an online or in-person live event where a participating candidate gives a live speech, participates in a panel discussion, or responds to questions, and that meets all the following conditions:"



DRAFT

On page 2, for Section F. Waiver for Good Cause, amend the first sentence as follows (addition underlined):

“The Executive Director may grant a partial or complete waiver of the debate requirement if a candidate shows good cause for not attending the required number of qualifying events and was unable to reasonably attend the necessary number of alternate qualifying events.”

On page 3, under F. Waiver for Good Cause, after subsection 7 and before the last sentence, add the following sentence (addition underlined):

“The Executive Director shall report back to the Commission on any waivers granted or denied pursuant to this section.”

Ayes: Micik, Upton IV, Gage, Hill, Steele, and Tilak.

Noes: None.

Vote: Passed 6-0.

Public Comment: Gene Hazzard.

Written public comment from Helen Hutchison was received prior to the meeting.

6. PEC Ballot Measure Proposal.

Executive Director Heidorn presented on, and Commissioners discussed, the introduction of a resolution which would place a measure on the November 2024 ballot that includes some of the proposed Charter and Oakland Municipal Code reforms recommended by the Commission at its April 10, 2024, meeting. Director Heidorn explained the ways the introduced resolution differed from the Commission’s full package of endorsed reforms.

Chair Micik moved, seconded by Hill, to receive the report.

Ayes: Micik, Upton IV, Gage, Hill, Steele, and Tilak.



DRAFT

Noes: None.

Vote: Passed 6-0.

Public Comment: Gene Hazzard, Ralph Kanz.

Written public comment from Ralph Kanz was received prior to the meeting.

7. Mayoral Salary Ballot Measure.

Executive Director Heidorn presented on, and Commissioners discussed, the introduction of a proposed resolution for a November 2024 ballot measure which would transfer the responsibility for setting the Mayor's salary from the City Council to the Public Ethics Commission, pursuant to the Commission's recommendation.

Vice Chair Upton IV moved, seconded by Steele, to endorse the proposed resolution.

Ayes: Micik, Upton IV, Gage, Hill, Steele, and Tilak.

Noes: None.

Vote: Passed 6-0.

Public Comment: Gene Hazzard, Ralph Kanz.

8. Police Commission Procedural Changes.

Executive Director Heidorn presented on, and Commissioners discussed, potential amendments to a proposal by Councilmembers Kalb and Jenkins to modify the enabling ordinance of the Police Commission, among other changes. The Commission previously reviewed and provided comment on the proposal at its January 17, 2024, meeting.

Commissioner Hill left at 7:38 p.m.

Commissioner Gage moved, seconded by Steele, to endorse the proposed amendment to the proposal by Councilmembers Kalb and Jenkins to modify the enabling ordinance



DRAFT

of the Police Commission, among other changes.

Ayes: Micik, Upton IV, Gage, and Steele.

Noes: Tilak.

Absent: Hill.

Vote: Passed 4-1.

Public Comment: Gene Hazzard.

INFORMATION ITEM

9. Future Meeting Business.

Chair Micik expressed interest in possibly looking at the City's Record Retention Policy as a topic at the Public Ethics Commission's next planning retreat.

Public Comment: Ralph Kanz, Gene Hazzard.

The meeting adjourned at 7:51 p.m.



Open By Default:

A Best Practices Analysis for Meaningful Transparency in the City of Oakland

May 2024



*A Report by Master of Public Policy Students
at the UC Berkeley Goldman School of Public Policy:*

Chelsea Hall, Kelsey Perez, D. Azarmi, and Ryan Manriquez

Table of Contents

Acknowledgements..... 4

Executive Summary..... 5

Introduction.....7

The Oakland Public Ethics Commission..... 7

Legal Landscape..... 7

Exploring Challenges and Opportunities..... 8

Current Records Request Process in the City of Oakland..... 9

Why Public Records Matter..... 12

Oakland’s Track Record for Transparency Reform..... 13

Setting up Our Analysis..... 15

Main Research Questions..... 15

Methodology..... 15

 Phase 1: Background Research..... 15

 Phase 2: Qualitative Interviews..... 15

 Phase 3: Selecting and Analyzing Best Practices..... 17

Initial Findings..... 17

Key Priorities..... 18

 Ease of Implementation in Other Jurisdictions..... 18

 Use of Technology..... 18

 Data Aggregation..... 18

 Sensitivity to Confidential Information..... 19

 Feasibility in Oakland..... 19

 Preliminary Cost Savings..... 19

Best Practices Analysis..... 22

Cross-Departmental Coordination..... 23

 Case Study Agencies..... 23

 Comparison and Analysis..... 25

 Feasibility in Oakland..... 26

 Preliminary Cost Savings..... 27

 Recommendations..... 28

Open Data Portals..... 29

 Case Study Agencies..... 30

 Comparison and Analysis..... 33

 Feasibility in Oakland..... 34

 Preliminary Cost Savings..... 35

 Recommendations..... 37

Police Data Dashboards..... 38

 Case Study Agencies..... 38

 Comparison and Analysis..... 43

 Feasibility in Oakland..... 44

Item 5 - Goldman Student Presentation on Transparency

Preliminary Cost Savings.....	45
Recommendations.....	46
<i>Contract Tracking Dashboards.....</i>	<i>47</i>
Case Study Agency.....	47
Feasibility in Oakland.....	49
Preliminary Cost Savings.....	49
Recommendations.....	50
Summary of Recommendations and Next Steps.....	51
<i>Limitations.....</i>	<i>52</i>
<i>Next Steps for the City of Oakland.....</i>	<i>52</i>
<i>Theoretical Approaches for Consideration.....</i>	<i>53</i>
Appendix: List of Interviewees.....	54
The Authors.....	56

Oakland City Hall cover image credit: Amir Aziz

Acknowledgements

The Goldman School Team would like to express our deepest gratitude to Commissioner Francis Upton and Executive Director Nicolas Heidorn of Oakland's Public Ethics Commission (PEC) for their unwavering support, guidance, and collaboration with this project. We are also thankful to our faculty advisor, Meredith Sadin, for reviewing our work and offering valuable insights and suggestions.

We would like to extend our sincerest gratitude to Jerry Flanagan from Consumer Watchdog, who was generous in sharing his time and knowledge of the California Public Records Act with us. His expertise and insightful contributions were instrumental for this project. We would also like to thank David Cuillier from the Brechner Center for Freedom of Information at the University of Florida. David provided the Goldman Team with research and resources that enriched our analysis, and we are deeply appreciative of his invaluable assistance.

Lastly, we would like to thank the staff at the San Francisco Department of Public Works, DataSF, San Francisco Police Department, San Diego Police Department, Seattle Information Technology, Seattle Purchasing and Contracting Division, Berkeley Police Department, Louisville Jefferson County Metro Government Office of Records Compliance, Louisville Jefferson County Metro Technology Services, and the State of Vermont Agency of Human Services for their willingness to meet with us for our research and participate as case studies in this report.

Executive Summary

An open government is a cornerstone of a healthy democracy, and Oaklanders value transparency and insight into the inner workings of their city. The City of Oakland Public Ethics Commission promotes transparency in Oakland government and provides information and resources to ensure that residents can obtain City documents and data. However, the City as a whole currently faces a number of challenges in responding to requests for public records: disparate departmental processes, a lack of unified mandatory training, limited interdepartmental collaboration, and incomplete and obscure disclosure of data.¹ City departments tend to be siloed and understaffed, and find themselves in precarious situations where they are unable to meet requests for information.² This perpetual cycle results in a dysfunctional system, ultimately leading to government unresponsiveness and public mistrust. This is a critical point of policy intervention because greater transparency allows for iterative public conversations, ultimately enabling the City government to create better policies for the people it serves.

Oakland needs systems and processes in place that facilitate the proactive disclosure of public records to achieve *openness by default*, a standard that will advance the City to become a leader in the government transparency movement.

The Goldman School team met with journalists, nonprofits, and government jurisdictions nationwide to uncover best practices for government transparency and public records requests that the City of Oakland could implement. We focused on ten government agencies of interest, which surfaced four key best practices.³ In the resulting analysis, we summarize each best practice and conduct an in-depth evaluation using qualitative data from current research and our source interviews. Ultimately, we present a set of short-term and long-term recommendations for achieving each best practice.

In summary, we recommend that the City of Oakland:

1. **Institute a centralized Public Records Office** to foster greater cross-departmental coordination so that public records requests can be processed more easily. This will increase staff efficiency and enable more seamless implementation of the other recommendations.
 - *In the short-term, the City should also:*
 - Institute bi-monthly meetings of all Public Records Liaisons.
 - Upgrade its NextRequest contract.
 - Mandate regular staff training on NextRequest and public records laws.
 - Create a citywide cheat sheet for making redactions.

¹ Source: Conversations with PEC staff members.

² City of Oakland Public Ethics Commission. "[Spotlight on Oakland's Public Records System: A Data-Driven Review of City Agency Performance Opportunities for Improvement](#)", *Public Ethics Commission*, May 2021.

³ Jurisdictions included the San Francisco Department of Public Works, DataSF, San Francisco Police Department, San Diego Police Department, Seattle Information Technology, Seattle Purchasing and Contracting Division, Berkeley Police Department, Louisville Jefferson County Metro Government Office of Records Compliance, Louisville Jefferson County Metro Technology Services, and the State of Vermont Agency of Human Services.

Item 5 - Goldman Student Presentation on Transparency

- Create citywide guidance documents for responding to public records, including how to handle common issues and questions.
2. **Establish a more robust Open Data Policy and build upon the existing open data portal** to decrease the amount of staff time spent on responding to public records requests and enhance overall transparency.
 - *In the short-term, the City should also:*
 - Begin conversations with departmental heads about the importance of publishing more data and records.
 - Coordinate with the City Administrator's Office to make existing datasets in the open data portal more accessible.
 - Determine and categorize the most commonly requested types of records in NextRequest for each department.
 - Expand resources and guides for how to use the open data portal.
 3. **Integrate a detailed Police Data Dashboard into the open data portal** to foster public accountability and center real-time, public-facing data in law enforcement, an important step toward building trust between citizens and the Oakland Police Department.
 - *In the short-term, the City should also:*
 - Work with OPD and/or IT to establish a consistent schedule for updating all data on Oakland's current police data dashboard and make it more accessible.
 - Begin to involve the public via focus groups to give direction for how to best improve the dashboard.
 4. **Create a citywide Contract Tracking Dashboard** to increase public trust in the City contracting process and demystify public-private partnerships through proactive disclosure.
 - *In the short-term, the City should also:*
 - Work with the City Administrator's Office to begin the process of consolidating citywide contract information.
 - Produce summary reports that analyze contracts by type to identify asymmetries in contract distribution and frequency.

Through our analysis, we demonstrate that Oakland could incur significant cost savings by implementing any or all of these recommendations. Although working with limited information, we derived a formula for estimating preliminary cost savings for each best practice. With full implementation of the recommendations, this preliminary analysis shows that the City could *annually* save taxpayers \$200,000 with the Public Records Office, \$2,000,000 with the open data portal, \$2,500,000 with the police data dashboard, and \$300,000 with the contract tracking dashboard.

Introduction

The Oakland Public Ethics Commission

The City of Oakland Public Ethics Commission (PEC) is an independent commission of seven Oakland residents who volunteer their time to promote open and fair government. Established in 1996, the primary objective of the PEC is to uphold principles of “fairness, openness, honesty and integrity”⁴ within the City government. The PEC is charged with overseeing compliance with the California Public Records Act, Brown Act, and the Oakland Sunshine Ordinance, among other laws. Historically, the PEC has set precedents for transparency and implements various policies and measures to enhance public trust in the City government.

Legal Landscape

The California Public Records Act (CPRA) was passed by the California Legislature in 1968, requiring that government records be disclosed to the public on request. It defines applicable records as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics,”⁵ which can include documents, reports, staff emails, and many other types of written records. The CPRA aims to 1) promote accountability of government to the public; 2) encourage the disclosure of governmental affairs; and 3) recognize that secrecy is contradictory to democracy’s core values.⁶ The CPRA was modeled after the federal Freedom of Information Act (FOIA) of 1967 and establishes two types of rights for the public: the right to request records, and the right to inspect records. There are 76 exemptions to the CPRA, usually relating to privacy and confidentiality concerns, though some exemptions are voluntary and agencies can elect to produce records.⁷ The League of California Cities notes that “disclosure obligations under the PRA must be construed broadly, and exemptions construed narrowly.”⁸

In addition to the CPRA, California voters approved Proposition 59 in 2004, which enshrines the right to access public records into the state Constitution. Ten years later, voters approved Proposition 42, which mandates adherence to the provisions of the CPRA notwithstanding whether the State reimburses local governments for costs related to adherence.⁹ Additionally, the California Brown Act was enacted in 1953 and guarantees the right to attend and participate in public hearings.¹⁰

In California, the City of Oakland has been a leader in municipal transparency policy by adopting its own Sunshine Ordinance 1997, which builds upon the provisions of the CPRA.

⁴ “[Public Ethics Commission](#).” *City of Oakland*. Accessed 17 Apr. 2024.

⁵ CA Govt Code § 6252(e)

⁶ Govt Code, § 7920.000 et. seq. (formerly Gov. Code, § 6250 et seq.)

⁷ “[The People’s Business: A Guide to the California Public Records Act](#).” League of California Cities, Sept. 2022.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Lockyer, Bill (2003), “[The Brown Act: Open Meetings for Local Legislative Bodies](#)” (PDF), vol. Foreword, Introduction, and Table of Contents, [California Attorney General](#), archived from [the original](#) (PDF) on 2009-05-01.

Item 5 - Goldman Student Presentation on Transparency

Specifically, it requires faster response times for certain types of public records and the release of more City documents than is required under the CPRA.¹¹ By guaranteeing access to certain government information, Oakland allows the public a wider window into its actions and processes.

The CPRA requires government agencies to respond within ten days to requests for public information. However, one of the unique features of Oakland's Sunshine Ordinance is its condition that allows for the "immediate disclosure" of specific records. When a person requests immediate disclosure of specific records (i.e. meeting agendas, agenda packages, calendars, etc.) the agency must provide a copy of these documents no more than three business days later.¹² Another unique feature of the Ordinance is that, if a City department denies a person's request for records, they may request that the Public Ethics Commission attempt to mediate the dispute.

Exploring Challenges and Opportunities

Local governments nationwide face myriad challenges with making data and records publicly available, including staffing constraints, lack of technological investment, litigatory risk, and the complexities of federal, state, and local laws mandating disclosure. Local news stories are rife with cases of agencies falling behind on responding to requests for information, at times with the presumption that the delay is intentional.^{13,14,15} Such challenges find their way into public perception: a Pew Research Center survey found that just 7% of Americans believe "local governments share data very effectively." Only 19% of respondents said that they "could think of an example where the local government did a good job providing information to the public about data it collects."¹⁶ The City of Oakland faces similar challenges that erode residents' trust, including disparate departmental processes, a lack of unified training, limited interdepartmental collaboration, and incomplete and obscure disclosure of data. In a [2021 report](#), the PEC found that 70% of NextRequest users were dissatisfied with the service they received and the amount of redacted information included in their records request response.¹⁷ In light of such challenges, it is imperative that the City of Oakland implement comprehensive reforms to current processes to rebuild public trust and fulfill its duty to serve Oaklanders and its community.

¹¹ City of Oakland Public Ethics Commission. "[Spotlight on Oakland's Public Records System: A Data-Driven Review of City Agency Performance Opportunities for Improvement](#)", *Public Ethics Commission*, May 2021.

¹² Ibid.

¹³ Jarmanning, Ally, and Todd Wallack. "[Keeping Public Records Secret Is Costing Mass. State and Local Agencies](#)." WBUR News, WBUR, 21 Sept. 2023.

¹⁴ Derby, Diane. "[Letters from the Editors: Public Records Are Just That](#)." VTDigger, 20 Feb. 2024.

¹⁵ McDonald, Jeff. "[In Chula Vista, When It Comes to Public Records, Not Much Is Public](#)." Tribune, San Diego Union-Tribune, 4 Feb. 2024.

¹⁶ Horrigan, John B. "[Americans' Views on Open Government Data](#)." Pew Research Center: Internet, Science & Tech, Pew Research Center, 21 Apr. 2015.

¹⁷ City of Oakland Public Ethics Commission. "[Spotlight on Oakland's Public Records System: A Data-Driven Review of City Agency Performance Opportunities for Improvement](#)", *Public Ethics Commission*, May 2021.

Item 5 - Goldman Student Presentation on Transparency

Current Records Request Process in the City of Oakland

Decentralization and departmental discretion

The City of Oakland uses the [NextRequest](#) online system as a central portal to track public records requests. Departments accept requests by phone, email, or mail. However, responses to these requests are decentralized and there is no central function to ensure timely response and compliance with statutory deadlines. Most City departments use NextRequest to field and organize requests. However, the coordination and response process is specific to each department, as members of the public select which department to send their request to with a drop-down feature, and the request is then delivered to the departmental Public Records Liaison. There is no centralized body that receives and routes requests, putting the onus on the requester to know which department holds the records they are seeking. Although there are standardized message templates to be sent to the requester in the NextRequest system, they are underutilized, and NextRequest's user-friendly redaction feature is also unused.¹⁸ The PEC notes that Oakland currently uses a minimal version of NextRequest without many of the additional features that are used by other jurisdictions.

Oakland's NextRequest system has incurred significant complaints from staff members regarding its usability and issues with data tracking. An anonymous 2021 survey of 14 Public Records Liaisons in different departments at the City of Oakland provided enlightening insights.¹⁹ One liaison noted that "training on NextRequest would be helpful – some staff do not seem to fully understand the mechanics of the site," while another liaison stressed the need for "more templated responses."

Additionally, there is not one unified or standardized citywide process for responding to public records requests. The public records collection and response protocols followed by each City department are not made accessible to the public without inquiry, but, considering the decentralized approach, it is likely there are significant differences across departments. In order to find out more about different City departments' public records staffing and processes, information would need to be collected from each department. Project timeline and capacity constraints rendered it infeasible for the research team to conduct additional outreach to internal City staff.

Lack of unified mandatory training

As required by Oakland's Sunshine Ordinance, the City keeps a [public list](#) of 37 Public Records Liaisons, one for each of its departments, councils, and commissions, last updated in December 2022 as of the date of this report. These liaisons are trained within their respective departments, and according to a Public Records Liaison for the Public Ethics Commission, other than an [optional video overview](#) of the City's Sunshine Act produced by the Ethics Commission, there is no citywide training on how to respond to public records requests. The need for additional training is apparent in one response from the 2021 survey of Liaisons:

¹⁸ Source: Conversations with PEC staff members.

¹⁹ The detailed survey results are not available to the general public. However, the results are loosely summarized in the [2021 PEC report](#).

Item 5 - Goldman Student Presentation on Transparency

“ It would be helpful to have available a more detailed description (some sort of written guide) of the subject areas, projects, programs, and contracts that each department oversees – on more obscure requests, it's very challenging for me to determine who is the appropriate party to respond, it's time consuming to have to track down this information. In addition, more training on the type of information that is subject to redaction would be very helpful. Staff without a legal background struggle to make these determinations, requiring greater reliance on City Attorneys, who also have capacity challenges and competing priorities. Having a written guide or training resources to refer to would be really helpful.”²⁰

Volume and capacity

Often, departmental liaisons work on public records part-time and have many other administrative duties to fulfill. The only department we were able to confirm as having full-time public records staff is the Police Department.²¹ Given these staffing constraints, a central challenge is the sheer volume of requests for public information. Since going online in 2013, Oakland's public records request system, NextRequest, has received almost 50,000 requests. A [2021 report](#) conducted by the PEC found that in 2020, over 9,000 public records requests were submitted, a 46% increase over 2019.²² A recent search in NextRequest finds that requests continue to skyrocket: 12,582 were submitted in 2023. With its records requests increasing, Oakland has found itself in a precarious position. Demands for records from the Police Department (OPD), Fire Department (OFD), and Planning and Building are where Oakland is currently falling behind. The 2021 report shows that 58% of all 2020 public records requests were concentrated in OPD, a proportion that has since increased.²³ In an article by Eli Wolfe of *The Oaklandside*, OPD attributes the lack of responsive requests to understaffing.²⁴ OPD staff members reported that the department receives almost 800 new requests for records every month in 2024, on track for a total of 9,500 requests this year.²⁵ Due to staffing issues and the sheer volume of requests, OPD is unable to fulfill its duties, causing frustration among the media and the public.

This came to a head with a class action lawsuit filed by a group of journalists and activists against OPD, whose records requests had “languished for years in a colossal backlog” according to a *Courthouse News Service* article.²⁶ The City settled in 2021, agreeing to pay \$127,000 in plaintiffs' legal fees and to reform its public records system.²⁷ However, in August 2023, *The Oaklandside* submitted a public records request for the Mayor's and City Council's appointment schedules, but the City has failed to respond.²⁸

²⁰ Source: Results from 2021 survey of Public Records Liaisons.

²¹ Source: Conversations with PEC staff members.

²² City of Oakland Public Ethics Commission. “[Spotlight on Oakland's Public Records System: A Data-Driven Review of City Agency Performance Opportunities for Improvement](#)”, *Public Ethics Commission*, May 2021.

²³ Ibid.

²⁴ Wolfe, Eli. “[Oakland Police Department Says It Is Drowning In Requests For Records](#)”, *The Oaklandside*, 21 Feb 2024.

²⁵ Ibid.

²⁶ Dinzeo, Maria. “[Judge Oks Settlement between Journalists, Oakland Police over Public Records Backlog](#).” *Courthouse News Service*, 9 Dec. 2021.

²⁷ Rosenberg, Tracy. “[Public Records Class Action Lawsuit against Oakland Police Department Settled](#).” *Oakland Privacy*, 7 Nov. 2021.

²⁸ Wolfe, Eli. “[Why Won't Oakland Leaders Let Us See Their Calendars?](#)”, *The Oaklandside*, 14 December 2023

Item 5 - Goldman Student Presentation on Transparency

As for OFD in 2023, a total of 819 public records requests were submitted through NextRequest.²⁹ A significant number of requests are concentrated in three divisions: the Fire Prevention Bureau, Fire Dispatch Center, and Medical Services Division. The biggest challenge that OFD faces is that there is no full-time staff member dedicated to responding to public records requests. This places an administrative burden on OFD staff, who take time away from their primary role in order to service a request. This seems to be consistent with the experiences of staff at OPD and the Planning Department, and reveals opportunities to improve the public records request process within multiple departments.

A 2021 survey respondent mentioned that responding to public records is “understood to be an important function, but with low capacity and competing priorities it's difficult to manage the volume of requests received.” Additional feedback on the staff time needed to respond to requests and the confusion caused by the current system is reflected in this survey response:

“Responding to an unending stream of record requests from the public is an incredibly time consuming and expensive endeavor for taxpayers. Watching staff members who are trained and hired as (for ex.) urban planners or housing experts, spend entire work days reviewing and printing emails to adhere to a fishing expedition of a PRR is a waste of their tax-payer salary... Staff are habitually late and rarely deliver records on time, but not for lack of effort. The amount of requests consumes work days and weekends for some employees and contributes to work-flow bottlenecks in other areas. It's inefficient for everyone.”

Limited interdepartmental collaboration

Interdepartmental collaboration is mostly limited to occasional requests for assistance from the City's Information Technology (IT) department and City Attorney's Office. Departments seem to occasionally collaborate with the IT department to systematically collect and sort through digital records. However, in large part, staff are expected to manage and organize their own emails and documents and manually collect all responsive emails in the event of a public records request. The City Attorney's Office answers staff questions about confidentiality issues and redaction, assists with responses to otherwise sensitive requests, and grants new user permissions for NextRequest.³⁰ When a records request involves more than one department, it takes longer to coordinate among departments and produce the relevant documentation.³¹

Data disclosure is incomplete or challenging to access

In terms of proactive disclosure of data, the City has an [open data portal](#) and recently launched a [police data dashboard](#). The open data portal is powered by Tyler Technologies. While it is managed by the City Administrator's Office, departments can opt in to publishing their data and community members can add their own content to the portal. It contains mostly raw data about specific City services; the datasets are limited and it is unclear what they contain by reading the dataset name (for example: “Oakland PDA” or “Oakland Public

²⁹ “[PEC Letter to OFD and Response](#),” *City of Oakland Public Ethics Commission*, 18 Mar. 2024.

³⁰ Source: Interview with an Oakland Public Ethics Commission Program Manager and Ethics Analyst.

³¹ City of Oakland Public Ethics Commission. “[Spotlight on Oakland's Public Records System: A Data-Driven Review of City Agency Performance Opportunities for Improvement](#)”, *Public Ethics Commission*, May 2021.

Item 5 - Goldman Student Presentation on Transparency

Housing 2014 Geocode). Currently, it is difficult to access the open data portal without doing a browser search, as it is linked only on the very bottom of the City website. The City's separate [geospatial data platform](#) is not visibly accessible from the website at all. Oakland appears to have adopted an Open Data Policy in 2013, but the policy does not seem to be fully implemented and outcomes are unclear as it is not mentioned on the City website.³² The new police data dashboard is somewhat sparse, though the more robust aspects connect directly to the open data portal. It also contains mostly raw data such as crime statistics, police shootings, and misconduct data, most of which was required to be disclosed by a 2021 court settlement.³³ The dashboard also contains a map of recent crime incidents as well as monthly gunshot reports; however, the later reports have not been updated beyond 2018 as of the date of this report.

While Oakland has made some strides in promoting transparency and accountability, there remains a strong need to improve current systems that struggle to keep up with legal requirements and the public's expectations of openness. A 2014 report commissioned by the PEC demonstrates that many of the same challenges the City faced 10 years ago remain active and unresolved today.³⁴ Oakland's current Public Ethics Commission is now focused on finding solutions that would help improve records request processes, especially for the City's large departments.

Why Public Records Matter

Greater transparency of data and insight into the inner workings of government are incredibly important for policy outcomes – more accessible information enables conversations between citizens and government that ultimately lead to “better policy decisions”³⁵ and overall “good governance.”³⁶ Although sources are mixed on an authoritative definition,³⁷ transparency is loosely defined as “the principle of allowing those affected by administrative decisions to know about the resulting facts and figures... and about the process that resulted in those decisions.”³⁸ Similarly, the San Francisco Bay Area Planning and Urban Research Association's (SPUR) definition of good government is outlined by six principles, one of them being transparency. SPUR asserts that an effective government ensures transparency by making information readily available to the public and maintaining clear communication regarding its decision-making procedures.³⁹ Transparency of public records heavily influences public perception: “When... the public can see what is happening and are involved in the process, they are more likely to accept what comes out of it. They believe that what occurred was lawful, fair and based on informed decision-making.”⁴⁰

³² “[File #: 13-0057.](#)” *City of Oakland Legistar*, City of Oakland, 15 Oct. 2013.

³³ Dinzeo, Maria. “[Judge Oks Settlement between Journalists, Oakland Police over Public Records Backlog.](#)” *Courthouse News Service*, 9 Dec. 2021.

³⁴ “[Toward Collaborative Transparency.](#)” *City of Oakland Public Ethics Commission*, Jan. 2014.

³⁵ “[National League of Cities: Why Transparency Is Good \(or Bad\) for Governments?](#)” *New Hampshire Municipal Association*. Accessed 28 Feb. 2024.

³⁶ Grimmelikhuijsen, Stephan, et al. “[The effect of transparency on trust in government: A cross-national comparative experiment.](#)” *Public Administration Review*, vol. 73, no. 4, 29 Apr. 2013, pp. 575–586, <https://doi.org/10.1111/puar.12047>.

³⁷ Krahn, R. D. Y., & Mertens, G. (2020). [Transparency in Local Governments: Patterns and Practices of Twenty-first Century.](#) *State and Local Government Review*, 52(3), 200-213.

³⁸ <https://icma.org/page/transparent-governance-anti-corruption>

³⁹ Karlinsky, Sarah, & Christie, Annie. “[Making Government Work: 10 ways city governance can adapt to meet the needs of Oaklanders.](#)” SPUR, November 2021.

⁴⁰ Ibid.

Item 5 - Goldman Student Presentation on Transparency

In the Pew Research Center poll, 66% of respondents displayed some sense of optimism that improved data and transparency practices in government would also increase accountability.⁴¹ This is especially true for cities engaging in greater transparency through proactive disclosure, or the practice of publishing data and records online without the need for residents to make a formal request to city staff. Proactive disclosure is crucial considering the history of secrecy and inaccessibility in government and the groups who are more likely and able to access public records. According to an in-progress study by David Cuillier with the University of Florida's Brechner Center for Freedom of Information and A.Jay Wagner with Marquette University, a majority of public records requesters nationwide are educated, wealthy white men.⁴² Historically, this demographic knows how to navigate the system compared to someone without the same resources or education. Ginny LaRoe, Director of Advocacy at the First Amendment Coalition, pointed out that individuals seeking public records often feel compelled to understand and adhere to the agency's protocols, meticulously prepare, and provide precise legal references. However, even for those familiar with the procedures, obtaining comprehensive or understandable information from governments is difficult.

The current approach of processing records perpetuates a system that is influenced by budgetary decisions and the individual beliefs and culture of departmental leadership. This report emphasizes the need for enhanced transparency practices in Oakland, but also highlights an even more urgent need for sufficient resources to facilitate transparency. In order to bring city government into the twenty-first century, it is critical that cities "forge new digital procedures where hard-copy practices still prevail." Meaningful transparency reform "is a matter of making a concerted effort to transition"⁴³ – in other words, "a matter of budgets and priorities."⁴⁴ For Oakland to become a leader in the transparency movement, it must reassess its existing systems and devise strategies to prioritize its residents' concerns, including a fresh approach to budget allocation. Oakland must prioritize transparency in its City budget in order for any of our recommended best practices to actualize.

Oakland's Track Record for Transparency Reform

The City of Oakland has been a leader in advancing transparency in the past with its campaign finance reform policies. The City could replicate its successful approaches to campaign finance with its public records systems.

For decades, Oakland kept only hard-copy records of campaign finance documents such as statements detailing monetary contributions to election campaigns. Members of the public interested in viewing such documents needed to visit City Hall in person for access. However, in 2013, Oakland was proactive in pursuing transparency when the City Council contracted

⁴¹ Horrigan, John B. "[Americans' Views on Open Government Data](#)." Pew Research Center: Internet, Science & Tech, Pew Research Center, 21 Apr. 2015.

⁴² The research paper, titled "The Document Divide: Public Record Requester Demographics, Efficacy, and Those Left Behind," is not yet published as of April 2024. A draft was graciously provided by David Cuillier.

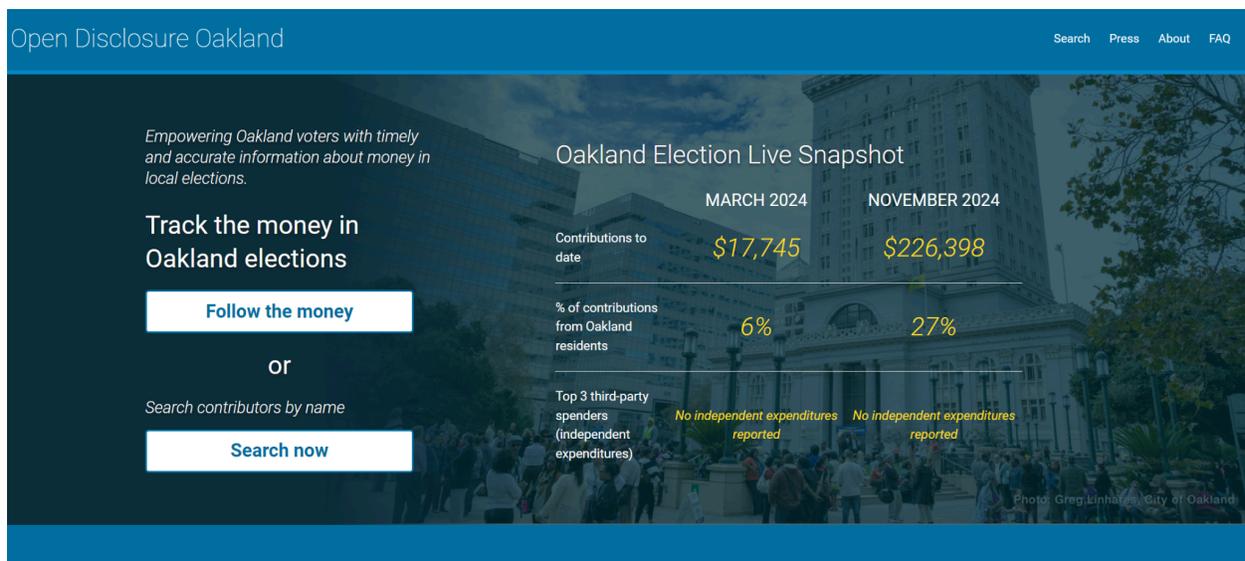
⁴³ Wagner, A.Jay, and Daxton "Chip" Stewart. "[Opening the Floodgates: Assessing and Implementing Affirmative Disclosure](#)." National Freedom of Information Coalition, 25 Oct. 2023.

⁴⁴ Gordon, Aaron. "[I Filed 136 Public Records Requests with Police and Learned Why Our System Is Broken](#)." VICE, Vice.com, 7 Dec. 2023.

Item 5 - Goldman Student Presentation on Transparency

with [NetFile](#) to create a publicly-accessible online system for filing and reviewing campaign finance documents.⁴⁵ The California legislature caught up several years later in 2020 by amending the outdated Political Reform Act of 1974 with AB 2151. The new law required all local government agencies to post campaign finance documents online.⁴⁶

Early on, the City of Oakland recognized the important role of digitally transparent campaign finance records in fostering confidence in local elections and elected officials. In 2022, the City once again surpassed state law when it amended its local Campaign Reform Act to require the disclosure of more campaign information than is required under state law.⁴⁷ Oakland continues to make improvements to its campaign finance systems and leverages technology by hosting a wide variety of information about campaign finance on its website. The City has also partnered with civic hackers at OpenOakland to make this information more digestible to the public, such as through a [public portal](#) for accessing information about campaign finance and lobbying, the “[Show Me The Money](#)” candidate search portal, and the “[OpenDisclosure](#)” contributor search portal, all of which are easily accessible from the PEC’s central “[Disclosure Information and Data](#)” webpage. In 2022, content in the OpenDisclosure portal received over 50,000 views.⁴⁸



The City of Oakland has made tremendous progress in setting standards and expectations for digital transparency within campaign finance. With the recommendations in this report, the City has a significant opportunity to apply the successes seen with campaign finance to centralizing and upgrading its public records systems.

⁴⁵ “[Toward Collaborative Transparency](#).” *City of Oakland Public Ethics Commission*, Jan. 2014.

⁴⁶ “[Bill Text](#) - AB-2151 Political Reform Act of 1974: Online Filing and Disclosure System.” *California Legislative Information*, 30 Sept. 2020.

⁴⁷ https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT3MUUEL_CH3.12THOACAREAC

⁴⁸ “[Annual Report 2022](#).” *City of Oakland Public Ethics Commission*, 2022.

Setting up Our Analysis

Main Research Questions

This report seeks to answer the following questions:

- How have other jurisdictions streamlined their response to public records requests, both interdepartmentally and with requesters?
- What have other jurisdictions done in pursuit of proactively disclosing information to the public?
- What challenges do other jurisdictions face when implementing these practices, and what resources does successful implementation require?

Methodology

Our work comprises three phases: Background Research, Qualitative Interviews, and Selecting and Analyzing Best Practices. In the first phase of research, our team conducted a review of existing research on best practices of government transparency in California, nationwide, and internationally. This broad understanding allowed us to move into our second phase of conducting qualitative interviews. Qualitative interviews were our primary data collection method and were used to uncover promising innovations and approaches. After conducting 30 interviews with state and local jurisdictions, journalists, scholars, and nonprofit watchdogs, we transitioned to our final phase of selecting case studies and synthesizing key recommendations for how the City of Oakland can achieve meaningful transparency for its residents.

Phase 1: Background Research

While conducting background research, we considered many aspects of the overall landscape of government transparency as well as the current practices in the City of Oakland. Our review included articles from scholarly sources, news outlets, watchdog groups, and state and local laws – all focused on the current state of government transparency in cities and states nationwide. We also reviewed publicly available information and reports by the City of Oakland, which we used to outline the current records request processes and challenges that the City faces in working toward meaningful transparency.

Phase 2: Qualitative Interviews

Conducting qualitative interviews was our primary source of data collection to conduct the best practices analysis. We first developed an initial list of potential interviewees, which happened concurrently with our research in Phase 1. In addition to identifying and contacting journalists and non profit organizations that had expertise in government transparency, we largely interviewed other government agencies. We began by contacting agencies that were positively cited in media outlets for their handling of data, records, and overall transparency. Although we focused primarily on reaching out to local jurisdictions in California that were somewhat comparable in size and structure to Oakland, we also looked for jurisdictions in

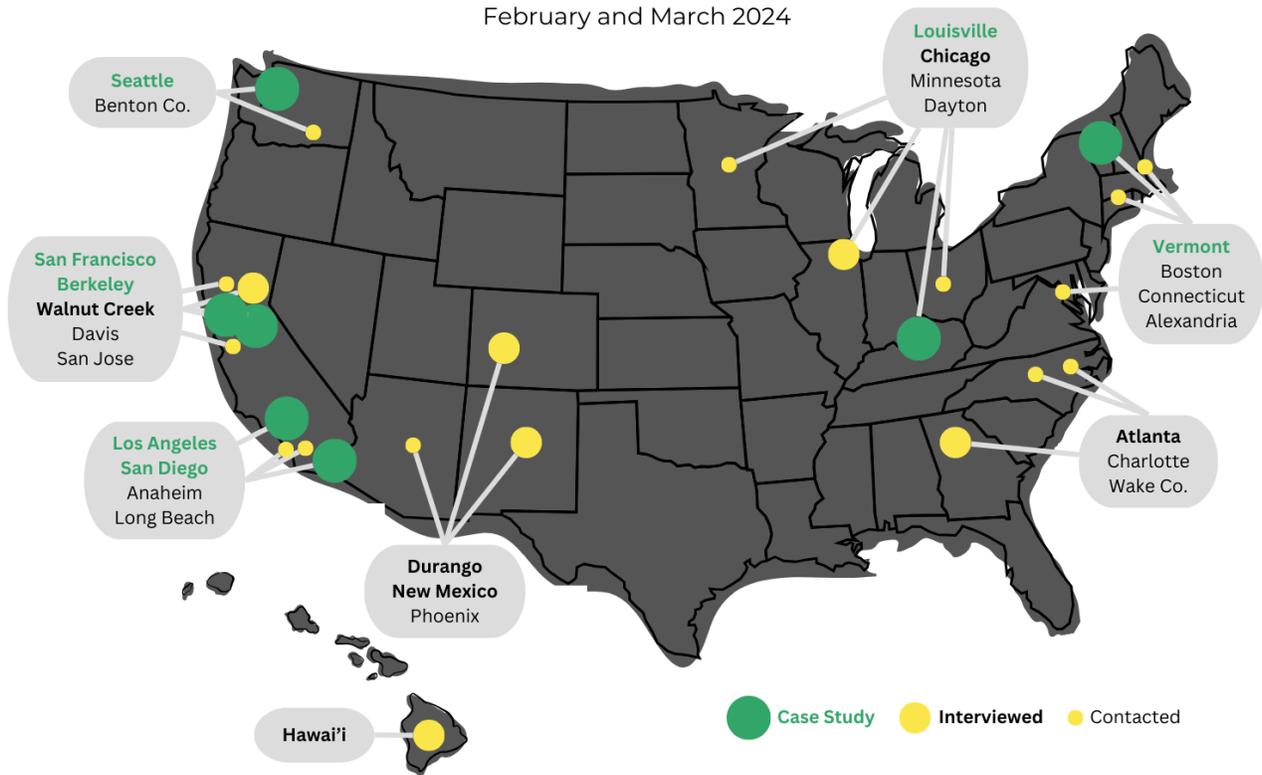
Item 5 - Goldman Student Presentation on Transparency

other states. We narrowed our list based on the efficacy and accessibility of agencies' public records and transparency-related web pages, the tone of press coverage and direct feedback from journalists, and how responsive agency representatives were to our email and phone communications. As we began to conduct interviews, we also received cascading referrals to other potential interviewees.

In total, we contacted 61 different organizations and agencies for an interview. We conducted 30 interviews with 9 journalists and nonprofit watchdogs as well as 21 state and local agencies, in total, representing 11 U.S. states. The government agencies we contacted and/or interviewed are mapped below. Interviews lasted between 30 minutes to a full hour, allowing us to collect meaningful qualitative data with experts in government transparency as well as practitioners. After collecting this data from our interviews, our team organized a menu of promising transparency practices for the PEC.

Jurisdiction Outreach

February and March 2024



Note: Refer to the Appendix for a full list of interviewees, including department and staff names.

Item 5 - Goldman Student Presentation on Transparency

Phase 3: Selecting and Analyzing Best Practices

Our team provided the PEC with a menu of 10 transparency best practices across 10 different government agencies. From this list, the PEC was asked to select 2-4 best practices for in-depth analysis in this report. The PEC selected the following four best practices: 1) Cross-Departmental Coordination, 2) Open Data Portals, 3) Police Data Dashboards, and 4) Contract Tracking Dashboards. From there, we analyzed each practice and compared jurisdictional approaches, with an eye toward the Key Priorities outlined below.

Initial Findings

The interviews yielded initial findings that required us to rescope our analysis. Although the PEC was originally interested in finding **agencies that demonstrate transformative transparency practices, including but not limited to public records**, there are few cases where any single jurisdiction as a whole demonstrated innovations in transparency. Rather, particular departments and aspects of a jurisdiction's work were found to be relatively transparent. There are rarely standardized approaches to responding to public records requests, and agencies across the nation struggle due to decentralized processing systems and not enough designated staff.

In addition, the PEC was interested in technological innovations. Transparent agencies nationwide share similar practices, such as the use of NextRequest or the comparable GovQA to field public records requests. "Innovative" transparency is mostly limited to data sharing and coordination across departments. However, having software that can translate complex data and make it digestible for residents, such as with comprehensive open data portals and dashboards, is a powerful tool for enhancing openness.

While the project scope was originally quite ambitious, our research yielded few truly transformative or highly technological practices. Most of the cases examined involved structural, programmatic, or procedural changes. Agencies that were comparatively transparent often had policies of proactive disclosure. Indeed, research shows that public records requests decrease when a jurisdiction demonstrates greater proactive disclosure.⁴⁹ Therefore, we narrowed our analysis to **agencies that demonstrate or enable proactive disclosure of public records**.

When instituting policies of proactive disclosure, support from leadership such as the mayor and city council is essential. Larger cities are able to engage in proactive disclosure through open data portals and public safety dashboards, which encourage the public to do their research before making an official records request. Agency interviewees were in agreement that these practices significantly reduced the amount of staff time spent on public records requests, creating efficiencies for everyone.

⁴⁹ Stern, Alena. "[Research: Cities Can Save Time on Records Requests by Doing Open Data Right.](#)" *Sunlight Foundation*, 9 Oct. 2018.

Item 5 - Goldman Student Presentation on Transparency

Key Priorities

We conducted our analysis with an eye toward the following overall priorities to help us evaluate each of the best practices and explore their fit for the City of Oakland:

- ★ Ease of Implementation in Other Jurisdictions
- ★ Use of Technology
- ★ Data Aggregation
- ★ Sensitivity to Confidential Information
- ★ Feasibility in Oakland
- ★ Preliminary Cost Savings

Ease of Implementation in Other Jurisdictions

We consider how easy or difficult it was for case study agencies to implement each best practice. Perhaps one of the most important factors when considering the implementation of a new policy is support from leadership. Jurisdictions that have a clear culture of transparency relayed that successful, large-scale change is largely predicated on the support of the mayor, city council, or a state-level equivalent. The ease with which a transparency policy can be implemented also requires analysis of varying levels of staff resources and protocols that would need to be altered.

Use of Technology

We also consider how agencies make use of technology for each best practice. Technology is integral to modern and effective government transparency processes. The most commonly used online tools for requesting access to government records are NextRequest and GovQA. Emerging technologies such as AI are promising possibilities for eventually streamlining public records procedures.⁵⁰ However, while the use of AI in requesting records is revolutionary, jurisdictions that have tried out AI tools for this purpose report problems with recognizing the same type of document from different periods of time or redacting the correct information.⁵¹ With that said, a national survey finds that Americans in jurisdictions with self-service systems in place are “more satisfied with their local government than people still dependent on analog interactions to obtain government services.”⁵² In addition, residents tend to be more civically engaged when jurisdictions have technology-forward approaches.

Data Aggregation

Data aggregation describes the confluence of jurisdiction-wide data in one or only a few online touchpoints. This is especially important for complex datasets, such as police and public safety data. Interviewees repeatedly stressed the importance of ensuring that there is *translation* of complex data so that it is digestible for the public and that the same data platforms are easily accessible from several entry points.

⁵⁰ Kamb, Lewis. “[Some U.S. Government Agencies Are Testing out AI to Help Fulfill Public Records Requests.](#)” NBC News, NBCUniversal News Group, 1 Aug. 2023.

⁵¹ Source: Interview with San Francisco Department of Public Works staff.

⁵² [The Secret Solution to Increasing Resident Trust](#), CivicPlus, 2023.

Item 5 - Goldman Student Presentation on Transparency

Aggregated data must simultaneously be readable and neutral. When data is readily available, there's often an assumption that the public should possess the ability to locate it or have the resources to navigate it. This is where providing in-house analysis of data and production of helpful summaries and visualizations can render it more accessible. However, while this supports the public's ability to digest complex information, it also provides an opportunity for agencies to manipulate the narrative that data tells. It is critical to present data in an impartial manner. When the true stories data tells are embraced, meaningful measures toward change and transparency can have real impacts. If data is used to advance a goal or serve a purpose, rather than tell the truth, it not only breaks down community trust, but contributes to inadequate solutions that do not address the root of the problem. The point of aggregating data in a dashboard or portal should not be to show only favorable information, such as a decrease in crime, but to reveal an accurate and informative snapshot of the status of community issues and exhibit transformative government transparency.

Sensitivity to Confidential Information

We consider records containing confidential or sensitive information in our analysis. When working with potentially sensitive data, governments must proceed with caution. There are trade-offs to consider between the goal of greater transparency and following the relevant confidentiality laws. While a member of the public may want total transparency of information, jurisdictions have legal obligations to parties who may be endangered by the broad release of information. However, journalist Jeff McDonald with the San Diego Union-Tribune noted that there are serious shortcomings in this area when agencies redact "overly-broadly" and justify it by claiming attorney-client privilege, stating that there is an "ongoing review," or labeling reports as "drafts" but failing to ever release a final report. There are competing interests when it comes to releasing sensitive or preliminary information, and it results in a tricky balancing act that jurisdictions everywhere must navigate when considering transparency reforms.

Feasibility in Oakland

We analyze how feasible it is to implement each best practice in Oakland and what considerations are at play. This includes resources like staffing and technology as well as changes to the existing legal framework where applicable. All of the best practices derived from the case study interviews will have some form of cost, staffing burden, and/or technology upgrade. However, many interviewed jurisdictions stated that the long-term benefits of implementation far outweigh the short-term costs. Policy shifts also affect multiple departments in a jurisdiction. Departments like IT, the City Attorney's Office, and other stakeholders would need to be consulted before any implementation can occur. Aligning with the findings from our interviews, our recommended changes will also require support from leaders such as the Mayor and City Council. Receiving endorsement from these entities in Oakland is essential to making a lasting impact in pursuit of transparency.

Preliminary Cost Savings

The City of Oakland is facing an upcoming budget deficit. Emphasizing how transparency would save the City money strengthens our recommendations. Therefore, throughout our

Item 5 - Goldman Student Presentation on Transparency

analysis, we attempt to narrow in on a dollar amount of cost savings that the City could reasonably expect from implementing the recommended changes.

However, there are significant limitations to our estimates: we do not have specific or recent information on the time spent by all City staff on public records requests, nor do we have any aggregated information about litigation costs. Such limitations led us to analyze the available panel data for the State of Washington, which provides specific dollar costs for every public agency in the state. Consumer Watchdog asserts that it makes sense to compare Washington and California: “The WPRA provides a useful comparison to the CPRA as the laws have similar disclosure requirements, and the WPRA, like the CPRA, is modeled on FOIA.”⁵³ Consumer Watchdog also points out that “*Administrative* costs will always be necessary to implement the Constitutional promise of access. However, most agency *litigation* costs over the CPRA are wholly avoidable.”⁵⁴ (Interviewees repeatedly emphasized that in general, the costs of poor transparency far outweigh litigation costs, rendering this cost savings analysis quite conservative.) We were able to locate both administrative data (in terms of staff time)⁵⁵ and litigation data (in terms of settlements and legal costs) for the State of Washington.⁵⁶ For both the administrative and litigation data, we took the top three most populous cities – Seattle,⁵⁷ Spokane, and Tacoma, which together average to roughly Oakland’s population – and calculated their average administrative cost per request and their average yearly litigation expenses:

Washington Cities’ Data:

- Average Administrative Cost Per Request (2021) = \$404
- Average Litigation Costs (2018-2021) = \$462,759 yearly, \$8,899 weekly

Next, we used these numbers to estimate the costs of the status quo for the City of Oakland. Oakland received 12,582 requests in 2023, or 242 requests per week. We can estimate total weekly costs by multiplying the average cost per request of the Washington cities by the number of Oakland requests, and adding that to the Washington weekly litigation costs:

Rough Estimate of Current Total Weekly Costs to Oakland

$$\begin{aligned} &= (242 \times \$404) + \$8,899 \\ &= \mathbf{\$106,882} \end{aligned}$$

By estimating five additional variables, we can arrive at a new total weekly cost for each recommended practice:

1. Proportion of litigation costs under the proposed system as compared to the current system,
2. Any ongoing new software or technology costs,

⁵³ Flanagan, Jerry, and Ryan Mellino. *Letter to LAO Re: Government Transparency Act (A.G. File No. 23-0015)*, Consumer Watchdog, 17 Aug. 2023.

⁵⁴ Flanagan, Jerry, and Ryan Mellino. *Letter to LAO Re: Government Transparency Act (A.G. File No. 23-0015)*, Consumer Watchdog, 12 Sep. 2023.

⁵⁵ WA Joint Legislative Audit & Review Committee (JLARC). “[2021 - Metric 11](#).” *Tableau*.

⁵⁶ WA Joint Legislative Audit & Review Committee (JLARC). “[2021 - Metric 13](#).” *Tableau*.

⁵⁷ Because Seattle operates as a case study in this report, including their costs here boosts the conservatism of our estimates because their current costs are likely lower than they would be without their current public records practices.

Item 5 - Goldman Student Presentation on Transparency

3. Proportion of liaison staff time under the proposed system as compared to the current system,
4. Number of new full-time staff, and
5. Number of weekly public records requests.

Because the City has 37 Public Records Liaisons, and the 14 liaisons surveyed in 2021 spent an average of about 10.5 hours per week responding to public records, the total weekly hours dedicated to public records is as follows:

$$37 \text{ liaisons} \times 10.5 \text{ hours} = \mathbf{388.5} \text{ total weekly hours}$$

For the purposes of being conservative in our estimates, and because we cannot estimate how much time non-liaison staff spend collecting responsive records (though survey respondents contend it is significant), we are only including staff time of Public Records Liaisons and any proposed new staff. Although proposed new staff would present additional costs to the City, such as medical benefits, we are unable to estimate those costs at this time, and therefore rely on the highly conservative exclusion of non-liaison staff time to even out the analysis. The full formula for potential cost savings is as follows:

Rough Estimate of Proposed Total Weekly Costs to Oakland =

$$\begin{aligned} & (\text{Litigation costs} \times \text{Estimated new litigation rate}) + \\ & \text{Ongoing new software costs} + \\ & ((\text{Total staff hours} / \text{Old total staff hours at } 388.5) \times \text{Cost per request at } \$404 \times \text{Number} \\ & \text{of weekly public records requests}) \end{aligned}$$

Where Total Staff Hours =

$$\begin{aligned} & (\text{Current weekly liaison time at } 388.5 \text{ hours} \times \text{Estimated new proportion of} \\ & \text{liaison time}) + \\ & (\text{Number of new full-time public records staff} \times 37.5 \text{ hours}) \end{aligned}$$

To find estimated Cost Savings, we then subtract the proposed weekly cost from the current cost:

$$\text{Current weekly cost at } \$106,882 - \text{Proposed weekly cost} = \text{Cost Savings}$$

The estimates yielded by this formula, though conservative, are very rough. Without more data on each City department's costs and staff hours, both in terms of public records administration and litigation, they represent our best guesses given the limited scope of this report. In any case, there are tangible benefits to transparency: a growing body of research suggests that the costs associated with responding to public records requests far exceed what would be spent if agencies proactively disclose more information,⁵⁸ and our cost savings estimates reflect that.

⁵⁸ Egilman, A.C., Wallach, J.D., Morten, C.J. et al. [Systematic overview of Freedom of Information Act requests to the Department of Health and Human Services from 2008 to 2017](#). *Research Integrity & Peer Review* 4, 26 (2019).

Best Practices Analysis

Our research and informational interviews yielded four best practices in government transparency:

1. Cross-Departmental Coordination
2. Open Data Portals
3. Police Data Dashboards
4. Contract Tracking Dashboards

Cross-Departmental Coordination

Cross-departmental coordination involves helping all city departments work together directly in the public records sphere and providing space for continual process improvement on a citywide level. Standardized management of public records and coordination of response is a crucial structural consideration for heightening transparency.

In this report, cross-departmental coordination is characterized by:

- A centralized office or department with full-time staff dedicated to receiving requests and coordinating responses,
- Regular meetings of staff who are involved with public records (including trainings),
- Involvement of the city attorney's office and information technology department in a standardized way and on a citywide level, and/or
- Citywide standardization of public records guidance and technologies.

Cross-departmental coordination requires intentional investments in staff and other structural decisions that may involve the creation of a new office or department. According to Ginny LaRoe of the First Amendment Coalition, "No matter what technology or policy you're implementing, it won't matter unless you're spending time on staffing and training."⁵⁹ Technological upgrades alone do not result in meaningful transparency. Achieving a citywide culture of transparency requires enough funding for public records staff members and investments in staff knowledge and retention, often accompanied by changes to departmental structure.

Case Study Agencies

Four government agencies demonstrate exceptional cross-departmental coordination: the City and County of San Francisco Department of Public Works, the City of Seattle Department of Information Technology, the State of Vermont Agency of Human Services, and the Louisville Jefferson County Metro Government.

City and County of San Francisco Department of Public Works (DPW) staff noted that every City department has a designated Custodian of Records whose duties include receiving and responding to public records requests.⁶⁰ DPW's Custodian of Records, upon starting his position, saw a need for better knowledge-sharing among records staff and instituted bi-monthly meetings for all custodians.⁶¹ The meetings supplement the custodians' knowledge of public records procedures and trends, and they discuss what changes they want to see within their departments and citywide to handle requests more efficiently. This is especially salient given the San Francisco Sunshine Ordinance's "immediate disclosure" requirement that certain requests for public records are acknowledged within one day.⁶² According to the DPW Custodian of Records as well as the Custodian for the San Francisco

⁵⁹ Source: Interview with Ginny LaRoe, Director of Advocacy with the First Amendment Coalition.

⁶⁰ Source: Interview with David Steinberg, Executive Assistant and Custodian of Records with San Francisco DPW.

⁶¹ Source: Interview with David Steinberg, Executive Assistant and Custodian of Records with San Francisco DPW.

⁶² "[Frequently Asked Questions](#)." *Sunshine Ordinance Task Force*, City and County of San Francisco. Accessed 12 Apr. 2024.

Item 5 - Goldman Student Presentation on Transparency

Public Ethics Commission, these regular meetings help significantly with standardizing best practices and procedures.

Seattle IT's Data Privacy, Accountability, and Compliance Division supports the public records function and operates the open data program for the whole city. The Citywide Public Records Program Manager and Open Data Manager noted that having a city leader who is serious about transparency is a key factor in making structural changes.⁶³ Seattle has achieved citywide consistency through more centralized training, transitioning to more comprehensive and auditable technologies, and education to departments concerning the City's general public records obligations. The division provides training and support to public disclosure officers embedded throughout City departments to help ensure that records are delivered accurately and timely. In total, the City of Seattle received approximately 22,000 public records requests in 2023. Within the division, the Citywide Public Disclosure Program Manager has five full-time staff: three senior public disclosure officers (who run a help desk specific to public records, handle GovQA licensing, and general troubleshooting), one eDiscovery lead (who runs searches of responsive files on behalf of other departments, should they need or want that service), and one developer.

The State of Vermont Agency of Human Services (AHS) encompasses six departments that account for over half of the workforce of the Vermont state government. After widespread frustration with handling paper and digital agency records and information, AHS created an agency-wide Information Governance Committee, which meets monthly; the Vermont AHS Chief Operations Officer, with support from the Vermont State Archivist/Chief Records Officer, established the Committee in 2017 by formal charter.⁶⁴ It took Vermont AHS about 18 months to plan and formalize the committee, which included hiring a full-time records and information management (RIM) specialist to provide support, before regular meetings were held. The Committee brings together designated departmental "records officers" (most of whom manage a team of 30-40 records liaisons), IT managers, and legal counsel at monthly meetings that are led by the Chief Operations Officer and supported by the AHS RIM specialist. The State Archivist characterized the Committee as an interdisciplinary, information-sharing, "problem-solving" group and the Vermont AHS RIM Specialist noted that getting the right people in the same room is crucial to standardizing information management and records response practices agency-wide and achieving meaningful transparency. With the success of AHS's Information Governance Committee, other Vermont departments such as the Agency of Transportation are considering something similar.⁶⁵

The Louisville Jefferson County Metro Government established its Office of Records Compliance in 2015 by mayoral decree after a department received a public records request and released records that legally should have been redacted or withheld.⁶⁶ The Louisville

⁶³ Source: Interview with Julie Kipp, Citywide Public Records Program Manager, and Mark Schmidt, Data Governance Program Manager, with the City of Seattle Data Privacy, Accountability, and Compliance Division.

⁶⁴ [NAGARA 2020 Program Excellence Award Recipient](#), National Association of Government Archives and Records Administrators, 2020.

⁶⁵ Source: Interview with Tanya Marshall, State Archivist and Chief Records Officer, and Jennifer Treadway, Records and Information Management Specialist IV, with the State of Vermont.

⁶⁶ Source: Interview with Robin Berry, Executive Director/Records Retention Officer with the Louisville Jefferson County Metro Government.

Item 5 - Goldman Student Presentation on Transparency

Jefferson County Metro Government receives about 12,000 requests for records annually and its [Office of Records Compliance](#) is an independent department with two divisions: Open Records, and Records Management/Archives. Since 2015, the Open Records Division has coordinated responses to public records requests for 45 City departments, including the police department, in a semi-centralized manner. The division is staffed by a supervisor and 8 Open Records Specialists. The Metro Government uses NextRequest to manage the public records submission and response process, and the Open Records Division reviews departmental records submissions before releasing the records and clarifies any questions with departmental staff. The Executive Director/Records Retention Officer contended that the formation of the Division has vastly improved consistency for departments and has helped the City maintain standardized procedures for responding to records requests.

Comparison and Analysis

The need for greater coordination was approached differently by each agency. The bi-monthly records custodian meetings at the City and County of San Francisco were brought about through staff initiative, which, though effective for instituting regular meetings, limited how much structural change could be achieved. Other agencies saw a top-down approach: Seattle's and Louisville's changes arose through mayoral decree, while Vermont AHS's changes were conceived and implemented by department heads. A top-down approach enabled not only better support for public records staff, but also the establishment of new offices and committees that could more effectively and efficiently standardize and streamline public records systems. All of the agencies described in this section implemented procedural changes, while the latter three were also able to make significant structural changes.

Vermont AHS and Seattle IT both demonstrate effective use of technology. During AHS's Information Governance Committee meetings, they discuss approaches to digitization of old hard copy records, trends in public records requests and responses, and push for the use of technology in public recordkeeping and response. They are currently testing file analysis tools and machine learning for their application to public records. The State Archivist/Chief Records Officer and Records and Information Management Specialist emphasized the importance of bringing together personnel in both records management and the IT department, partnerships that are essential for driving innovations forward. Seattle IT has taken a more direct approach by creating citywide standards, requiring that all departments use the Microsoft Compliance function to gather documents and data when responding to public records requests, making integration of workflows seamless across departments. Seattle IT is also moving toward building an intelligent mapping of data domains, which will help elucidate and address any overlap and duplication of work between departments.

Greater coordination also allows for better handling of sensitive or confidential information. The Louisville Jefferson County Metro Government's Open Records Division reviews any redacted documents before they are released to the requester and ensures that they are not under- or over-redacted. As experts in the Kentucky Open Records Act, staff with the Louisville Open Records Division have created and distributed a "cheat sheet" of redaction guidance to all metro departments, including a requirement that the relevant section of the Kentucky Open Records Act must be cited for each redaction. The Open Records Division also

Item 5 - Goldman Student Presentation on Transparency

regularly trains departmental records staff on the law and usage of NextRequest. The division makes full use of NextRequest's redaction feature, which allows a brief and clear reason for the redaction to show up over each block of redacted text. Robin Berry, the Open Records Division's Executive Director and Records Retention Officer, stated that "The more information we give them [the requester], the more receptive they are to accepting it." Such citywide processes minimize litigatory risk while maximizing openness with the public.

To some extent, all four cases involve close collaboration with the agency's legal counsel, further insulating risk of litigation. San Francisco DPW uses citywide NextRequest messaging templates that were created and updated by the City Attorney's Office. Vermont AHS invites each department's legal counsel to the Information Governance Committee meetings. A common theme in our interviews, however, was that the involvement of legal counsel should be measured. There can be natural conflicts between true transparency and a staff attorney's goal of protecting the agency from lawsuits.

Feasibility in Oakland

The institution of regular meetings of Public Records Liaisons at the City of Oakland is by far the simplest practice to implement among those examined in this report. Establishing a new office to oversee records compliance is a more challenging task – however, it could be made more feasible in the short-term by starting small and scaling the changes over time. For example, the Vermont AHS Information Governance Committee covers AHS only, but the Agency of Transportation is now considering a similar approach. Oakland could initially establish a committee or office catering exclusively to the highest-volume departments, and slowly phase out to eventually encompass all departments. One of the key factors in Vermont, and which will be similarly important in Oakland, is the development of clear goals and principles for the new committee or office, as well as bringing in the right stakeholders and decision-makers early on such as IT, the City Attorney, PEC, and public records staff. The Information Governance Committee charter outlined objectives that the participating cohort could easily rally around, and the State's Chief Operations Officer was deeply involved as the committee's co-lead. Having someone in the position of setting policy to champion and lead the new body would be crucial in Oakland. Even more crucially, Louisville's Office of Records Compliance has encountered recent challenges in meeting deadlines for responding to records requests.⁶⁷ This highlights the need for continual adequate funding and staffing of these offices after their creation.

Given that the City of Seattle and Louisville Jefferson County Metro Government are comparable to Oakland in that they are large municipal governments, and that they extend beyond merely conducting staff meetings, we recommend the establishment of a citywide, centralized office after their fashion. Should the City of Oakland opt to establish such a dedicated office for public records requests – which would receive requests, solicit relevant records from various departments, ensure deadlines are met, make redactions in collaboration with the City Attorney or department(s) fulfilling the request as needed, and respond to requesters – we propose that the office be structured in one of the following ways:

⁶⁷ Velzer, Ryan Van. "[An Affront to Transparency' Louisville's Open Records Backlog Grows, Hampers Journalists.](#)" *Louisville Public Media*, LPM, 11 Dec. 2023.

Item 5 - Goldman Student Presentation on Transparency

either as fully independent, modeled after Louisville; integrated within the IT department to prioritize technological streamlining and advancement, similar to Seattle's approach; or be situated under the PEC for greater political insulation. We recommend modeling the office's staffing after Seattle, adjusting down slightly to four full-time staff to account for differences in city population: one Public Records Program Director, two Senior Public Records Officers, and one File Manager/Developer. We also recommend that someone in a leadership position at the City be recruited to champion the creation of the office and lead it in an advisory capacity. The Oakland Sunshine Ordinance would likely need to be amended to account for these changes in structure and responsibilities.

It is important that the specific duties and processes of the dedicated office do not contribute to more of a bottleneck or add a layer of bureaucracy. However, it is also important to recognize that the current system is rife with inefficiencies. For example, a records request that was submitted by the research team on April 7, 2024 has been routed to four different departments, as we did not initially submit our request to the correct department, and remains open as of May 15. The request was for a single document: the City's most recently executed contract with Tyler Technologies. Further, the City's current system relies on all Public Records Liaisons to be fully trained on the relevant laws and confidentiality/redaction requirements, and dedicate a significant portion of their time to coordinating response when many of them have other, more directly service-related duties. Seattle's and Louisville's dedicated public records offices are both responsible for coordinating every request submitted, and the interviewees from those jurisdictions strongly contended that such centralization has contributed to greater citywide coordination and efficiency.

Preliminary Cost Savings

By estimating these five variables, we can arrive at a new ongoing cost for establishing a Public Records Office at the City of Oakland:

1. Proportion of litigation under the proposed system as compared to the current system = 0.7

- Rationale: We roughly estimate that streamlining public records response through cross-departmental coordination will moderately reduce litigation costs. We believe that increased collaboration and standardization across City departments will help mitigate inconsistencies in public records response, including response times, translating to fewer lawsuits.

2. Any ongoing new software or technology costs = \$0

- Rationale: No software changes are proposed in this section.

3. Proportion of liaison staff time under the proposed system as compared to the current system = 0.6

- Rationale: We roughly estimate that Public Records Liaisons spend around 40% of their time spent on public records coordinating receipt of requests, communicating with the requester, and organizing responsive records, with the other 60% being spent on actually gathering records. If the first set of responsibilities could be concentrated in the new office, thereby taken up by new staff, *liaison* staff time is reduced by 40%.

Item 5 - Goldman Student Presentation on Transparency

4. Number of new full-time staff = 4

- Rationale: We propose that the new office be staffed with four full-time employees.

5. Number of weekly public records requests = 242

- Rationale: We do not estimate that greater cross-departmental coordination will reduce the number of public records requests.

Rough Estimate of Proposed Total Weekly Costs to Oakland =

$$\begin{aligned} &(\$8,899 \times 0.7) + \\ &\$0 + \\ &((383 / 388.5) \times \$404 \times 242) \\ &= \mathbf{\$102,850} \end{aligned}$$

Where Total Staff Hours at 383 =

$$\begin{aligned} &(388.5 \times 0.6) + \\ &(4 \times 37.5) \end{aligned}$$

Conservative Cost Savings

$$\begin{aligned} &= \$106,882 - \$102,850 \\ &= \mathbf{\$4,000 Weekly, \$200,000 Annually} \end{aligned}$$

Potential Weekly Range: $-\$8,000$ in costs to $+\$15,000$ in savings

Recommendations

Long-term action: We recommend that the City of Oakland establish a new Public Records Office that is either independent, housed within the IT department, or housed within the PEC. The Public Records Office would be championed and advised by someone in a leadership position and would start out with four full-time staff who coordinate receipt of public records requests, solicit relevant records from departments, make clear redactions or withholdings where legally required, and issue responses to requesters.

Short-term actions: In the short-term, we recommend that the City of Oakland take the following actions (costs not calculated):

- Institute bi-monthly meetings of all Public Records Liaisons to initiate knowledge-sharing.
- Upgrade the City's NextRequest contract to include more functionality.
- Mandate regular training on NextRequest and public records laws for Public Records Liaisons.
- Create a cheat sheet for making lawful and clear redactions of sensitive information to be used citywide.
- Create guidance documents for generally responding to public records, including how to handle common issues and questions, to be used citywide.

Open Data Portals

Open data portals are online platforms that allow agency staff to publish data that informs the public and contributes to an open and transparent government. These portals are valuable tools for City staff and residents, as they provide facts, statistics, and documents that can be referenced for analysis. Accessible data is imperative to understanding how government works and can inform future policymaking. A common theme in our interviews with journalists and nonprofit watchdog groups is that commonly requested information should already be published online. Many interviewees explicitly advocated for proactive disclosure of records, and open data portals are an important mechanism for achieving this.

In this report, open data portals are characterized by:

- The use of an open data software platform,
- Data that is sourced from multiple agency departments,
- Downloadable tabular data (often in CSV format), and
- Summary visuals (such as maps or graphics) where appropriate.

Interviewees provided mixed responses on whether the institution of a robust open data portal reduced the number of public records requests they received. Some contended that they experienced a reduction in requests after their jurisdiction's portal went live, others were not involved in public records and therefore could not answer, while others maintained that they did not see a difference in the volume of requests. However, empirical research shows a significant reduction in public records requests following a city's adoption of a strong open data policy.⁶⁸ Further, every interviewee strongly asserted that their jurisdiction's open data portal significantly reduced the amount of administrative staff time spent on responding to public records requests. This is because, instead of sorting through files and emails to locate responsive records, in many cases staff could redirect the requester to the available data and records on the portal. This is especially true for jurisdictions like Seattle and Louisville, which publish document records and not just tabular data on their portals.

As previously mentioned, the City of Oakland already has an [open data portal](#) powered by Tyler Technologies, but it contains a limited array of datasets and it is often unclear what they contain. It is difficult to access the open data portal without doing a browser search. Moreover, the [geospatial data platform](#) is not connected to the open data portal. Oakland appears to have adopted an Open Data Policy in 2013, but the policy has not been fully implemented and there is no information about it on the City website.⁶⁹

Through interviews with other jurisdictions and analysis, we find that true transparency goes beyond mere disclosure of data. "The intent" behind disclosure matters, and simply sharing information is not transparent "if the available information is not comprehensible to the users" and if the technology used is not "interactive."⁷⁰ In addition, there are many different

⁶⁸ Stern, Alena. "[Research: Cities Can Save Time on Records Requests by Doing Open Data Right.](#)" *Sunlight Foundation*, 9 Oct. 2018.

⁶⁹ "[File #: 13-0057.](#)" *City of Oakland Legistar*, City of Oakland, 15 Oct. 2013.

⁷⁰ Krahn, R. D. Y., & Mertens, G. (2020). [Transparency in Local Governments: Patterns and Practices of Twenty-first Century.](#) *State and Local Government Review*, 52(3), 200-213.

Item 5 - Goldman Student Presentation on Transparency

data formats to consider for publishing on a portal, including data comprising a list of actual public records (such as crime incidents), document records themselves, or more aggregate data (such as crime statistics), which are not public records. In any case, approachable and user-friendly open data portals are a critical tool for achieving openness-by-default.

Case Study Agencies

Three government agencies have robust open data portals: the City and County of San Francisco ([DataSF](#)), the City of Seattle ([Seattle Open Data](#)), and the Louisville Jefferson County Metro Government ([LouKY Open Data](#)).

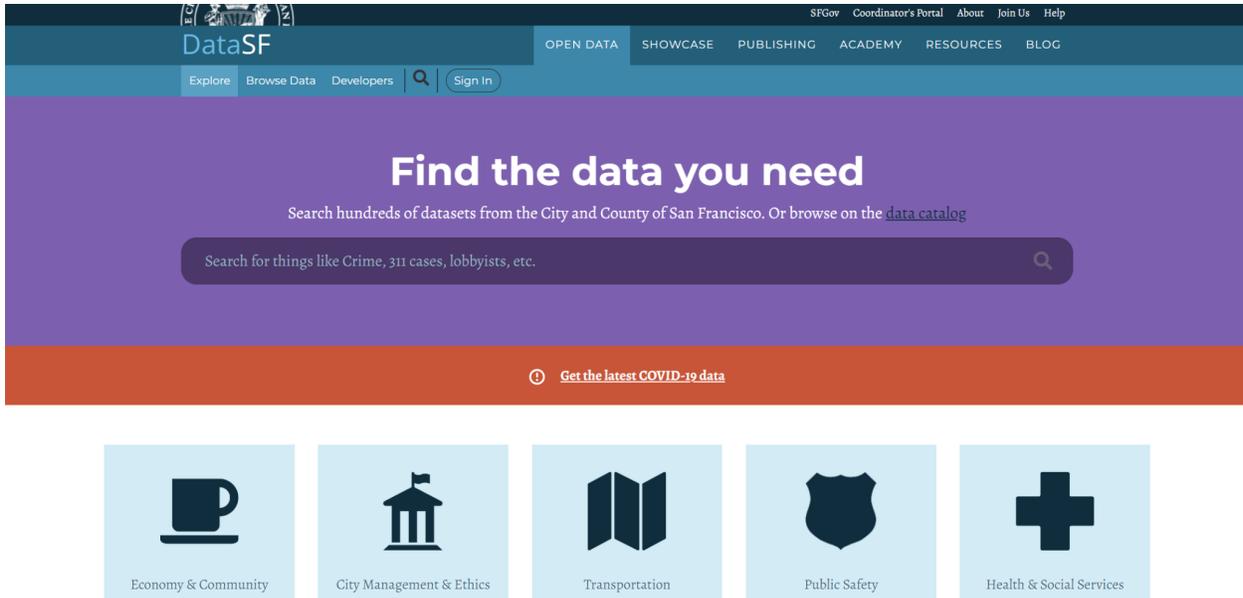
DataSF was established in 2009 after Executive Directive 09-06 was signed by the then-Mayor Gavin Newsom.⁷¹ The directive affirmed that DataSF “will enhance open government, transparency, and accountability by improving access to City data that adheres to privacy and security policies.” It aimed to make all non-confidential datasets publicly available, increasing government transparency with the hope that it could lead to further innovation for the City. Although DataSF was originally housed within the Mayor’s Office, it is now situated within the City Administrator’s Office and has seven full-time staff.⁷² There are 35 City departments that publish data. The Chief Data Officer at the City and County of San Francisco noted that City staff are the demographic that accesses DataSF most often. DataSF is powered by Tyler Technologies (formerly known as Socrata), software that is used widely by other cities nationwide, including Oakland. Behind the scenes, San Francisco City staff have different levels of data maturity (i.e., how they manage their datasets, systems they use, how they approach analysis), which has signaled to DataSF that they need to modernize their data infrastructure to make cross-departmental coordination easier.⁷³ Because DataSF’s small team must serve both the City and County of San Francisco, they make weekly and daily publishing priorities. The Chief Data Officer noted that they prioritize data related to citywide initiatives first, and move on to other projects and priorities as capacity allows.

⁷¹ “[Open Data in San Francisco, California](#),” *Centre For Public Impact (CPI)*. Accessed 9 Apr. 2024.

⁷² Source: Interview with Michelle Littlefield, Chief Data Officer with the City and County of San Francisco.

⁷³ Source: Interview with Michelle Littlefield, Chief Data Officer with the City and County of San Francisco.

Item 5 - Goldman Student Presentation on Transparency



Seattle's Open Data portal launched in 2010, but the program did not gain significant traction until 2016. In February 2016, then-Mayor Ed Murray signed an Executive Order directing all departments to comply with a new Open Data Policy requiring all City data to be “[open by preference](#).” The policy ensures that after screening for privacy and security, data would become publicly accessible.⁷⁴ It also calls for City data to be available in machine-readable formats and requires all departments to name [Open Data Champions](#) who are responsible for connecting with stakeholders, training staff in their departments, taking inventory of their data, addressing privacy concerns, and handling eventual data publication. The open data portal is run by the City's IT department and requires two full-time staff of two: one technical developer (who handles data integrations and technical issues) and one data analyst (who administers the platform and coordinates meetings with the designated Open Data Champions across all City departments to develop and upload open data).⁷⁵ Like DataSF, Seattle Open Data is powered by Tyler Technologies. The Open Data Manager emphasized that Seattle is currently working towards an “open by default” policy. Its Open Data program seeks to improve public understanding of City operations, generate economic opportunities for individuals and companies that benefit from Open Data knowledge, and empower City employees to become more coordinated.⁷⁶ In 2023, Seattle was re-certified as a Gold-level city by What Works Cities because it “embed[s] data and evidence into decision-making.”⁷⁷

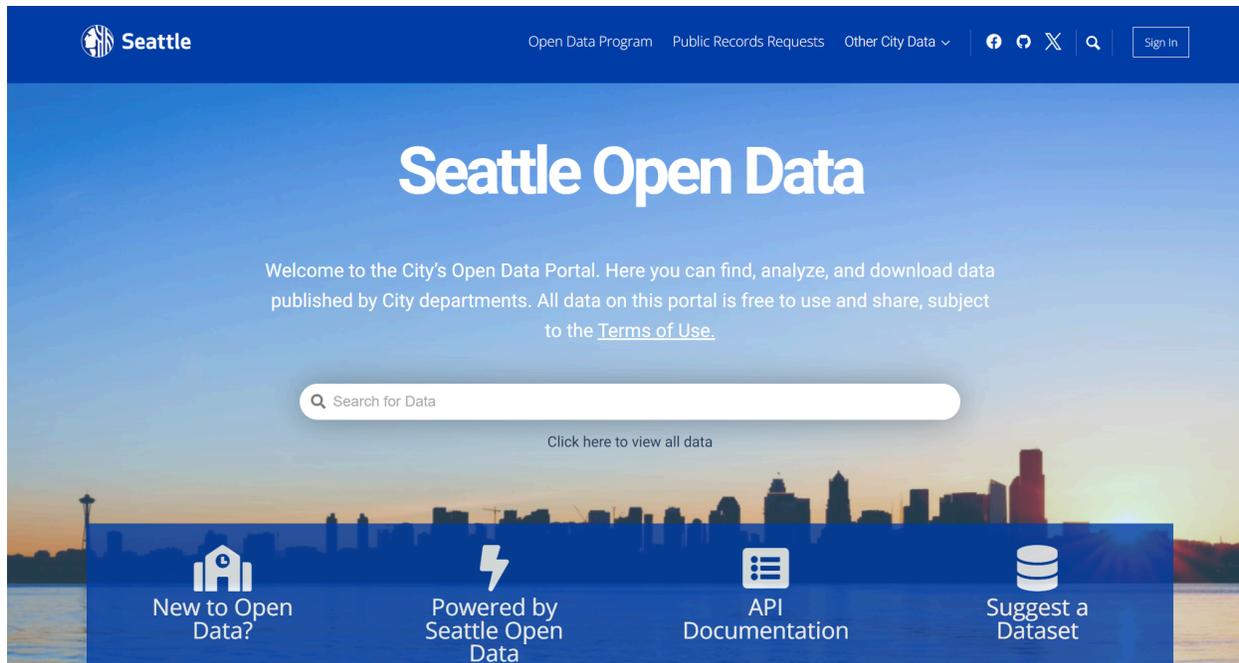
⁷⁴ Murray, Edward B. [Executive Order 2016-01](#), City of Seattle Office of the Mayor, 27 Feb. 2016.

⁷⁵ Source: Interview with Julie Kipp, Citywide Public Records Manager, and Mark Schmidt, Data Governance Program Manager, with the City of Seattle Data Privacy, Accountability, and Compliance Division.

⁷⁶ “[Open Data](#),” *Seattle Information Technology*. Accessed 6 Apr. 2024.

⁷⁷ “[Our Cities](#),” *What Works Cities Certification*, Bloomberg Philanthropies. Accessed 2 Apr. 2024.

Item 5 - Goldman Student Presentation on Transparency



LouKY Open Data is managed by the Louisville Jefferson County Metro Government's IT department and contains over 500 datasets. The Metro Government has been on the cutting edge of open data for many years. Its open data portal was established in 2013 when then-Mayor Greg Fischer solidified the Metro Government's commitment to transparency by signing an Executive Order mandating the publication of structured and standardized data in readable formats.⁷⁸ When he signed the Executive Order, his statement, "It's data, man," became a landmark moment in Louisville's transparency journey. The order aims to increase public access to information and embraces the concept of an open-by-default government. Since then, Louisville has continued to publish interactive maps, visuals, and generally furthered access to data. The open data portal in its current form, now called LouKY Open Data, launched in 2018 and is run primarily through a cloud platform called ArcGIS Hub.⁷⁹ LouKY Open Data is staffed by two data engineers and a GIS coordinator within the IT department. The Metro Government has consolidated LouKY Open Data with its multi-agency spatial data platform – the Louisville/Jefferson County Information Consortium (LOJIC) – aggregating more data in one place.⁸⁰ In 2022, the Metro Government formalized its practices by instituting an official Open Data Policy in its municipal code.⁸¹ Each department has employees who are responsible for collecting and synthesizing data for the portal and updating the data on either a monthly or quarterly basis. A key factor in departments' decisions about what types of data they post is whether the data is frequently requested by the public.⁸²

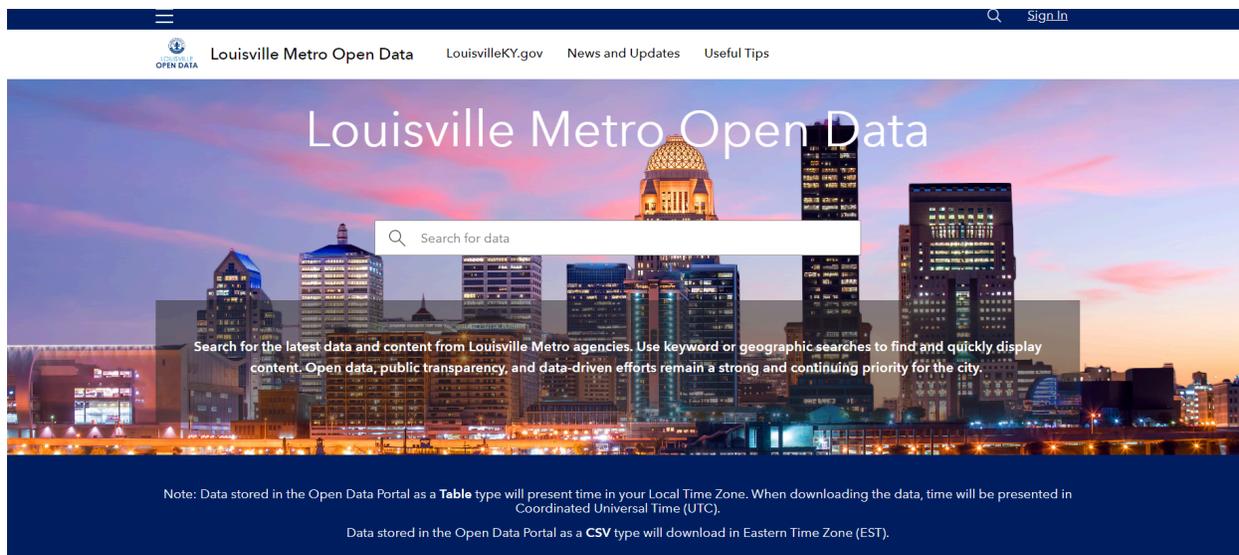
⁷⁸ Williams, Rebecca. [New Louisville Open Data Policy Insists Open By Default Is the Future](#), Sunlight Foundation, 21 Oct. 2013.

⁷⁹ Source: Interview with Andrew McKinney, Data Officer with Louisville Jefferson County Metro Technology Services. [Louisville/Jefferson County Information Consortium \(LOJIC\)](#). Accessed 10 Apr. 2024.

⁸⁰ Louisville-Jefferson County Code, [§ 44 Open Data Policy](#). American Legal Publishing. Accessed 15 Mar. 2024.

⁸² Source: Interview with Andrew McKinney, Data Officer with Louisville Jefferson County Metro Technology Services.

Item 5 - Goldman Student Presentation on Transparency



Comparison and Analysis

DataSF, Seattle Open Data, and LouKY Open Data are all clean and easily navigable portals. DataSF and Seattle Open Data are hosted by Tyler Technologies, while LouKY Open Data is hosted by ArcGIS Hub. Each portal demonstrates excellent user accessibility by organizing the browse categories on the home page primarily by data topic – which is what most public users will be looking for – and not by the name of the publishing department, though searching by publishing department is possible in the search options. While Seattle Open Data and LouKY Open Data actively serve members of the public, DataSF is geared more toward serving its City staff. DataSF has an “Academy” tab that sends the user to the Data Academy, a training program for staff that allows them to keep up with their skills as data and technology continue to advance. In addition, the “Resources” tab on the main pages helps staff understand “*your department’s data and create a publishing plan.*” Both Seattle Open Data and LouKY Open Data are more public-facing: they explicitly mention the word “transparency” on their open data portals’ landing pages and do not offer staff resources on the portal, though both do conduct regular staff training.

Seattle Open Data has several guides and videos instructing members of the public on how to navigate and use the tools that the portal offers, including instructions for how to “*find the dataset you need and filter it to find local information*” and “*create your visualization.*” This “[Getting Started](#)” webpage is immediately accessible from the portal’s homepage. Although LouKY Open Data has a similar “*Useful Tips*” tab on its main page, it contains only one tip: a PDF describing how to link directly to CSV files. Seattle Open Data and the City of Seattle’s [public records webpage](#) both link to each other, with the public records page containing a direct link to the most commonly requested datasets on the open data portal. On Seattle Open Data itself, a direct link to make a public records request is visible at the very top of the page, encouraging would-be requesters to take a look at the portal first. Although the Louisville Metro Government’s [open records webpage](#) links to the open data portal, the portal does not link to the open records page, and DataSF’s public records and open data portal sites do not mention each other at all.

Item 5 - Goldman Student Presentation on Transparency

LouKY Open Data excels in other areas, namely with aggregating its data among many sources (geospatial and tabular) and regionally. Further, it goes beyond mere spreadsheets by posting PDF records as well, although both Louisville and Seattle post a limited array of PDF records. LouKY Open Data has a [“Featured Visuals”](#) button on the homepage, which takes the user to a variety of data visualizations, including a visual, updated weekly, of the salaries of all Metro employees by name. The LouKY Open Data and Seattle Open Data teams also decide what data to publish primarily based on what is most requested by users, a tactic that DataSF does not employ given its staff-dominated audience.

Feasibility in Oakland

The City of Oakland could establish a revamped Open Data Policy, mirroring all three of the case study agencies. Drafting such a policy could be made relatively easy by using the Sunlight Foundation’s [Open Data Policy Generator](#) tool or by copying language from the other cities’ policies. Since Oakland’s current open data portal is already hosted by Tyler Technologies, improvements to the existing structure and data are extremely feasible. However, we are unable to determine what the City is already paying Tyler Technologies for this platform and whether additional functionalities would require a more expensive contract. The research team submitted a public records request to the City of Oakland for its most recently executed contract with Tyler Technologies on April 7, 2024 and have not received a response as of May 15.

There may need to be adjustments to the current staffing structure in order to implement any improvements. Mirroring Seattle’s approach, Oakland could easily select an Open Data Champion in each City department, which would likely not require hiring any new staff. However, the Open Data Champions would need to be educated and trained about what types of data should be open data and in what form (lists of records, document records, or aggregated data, for example). The champions would be responsible for connecting with stakeholders, training staff in their department, taking inventory of their data, addressing privacy concerns, and handling eventual data publication. There are likely already data- and IT-related positions in each department whose duties could more formally absorb an “Open Data Champion” designation. Although Oakland’s data portal is currently run through the City Administrator’s Office and departments can opt to publish their data, any substantial improvements in coordination, collection, translation, and updating of data will also necessitate hiring full-time staff in the IT department dedicated to the open data portal. Also similar to Seattle, two full-time staff should be sufficient, consisting of one technical developer to manage the platform and one administrator to coordinate with departmental data champions, create publishing plans to ensure all data is regularly updated, and lead process improvements.

Oakland’s portal has something similar to Seattle’s *“Getting Started”* user guides, though these resources are sparse and should be expanded. Although Seattle Open Data has a *“Files and Documents”* search option, going beyond mere tabulated and visualized data, it currently only posts *“paid parking occupancy”* documents in that category. Oakland can learn from this by making greater use of the *“Files and Documents”* option and could locate

Item 5 - Goldman Student Presentation on Transparency

many of its PDF records in Tyler Technologies. To aggregate disparate data even further, like Louisville, Oakland could consider ways to integrate its [geospatial data platform](#) in ArcGIS.

In order to operationalize a process for determining which data should be publicly posted on the open data portal, and how often, the City of Oakland could conduct an in-depth analysis of the most commonly requested types of records using recent NextRequest data and prioritize publishing those records, to the extent it is legal to do so, on a regular basis (e.g., weekly, monthly, or quarterly, depending on whether the data is urgent in nature). In addition, each department head could examine what types of records are most commonly requested by the public and whether they are well-suited to being posted online with little to no redaction needs. Establishing protocols for redaction of certain records will be a necessary part of this process. As all three of the analyzed open data portals came about through mayoral support, a top-down approach will be key to realizing a more comprehensive and user-friendly open data portal. In addition, departmental directors will need to be engaged early and often in the process.

Preliminary Cost Savings

By estimating these five variables, we can arrive at a new ongoing cost for improving the City of Oakland's open data portal:

1. Proportion of litigation under the proposed system as compared to the current system = 0.6

- Rationale: We estimate that proactively posting records online will significantly reduce litigation costs, as recent litigation has alleged withholding of records. Records being already available online will minimize unnecessary lawsuits. However, records that require redaction are not easily proactively disclosed, limiting the extent to which litigation lessens. We believe that proactive disclosure of a wide variety of records across City departments will help insulate the City from litigatory risk.

2. Any ongoing new software or technology costs = \$0

- Rationale: Although the City of Oakland already has a contract with Tyler Technologies, we cannot anticipate additional contractual costs as a result of improving the data portal without examining the current contract and how it compares with Seattle's Tyler Technologies contract. We are still awaiting a response to our Oakland public records request. To fully estimate this variable, conversations with Tyler Technologies representatives would also be needed.

3. Proportion of liaison staff time under the proposed system as compared to the current system = 0.7

- Rationale: We estimate that Public Records Liaisons would experience a sizable reduction in time spent on public records (30%), including in both coordination/communication and gathering of records, if a majority of commonly requested records are already available online. Interviewees agreed that the presence of a comprehensive data portal significantly reduces the amount of staff time spent on responding to public records requests because

Item 5 - Goldman Student Presentation on Transparency

requesters can be quickly referred to information that is already available online.

4. Number of new full-time staff = 2

- Rationale: We propose that the open data portal be staffed with two full-time employees.

5. Number of weekly public records requests = 172

- Rationale: A 2018 research study examined the link between adopting a robust open data policy and a reduction in public records requests.⁸³ It found that, “on average, adopting an open data policy is associated with a decrease of 6.48 public record requests received per 10,000 residents per month.” For Oakland, this would mean 278 fewer public records requests per month, or 70 fewer per week: $242 - 70 = 172$.

Rough Estimate of Proposed Total Weekly Costs to Oakland =

$$\begin{aligned} &(\$8,899 \times 0.6) + \\ &\$0 + \\ &((346 / 388.5) \times \$404 \times 172) \\ &= \mathbf{\$67,530} \end{aligned}$$

$$\begin{aligned} \text{Where Total Staff Hours at 346} = \\ &(388.5 \times 0.7) + \\ &(2 \times 37.5) \end{aligned}$$

Conservative Cost Savings

$$\begin{aligned} &= \$106,882 - \$67,530 \\ &= \mathbf{\$39,300 \text{ Weekly, } \$2,000,000 \text{ Annually}} \end{aligned}$$

Potential Weekly Range: +\$25,000 to +\$70,000 in savings

⁸³ Stern, Alena. "[Research: Cities Can Save Time on Records Requests by Doing Open Data Right.](#)" *Sunlight Foundation*, 9 Oct. 2018.

Recommendations

Long-term action: We recommend that the City of Oakland take more intentional and direct control of its open data platform by enlisting the Mayor to establish a revamped Open Data Policy. The policy should 1) redeclare Oakland's commitment to data transparency, 2) designate an Open Data Champion for every City department who would connect with data stakeholders, train staff, take inventory of departmental data, address privacy concerns, and handle publication, 3) establish citywide and departmental protocols for determining what kinds of records and data should be published based on what is commonly requested in NextRequest, defaulting to posting records and data whenever possible, and 4) allow for hiring one technical developer and one administrator in the IT department. These new staff would be fully dedicated to managing the open data portal, hosting regular training for data champions, coordinating with the data champions and departmental leadership, creating and enforcing publishing plans to ensure all data is regularly updated, and spearheading process improvements.

Short-term actions: In the short-term, we recommend that the City of Oakland take the following actions (costs not calculated):

- Begin conversations with departmental heads about the importance of publishing more data and records, and in accessible formats.
- Coordinate with the City Administrator's Office to rename existing datasets in the open data portal and include explanations and visualizations wherever possible.
- Conduct an in-depth analysis of the most commonly requested types of records in NextRequest for each department, and categorize the types of document records that tend to require redaction.
- Expand resources and guides for how to use the open data portal, geared to both City staff and members of the public.

Item 5 - Goldman Student Presentation on Transparency

Police Data Dashboards

Police data dashboards are often thought of as the visual representation of any public safety data that is available on open data portals. Making dashboards navigable for the average resident is a consistent challenge across agencies. Dashboards are intended to provide user-friendly displays of data that aim to make information digestible for the general public. Ongoing pressure from advocacy groups and the general public demanding access to police data has propelled dashboards to become effective transparency measures.

As previously mentioned, the City of Oakland recently launched a [police data dashboard](#). However, it is sparse and contains mostly raw data on crime, police shootings, and misconduct, most of which was required to be disclosed by a 2021 court settlement.⁸⁴ The dashboard contains a map of recent crime incidents, which appears to be up-to-date and quite usable. However, the dashboard also includes gunshot reports that are supposed to be updated monthly, but have not been updated since 2018 as of the date of this report.

We find that there are several aspects of police data reporting that make it unique. First, accessibility and format are important, because data without adequate cleaning and presentation does not tell a story. Second, clear categorization of crimes and offenses are especially important to point users in the right direction in their navigation. Finally, narrative framing of data is a critical, yet often overlooked component of data visualization; data should be presented neutrally and with relevant context, otherwise it can lead to misleading conclusions.

Case Study Agencies

Staff at the Berkeley, San Francisco, and San Diego Police Departments were interviewed to get a better understanding of the inception of their police data dashboards and how their current systems work. While there was some overlap between the departments, each possesses distinct data characteristics and internal policies that establish them as exemplary agencies.

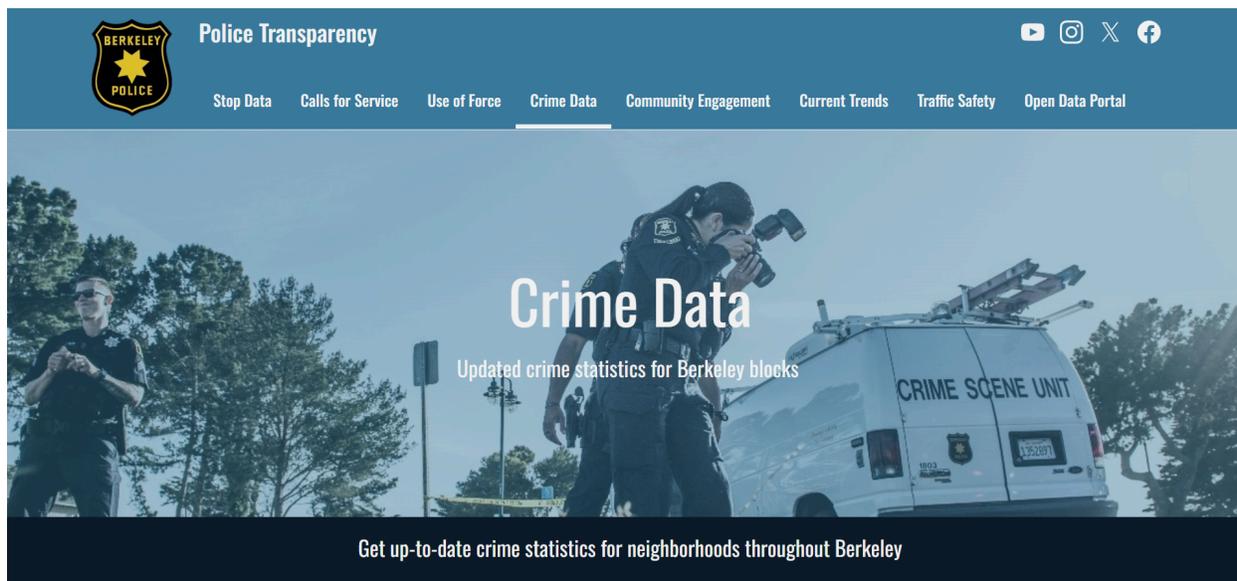
The Berkeley Police Department is on the cutting edge of innovation when it comes to publicizing police data. As noted throughout our case studies, data is often the focus of modern day transparency efforts. With immense support from Berkeley's Chief of Police and other leadership, they've been able to form a Strategic Analysis team that is composed of an officer, a lieutenant, and a data and policy analyst.⁸⁵ The Data and Policy Analyst from the Berkeley Police Department claimed that their dashboard is one of the most innovative and frequently updated dashboards in the state. Daily live updates to the dashboard demonstrate their commitment to utilizing technology and maintaining consistent practices, ensuring the public remains informed about ongoing developments in the community. The Data and

⁸⁴ Dinzeo, Maria. "[Judge Ok Settlement between Journalists, Oakland Police over Public Records Backlog.](#)" *Courthouse News Service*, 9 Dec. 2021.

⁸⁵ Source: Interview with Arlo Malmberg, Data and Policy Analyst with the Berkeley Police Department.

Item 5 - Goldman Student Presentation on Transparency

Policy Analyst indicated that the goal of the transparency hub is to be neutral, informative, and does not push a specific interpretation or narrative with the Hub.⁸⁶



In scanning the [Berkeley Police transparency dashboard](#), one encounters the following sections and slogans.

Stop Data: Analyzing officer-generated data

“Ensuring fair and impartial policing through analysis of stop data”

Calls for Service: Examining public safety needs through calls made to BPD

“Providing a level of service correspondent to community need”

Use of Force: Accountability and transparency when force is used

“Transparent oversight when force is used in the community”

Crime Data: Updated crime statistics for Berkeley blocks

“Get up-to-date crime statistics for neighborhoods throughout Berkeley”

Community Engagement

“Building bridges through community partnerships”

Current Trends: Our Community

“At BPD... what is important to you is important to us”

Traffic Safety

“Promoting traffic safety through data-driven, community-informed, accountable practices”

⁸⁶ Ibid.

Item 5 - Goldman Student Presentation on Transparency

PD Open Data Portal

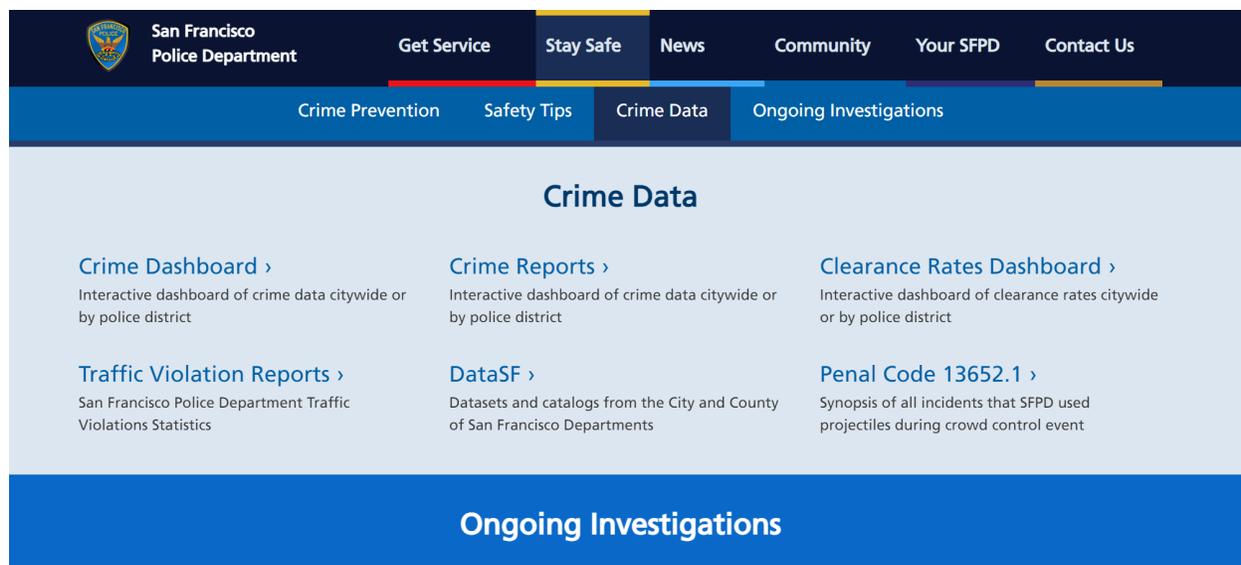
“Serving with transparency, a diverse workforce and collaborative strategies developed with the community”

While a slogan doesn't ensure complete accountability, it can have a significant impact when coupled with real-time data display that is conveniently categorized and available for instant download. By combining a concise explanation of data interpretation with a slogan that defines the department's commitment to providing data, thereby enhancing transparency, a clear picture is presented to citizens who otherwise may have been struggling to understand the data or struggle with interpretation.

Berkeley's [use-of-force data](#) describes a special rating system that defines the extent to which force was used in the incident at hand: level 1 involves grabs or body weight with no injury, and level 4 applies when an officer uses a firearm or when there is an in-custody death. Below this clear description, there is a *“Use of Force Data Snapshot”* that is updated daily and shows data from the last 30 days compared to the same period from the previous year; it also shows year-to-date counts compared to the same period from the previous year. It can be further filtered to a custom date range. The dashboard also includes total incidents, count of officers involved, count of subjects involved, and level 1-4 frequency breakdown. All of this data encases a live map of incidents reported in the city, equipped with color- and shape-coded markers.

The San Francisco Police Department (SFPD) dashboard has a basic appearance and provides an annual snapshot of the total frequency of each crime committed throughout the city, which can be filtered by neighborhood. There is an automatic summary feature which requires the user to select a start and end date within the present year, and the data is then automatically compared to reported numbers from the previous year. There is a summary row that shows the total number of incidents per year, followed by another summary of year-to-year increases or decreases in crime. Several sample searches yield consistently negative percentages, which appear to show overall or even across-the-board decreases in crime. SFPD shared that their dashboard is an accurate reflection of incidents that mirror police reports, but does not account for 911 calls.

Item 5 - Goldman Student Presentation on Transparency



SFPD's commitment to providing and publicizing body camera footage on their website, although not a function on their public safety dashboard, sets them aside in their transparency with the public. SFPD uses GovQA to upload requested documents related to officer-involved shootings such as police reports, internal affairs investigations, internal powerpoints, CSI reports, and body-worn cam footage from all present officers, etc. SFPD staff shared that 20-30% of their overall public records requests are for body cam footage. They have a specific team of 10 legal assistants that handle body cam footage requests.⁸⁷

SFPD also emphasized that they “do not do a good enough job putting information in a citizen-friendly format. We give people information expecting them to be second-year computer engineers – dig down into a CSV file and remove 15 columns and sort it in a certain way.”⁸⁸ The technicalities of their police data dashboard could be presented in a more user-friendly way by redesigning their dashboard to explain the data, rather than requiring analysis, which most members of the public are willing to do.

The San Diego Police Department (SDPD) shared that they are a “progressive police department”⁸⁹ that strives to be as accessible as possible to the public. In this vein, they have continuously invested in and upgraded their programmatic and technological commitments to advancing transparency through displaying highly sought after crime data on their police data dashboard. Though they did not provide specific data, SDPD staff communicated confidence that publishing more data means fewer public records requests, and believe that the more the public knows the results of their work, the better public perception will be.⁹⁰

SDPD's website domain is powered by ArcGIS and features a user-friendly interface that highlights data, short narratives, and visuals that present information in a digestible format. Their new [Neighborhood Crime Summary Dashboard](#) is meant to “visualize crime data

⁸⁷ Source: Interview with Lieutenant Christopher Beauchamp with the San Francisco Police Department.

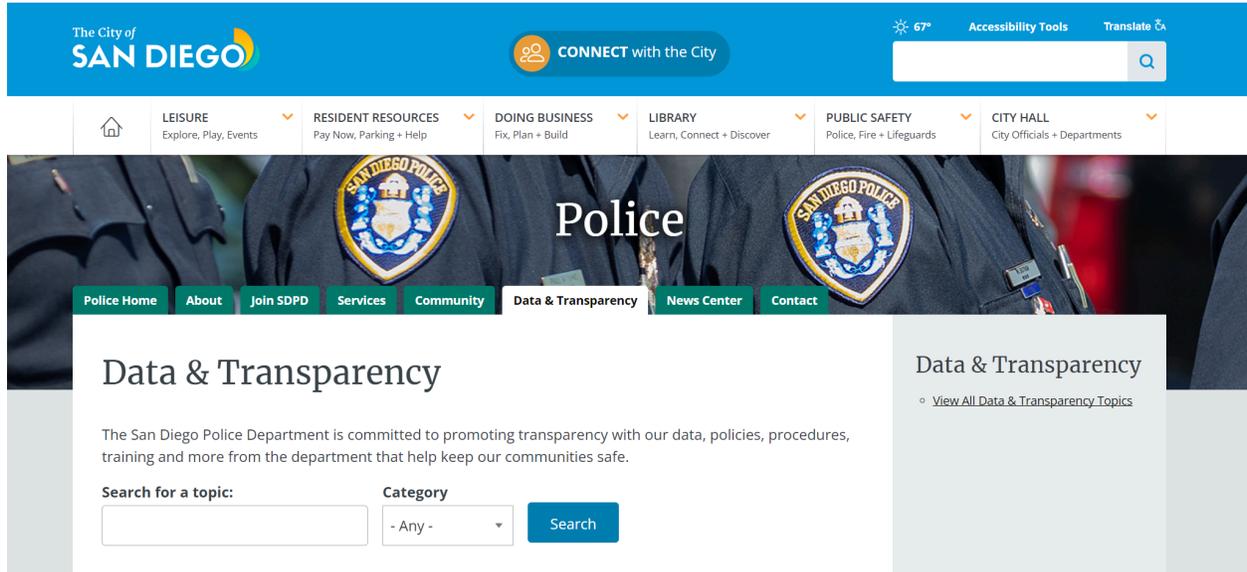
⁸⁸ Ibid.

⁸⁹ Source: Interview with Lieutenant Charles Lara with the San Diego Police Department.

⁹⁰ Ibid.

Item 5 - Goldman Student Presentation on Transparency

dynamically.” You can select a neighborhood of focus or do a citywide profile for each category on the dashboard. Their crime dashboard centers summarized reports that represent geographic and temporal snapshots of crime. Lists of crimes are presented numerically in order of frequency and provide a sense of what types of crime the department encounters most.



All of the categories of crime listed beneath crime trends are defined by the Uniform Crime Reporting Program National Incident Based Reporting System (NIBRS).⁹¹ In NIBRS, each offense reported is either a Group A or Group B offense type and stored in a national database to bolster accountability and visibility. SDPD began reporting to NIBRS in 2021, and now goes above and beyond their former reporting style of simply documenting counts of violent crime and property crime.⁹²

Crime data is visualized through the “[Neighborhood Crime Summary Year-to-Date](#)” page, which conveys overall crime trends for different categories. Graphs show data of total number of offenses over a three-year period and total crime growth rate in respective focus areas. Currently, raw crime numbers are stable while overall percentage rates of crime decrease; the reason these types of crime were chosen is unclear and might indicate bias in the selection of which data to publish.

The data hub is organized into three helpful categories:

1. Crime Trends: A summary of NIBRS crime type, derived by frequency over time.
 - o NIBRS categories are:
 - i. Crimes Against Persons: Murder; Rape Assault.
 - ii. Crimes Against Property: Robbery; Bribery.

⁹¹ “[Crimes Against Persons, Property, and Society](#).” *National Incident-Based Reporting System*, Uniform Crime Reporting Program, 2019.

⁹² “[San Diego Police Department Launches Online Neighborhood Crime Website](#).” CBS 8, CBS, 25 Mar. 2024.

Item 5 - Goldman Student Presentation on Transparency

- iii. Crimes Against Society: Gambling; Prostitution; Drugs
2. Crime Categories: Lists the most frequent types of crimes in each NIBRS category in numerical order of frequency.
3. Crime Map: Shows geographic location of NIBRS crimes on a user friendly map that can be easily segmented by neighborhood.

Comparison and Analysis

Each police department has unique strengths that constitute best practices for public safety dashboards and transparency. The primary purpose of each dashboard can be understood through the systems, software, and policies that guide them. Software is used to convey the social implications of the complex and technical data displayed. Making the decision to provide accessible data seems to be the first step in what should be a two-step process of providing both access and readable analysis of datasets. In using user-friendly, multi-format software like ArcGIS, Berkeley PD and SDPD achieve relatively higher levels of transparency to the public. SFPD uses GovQA for public records requests to fulfill transparency benchmarks around body cam footage requests. However, they supplement this work with 10 body cam-specific legal assistants in addition to their 13-member Crime Information Services Unit that handles police reports.

Consistently updating data is something that all three jurisdictions do, but Berkeley PD and SDPD excel in providing innovative visuals with multiple filters that enable more specific searches, while SFPD allows for date range searches, but only in a restrictive, comparison-based format.

Berkeley hired an in-house data analyst who works closely with an officer and lieutenant to form the Strategic Analysis Team. This team is uniquely poised to internally analyze their data, break it down into a digestible format, and work to update it after it is uploaded.

Each jurisdiction has unique strengths that should be raised up to constitute best practices for police data dashboards. Some of these unique features include:

Berkeley PD: Forward-facing communication and data display.

Berkeley does an excellent job providing an impartial and comprehensive raw data display and search engine. Data presented without manipulation is valued for its neutrality. This is combined with unique transparency-forward framing. They use strong language that values the public's perception of the Police Department within the dashboard itself, reinforcing the purpose of dashboards in clear, community-centered language. Finally, they center support from their Police Chief upholding the importance of the dashboard in real-world contexts:

“ In recent years our community and our country have confronted difficult facts about race and policing, and the effects law enforcement policies and actions have on our communities... I am committed to being transparent about our policies and actions, to sharing data with our city partners and community stakeholders, and to carefully listen and improve our policies and practices in appropriate and intelligent ways.”⁹³

⁹³ Louis, Jen, Chief of Police. [Berkeley Police Transparency Hub](#), Berkeley Police Department. Accessed 10 Apr. 2024.

Item 5 - Goldman Student Presentation on Transparency

San Diego PD: User support and training.

Among the dashboards analyzed, San Diego's was the most oriented toward providing support resources for users. It displays educational training materials that aim to teach users how to access and interpret data through videos and modules. Additionally, their "crime mapping" feature displays a legend to interpret intuitive maps with tracking symbols, and a summary feature generates a daily report that lists every crime that occurs. User-friendly neighborhood search features allow users to personalize searches to their neighborhood and encourage navigation of the site.

San Francisco PD: Body cam compliance and instant downloads.

San Francisco exceeds compliance with body cam video requests. They have specific staff to promptly handle these requests. Further, they keep comprehensive data and offer instant downloads for officer-involved shootings on their dashboard. Their heightened visibility around use-of force in data and officer training may help reinforce the relatively low number of officer-involved shootings in San Francisco, which averages at 2-5 shootings per year in the last five years.⁹⁴

Feasibility in Oakland

Oakland currently has a "Crime Data and Crime Maps" tab on its [police data webpage](#). While there is a live crime map display similar to that of SFPD, which shows symbols to code various crimes, it is not user-friendly and does not provide snapshots of crime data like Berkeley and San Diego. The Oakland Police Department already has the data they need to input into a more readable dashboard, which provides a "plug-and-play" opportunity to invest in visualizing data in a meaningful way. Further, Tyler Technologies, the open data software used in Oakland, is easily integrated into ArcGIS mapping software. An investment in a more detailed police data dashboard would certainly help build community trust. As mentioned above, Oakland's open data portal does provide some information, but providing data without synthesizing and summarizing it does not help community members understand the City's commitment to transparency. There are several reports that could be directly integrated with the current data in OPD's crime map to create an intuitive and informative dashboard that will surpass the outdated dashboard that is currently utilized. Specifically, "OPD Daily Log Info," "Police Crime Incident Data over the past 90 Days," and "Crime Watch Maps over the past 90 Days" could be combined with use of force and stop data.

The City of Oakland could integrate a police data dashboard similar to the ones used in Berkeley and San Diego. Spotlighting current, timely data that is on the hearts and minds of the residents is critical. For example, the Oakland police data dashboard has old data from 2014 and 2016 cited in plain text. Removing or de-centering outdated data and performing simple formatting updates will go a long way. Replacing extended lists of hyperlinks that lead to inaccessible data downloads and replacing them with innovative, user-friendly dashboards will show a commitment to fostering public understanding of the complex analysis of crime data, which has little meaning on its own. It may be most beneficial to organize focus groups of community members to help inform the process of determining which data is most helpful and the best ways to present it.

⁹⁴ [Officer involved shootings \(OIS\) data](#). San Francisco Police Department. Accessed 5 Apr. 2024.

Item 5 - Goldman Student Presentation on Transparency

The cost of upgrading the dashboard display software, specifically for crime, use of force, stop, and safety data, should not be exorbitant. However, with efficiency in mind, the city must decide whether it will pay contractors to set up a new platform or whether existing IT staff could manage some of the logistics of the system upgrades. Further, the frequency with which the dashboard would be updated is another area of decision. For example, Oakland could choose to do periodic updates rather than live updates like Berkeley PD; this could start on an annual basis like San Francisco, or Oakland could choose to divert in-house IT capacity to provide at-cost internal updates on a more consistent basis, such as quarterly, at cost.

Beyond software considerations, hiring new staff or shifting current practices can provide in-house capacity that could cut costs and heighten efficiency. As suggested previously in the report, hiring additional staff will make the integration of a police data dashboard far more feasible. Berkeley PD is able to do live updates because they recently added an analyst position who collaborates with other staff to provide data analysis and updates, and continuously works to improve the interface internally. While San Diego outsources its data uploads, San Francisco pulls capacity from their existing IT team. The sweet spot between completely outsourcing and relying on already existing staff may be in hiring one new full-time staff member and providing additional training to current staff to support them. Situating this additional staff member in the IT department would help with political insulation.

Preliminary Cost Savings

By estimating these five variables, we can arrive at a new ongoing cost for improving the City of Oakland's police data dashboard:

1. Proportion of litigation under the proposed system as compared to the current system = 0.5

- Rationale: We estimate that proactively publishing comprehensive police and public safety data will reduce litigation costs by about 50%. Although lawsuits against OPD are currently most common among Oakland public records lawsuits, full data transparency may counterbalance that effect by revealing more litigation-attracting information.

2. Any ongoing new software or technology costs = \$0

- Rationale: As the City of Oakland already has a contract with Tyler Technologies, we propose fully integrating police and public safety data into the existing open data portal. Oakland also already has a contract with ArcGIS for its geospatial data platform, which it would use for building out its crime maps. To fully estimate this variable, conversations with Tyler Technologies and ArcGIS representatives would be needed.

3. Proportion of liaison staff time under the proposed system as compared to the current system = 0.80

- Rationale: Although only OPD records are affected by this practice, we roughly estimate that total liaison staff time would decrease by about 20%. This is because OPD has more full-time public records staff than other departments,

Item 5 - Goldman Student Presentation on Transparency

and spends more time on public records in general given the volume of requests. For example, for a large 2021 records request, OPD staff spent “5,000 hours and nearly \$1 million in taxpayer dollars” gathering responsive records.⁹⁵

4. Number of new full-time staff = 1

- Rationale: We propose that the public safety dashboard be staffed with one new full-time employee.

5. Number of weekly public records requests = 150

- Rationale: Requests to OPD comprise over half of total public records requests. As a result, we estimate a roughly 40% reduction in total requests, from 242 to 150.

Rough Estimate of Proposed Total Weekly Costs to Oakland =

$$\begin{aligned} &(\$8,899.23 \times 0.5) + \\ &\$0 + \\ &((348 / 388.5) \times \$404.89 \times 150) \\ &= \mathbf{\$58,898} \end{aligned}$$

$$\begin{aligned} \text{Where Total Staff Hours at 348} = \\ &(388.5 \times 0.8) + \\ &(1 \times 37.5) \end{aligned}$$

Conservative Cost Savings

$$\begin{aligned} &= \$106,882 - \$58,898 \\ &= \mathbf{\$48,000 Weekly, \$2,500,000 Annually} \end{aligned}$$

Potential Weekly Range: +\$18,000 to +\$70,000 in savings

Recommendations

Long-term action: We recommend that the City of Oakland expand on its existing police data dashboard by mirroring that of Berkeley PD and San Diego PD. The dashboard should: 1) be integrated with Oakland’s open data portal using Tyler Technologies, 2) populate geospatial data in ArcGIS, and 3) be staffed by one full-time Data Analyst in the IT department. The dashboard itself should clearly display up-to-date crime, use of force, public safety, and stop data.

Short-term action: In the short-term, we recommend that the City of Oakland take the following actions (costs not calculated):

- Work with OPD and/or IT to establish a consistent schedule for updating all data on Oakland’s current police data dashboard and add explanations, summaries, and visuals wherever possible.
- Begin to involve the public via focus groups to give direction for how to best improve the dashboard, including what types of data and records to add.

⁹⁵ Dinzeo, Maria. “[Judge Ok's Settlement between Journalists, Oakland Police over Public Records Backlog.](#)” *Courthouse News Service*, 9 Dec. 2021.

Item 5 - Goldman Student Presentation on Transparency

Contract Tracking Dashboards

A contract tracking dashboard is a tool used to display and track important information about a jurisdiction's contracts with both public and private entities in a digestible and visual format. The goal of contract tracking dashboards is to provide easy access and visibility to the public. Dashboards typically present a brief overview of contracts, including cost, duration, parties involved, and status of the contract. This data provides insight into conflicts of interest, frequency of contract issuance, and contract completion ratios.

Case Study Agency

City of Seattle Purchasing and Contracting staff affirmed that generally, City documents are public knowledge. This speaks to Seattle's culture of and commitment to transparency. Leading with a public commitment to transparency externally will support a shift within culture internally when coupled with forward-facing accountability measures such as dashboards. When the City of Seattle launched their [contract search portal](#) in 2018 as part of a larger mayoral push for centering transparency, it had a public portal where all three types of contracts were viewable: blanket citywide, consulting, and public works. However, they aspired to innovate a new system that would increase transparency for the public as well as the vendors with whom the City contracts. The subsequent search for software that would achieve that goal led to Masterworks. The City hired Masterworks to do an assessment, which found that the City needed to be more transparent in its contracting practices.⁹⁶ As a result of ongoing collaboration between Masterworks and ERGO, the contract management portal that Masterworks employs to populate their dashboard, the public can now see the length of time and potential cost with additional types of contracts. Within the portal, the public can see memorandums of agreement (MOAs), download PDFs of contracts, and even create a profile in which they can save their searches and results. City departments have the autonomy to decide which contracts are viewable by checking a box during file upload; however, the Purchasing and Contracting Division noted that the vast majority of City contracts are viewable in the dashboard.

⁹⁶ Source: Interview with Carmalinda Vargas, Business Systems Application Manager, Pat Malai, Business Systems Analyst, and Joe Benton, Business Systems Analyst with the City of Seattle Purchasing and Contracting Division.

Item 5 - Goldman Student Presentation on Transparency

Seattle's contract tracking dashboard is linked directly from the open data portal and provides one of the most comprehensive, forward-facing contract trackers encountered by the research team. Users have the ability to search both active and terminated contracts, with the option to view actual documents, including pricing, summary reports, and comprehensive Invitations to Bid (ITBs), which are solicitations from the City to contractors that consider price, minimum qualifications, equal benefits compliance, technical compliance, and other mandatory requirements to award a contract,⁹⁷ plus timestamps of project postings, deadlines, and offers. Further, the portal allows users to export Excel files seamlessly, which demystifies the complexity of the City ITBs, allowing for data to be translated into more usable formats for both auditors and businesses competing for contracts.

Providing this level of detail in disclosure is a huge step toward building the public's trust in government contracting, which is so often directly connected to campaign finance contributions and political corruption. Such transparent approaches give smaller, individual contractors more equitable opportunities to learn about opportunities and secure contracts.

In November of 2023, Mayor Bruce Harrell signed an executive order aimed at expanding contracting equity while making it easier for small businesses, primarily women- and minority-owned businesses, to work with the City. The policy is expected to significantly impact City efforts to support women and BIPOC (Black, Indigenous and People of Color) owned firms that have been disproportionately underutilized in public contracting.⁹⁸ This executive order is another example of blanketing policies that center and advance equity, while strengthening citywide accountability, transparency, and efficiency.

Seattle's demonstrated ability to consistently achieve intersectional outcomes shines an

⁹⁷ [Purchasing and Contracting](#), City of Seattle. Accessed 2 Apr. 2024.

⁹⁸ Internet Archive. "[Mayor Harrell Signs New Executive Order to Expand Contracting Equity With the City: City of Seattle](#)," November 1, 2023.

Item 5 - Goldman Student Presentation on Transparency

important light on the concept of transparency and the notion that support from leadership can be detrimental to transparency. City leadership has made lasting strides toward making Seattle one of the strongest leaders in the country in equitable, forward-thinking, and innovative transparency policy.

Feasibility in Oakland

As previously discussed, the transition from storing documents internally to publishing them on an online platform is highly feasible, furthered by the seamless integration of Tyler Technologies, and pursuing a contract with Mastercraft, the software that the City of Seattle uses for its contract tracking dashboard. Hiring additional staff to perform data uploading and management internally may avoid a costly external contract with a company. Another alternative to continuous external contracts is to hire Mastercraft to provide training to newly hired or current staff, whose duties can be reallocated to ensure their institutional knowledge of how the systems work. If one additional full-time staff member was hired to coordinate the open data portal with this contract tracking dashboard, the contract-related duties could possibly be rolled into their responsibilities.

In regards to autonomy and control of which contracts would be published, Oakland can follow Seattle's protocol of allowing departments to decide; on the internal-facing side of Seattle's Masterworks program, there is a box that can be checked or left blank during the processing of the contracts. Staff with the Oakland PEC or the City Attorney's Office could act as an at-cost decision-making entity to uphold or deny requests for contract exclusion.

Finally, petitioning support from important entities like the City Attorney's Office, City Council, and Mayor will be important in successfully instituting a contract tracking dashboard. As outlined earlier in this report, several Seattle mayors have been instrumental in taking executive action to spearhead the City's open data portal and contract tracking initiatives. While additional coordination with Oakland's IT department will be critical, the buy-in of leadership to get the process going will be instrumental.

Preliminary Cost Savings

By estimating these five variables, we can arrive at a new ongoing cost for creating a contract tracking dashboard for the City of Oakland:

- 1. Proportion of litigation under the proposed system as compared to the current system = 1**
 - Rationale: We estimate that the creation of a contract tracking dashboard will not significantly affect litigation costs.
- 2. Any ongoing new software or technology costs = \$3,330**
 - Rationale: We estimate that a contract with Masterworks will cost approximately \$3,330 weekly. We took the annual Seattle Masterworks contract amount (\$298,656) and divided it by 52 weeks to yield \$5,743.38; and since Oakland's population is 58% of Seattle's population, $\$5,743.38 \times 0.58 = \$3,330$.
- 3. Proportion of liaison staff time under the proposed system as compared to the current system = 0.9**

Item 5 - Goldman Student Presentation on Transparency

- Rationale: Contracts are likely to comprise a small number of public records requests and account for a comparatively small amount of liaison staff time.

4. Number of new full-time staff = 1

- Rationale: Although Oakland has a range of staffing options, we conservatively propose that the contract tracking dashboard be staffed with one full-time employee.

5. Number of weekly public records requests = 220

- Rationale: We estimate that the number of public records requests would be reduced, but only slightly from 242 to 220.

Rough Estimate of Proposed Total Weekly Costs to Oakland =

$$\begin{aligned} &(\$8,899 \times 1) + \\ &\$3,330 + \\ &((387 / 388.5) \times \$404 \times 220) \\ &= \mathbf{\$100,995} \end{aligned}$$

Where Total Staff Hours at 387 =

$$\begin{aligned} &(388.5 \times 0.9) + \\ &(1 \times 37.5) \end{aligned}$$

Conservative Cost Savings

$$\begin{aligned} &= \$106,882.61 - \$100,995 \\ &= \mathbf{\$5,800 Weekly, \$300,000 Annually} \end{aligned}$$

Potential Weekly Range: -\$3,000 in costs to +\$15,000 in savings

Recommendations

Long-term action: We recommend that the City of Oakland create an innovative contract dashboard in alignment with the City's political transparency and campaign finance priorities. The dashboard should: 1) use Masterworks software, 2) be staffed with one full- or part-time Contracts Analyst, 3) allow users to search both active and terminated contracts, 4) allow users to view and download or export actual documents, and 5) include comprehensive Invitations to Bid (ITBs).

Short-term actions: In the short-term, we recommend that the City of Oakland take the following actions (costs not calculated):

- Work with the City Administrator's Office to begin the process of consolidating citywide contract information. This would entail tracking current and recent contracts and compiling an annual citywide report that includes timeline, status, and pricing.
- Produce preliminary reports that summarize contracts by type to identify asymmetries in contract distribution and the frequency with which certain contracts are awarded.

Summary of Recommendations and Next Steps

The best practices analyzed in this report demonstrate reasonable applicability to Oakland's context, and implementation of any one of the following recommendations would move the needle forward on City transparency.

We recommend that the City of Oakland:

1. Institute a centralized Public Records Office,
2. Establish a more robust Open Data Policy that builds upon its open data portal,
3. Expand on the Police Data Dashboard and integrate it into the open data portal, and
4. Create a citywide Contract Tracking Dashboard.

Instituting an Official Public Records Office will increase efficiency in Oakland.

Establishing a new Public Records Office, whether as an independent entity, within the IT department, or within the PEC, is the solution Oakland seeks to improve efficiency in addressing public records requests. Adopting this practice would require the City to rethink its budgetary expenses in order to establish the new department and hire new staff. However, we have identified that in the long-run this will be extremely beneficial for the City and will help increase efficiency among staff. It will also enable more seamless execution of the other recommendations.

Developing an Open Data Policy will enhance general transparency.

The creation of an Open Data Policy will show Oaklanders that the City is serious about enhancing general transparency practices. This intentional and direct approach would require the PEC to work with city council members and staff to create a comprehensive policy that requires non-private information to be made publicly available. This policy should clearly designate an open data champion for every City department, establish appropriate protocols for adhering to the CPRA while responding to records requests, and working with the IT department to bring this vision to life.

A detailed Police Data Dashboard will help rebuild public trust.

A significant percentage of Oakland records requests target the Oakland Police Department (OPD), indicating a wide gap between Oakland residents and OPD. Introducing a police data dashboard wouldn't just bolster transparency and accountability but also work toward rebuilding trust between citizens and law enforcement. Despite the contentious history of the Oakland Police Department, there's ample room for improvement. The ultimate goal is fostering positive interactions between OPD and the community, achievable through the implementation of police data dashboards. Given the common requests for use of force statistics and stop data, integrating a comprehensive, user-friendly display of real-time crime information could propel Oakland into the broader transparency movement.

A Contract Tracking Dashboard will demystify public-private partnerships.

By creating a contract tracking dashboard, Oakland will be able to share pertinent information about emerging projects and partnerships with the private sector and other entities. Residents often inquire about the progress of various projects in their community, ranging from new housing developments or park enhancements. With a new contract

Item 5 - Goldman Student Presentation on Transparency

dashboard, any resident can search active contracts, download agreements, and view a timeline of a city contract. The unintended secrecy of city contracts has long been the status quo in many jurisdictions. By creating a new contract dashboard, the City will be a beacon of transparency in this context.

To best prioritize these recommendations, the City might consider beginning with building out the Police Data Dashboard and creating a Contract Tracking Dashboard, given that these best practices would affect fewer departments and are more actionable in the short-term. The first two best practices (Public Records Office and Open Data Policy) would entail citywide changes and represent longer-term endeavors.

Limitations

The scope of this analysis was limited to interviewing external organizations and government agencies, rather than conversations with City staff. In addition, this report paints with a broad brush in three ambitious functions: 1) providing an overview of what jurisdictions around the nation are doing to increase transparency, 2) surfacing best practices from other jurisdictions' policies, and 3) analyzing feasibility in the City of Oakland, including a rough estimate of costs and savings. The research team's limited time and capacity and the broad project scope leaves uncovering additional details to future reports. It is our belief that each of the analyzed best practices deserves its own report covering implementation in the City of Oakland. To inform a more thorough internal analysis, more information is needed about what each department at the City is doing around public records, including low-volume departments, and any policies and practices around the City's existing open data portal and police data dashboard that are not yet publicly available.

Next Steps for the City of Oakland

The following are specific next steps that the City of Oakland can take in the immediate term:

- Conduct an in-depth review of Oakland's current costs for public records management and response, including all staff time (both liaisons and other staff) and litigation costs. Factor these costs into this report's preliminary cost savings analysis to yield more precise numbers for each best practice, which can better inform policy decisions and priorities.
- Reach out to case study interviewees of interest for additional details on their implementation of best practices and the specific benefits they saw.
- Craft detailed reports/plans on implementation for each of the four long-term best practices highlighted in this report, factoring in more specific information about the City's current practices around public records and open data.
- Begin working on the sub-recommendations for the Police Data Dashboard and Contract Tracking Dashboard and establish a timeline for beginning work on the other two best practices.

Item 5 - Goldman Student Presentation on Transparency

Theoretical Approaches for Consideration

There are several innovative ideas that emerged through qualitative interviews in addition to the aforementioned four best practices that are both feasible and potentially effective in increasing transparency in the City of Oakland.

The following practices were recommended by various experts and organizations who are esteemed leaders in the field of transparency and accountability:

Support Government Transparency Act overhaul in California.

In 2023, Consumer Watchdog [filed a proposed ballot measure](#) intended for the 2024 general election titled the "[Government Transparency Act](#)." Although the measure had promise, garnering 70% support from a poll of California voters, Consumer Watchdog has decided to make some tweaks to the act before it goes to a vote, meaning that it will appear on a post-2024 ballot. Oakland can join other local jurisdictions and organizations in being outspoken advocates of the Government Transparency Act at the state level. Doing so will build a groundswell of support in advance of the potential ballot measure. Oakland could also implement specific provisions of the legislation that are feasible at the local level.

Launch a local government transparency campaign in Oakland.

The PEC can begin to build out a transparency campaign at the local level. Starting with allies who are natural transparency advocates, the campaign can grow internally for current electeds and incumbents. These advocates along with City staff could meet with supportive staffers and get them to take the "transparency pledge." The PEC could then work with the individuals that "sign the pledge" to put in place a statement or principles of transparency that can be passed as a City ordinance or a "statement of principle" that emphasizes Oakland's commitment to transparency.

Be proactive in working with the media.

The PEC could work to build stronger and better relationships with members of the media, such as giving them a heads up when policies or practices are being introduced or changing. The City could also provide briefings and training to explain changes and updates outside of public meeting spaces, and reach out to invite the media to media-specific events. The New Mexico Ethics Commission found outreach and training with the media extremely beneficial in sharing updates with the public, especially in terms of garnering positive vs. negative coverage about ethics and transparency work.⁹⁹

⁹⁹ Source: Interview with Jeremy Farris, Executive Director and Jane Kirkpatrick, Communications and Administrative Manager with the New Mexico Public Ethics Commission.

Appendix: List of Interviewees

We would like to thank the following individuals for contributing their expertise to this report through their participation in interviews:

Jerry Flanagan, *Litigation Director, Consumer Watchdog*

David Cuillier, *Director of the Freedom of Information Project, Brechner Center, University of Florida*

Ginny LaRoe, *Director of Advocacy, First Amendment Coalition*

Jeff McDonald, *Investigative Reporter, San Diego Union-Tribune*

Angelica Salceda, *Director of Civic Engagement Program, American Civil Liberties Union of Northern California*

Shaila Nathu, *Staff Attorney for Democracy & Civic Engagement, American Civil Liberties Union of Northern California*

Sean McMorris, *Transparency, Ethics, and Accountability Program Manager, California Common Cause*

Ali Winston, *Investigative Reporter and Author*

Amye Bensehaver, *Board Member and Former Assistant Attorney General, Kentucky Open Government Coalition*

Fritz Mulhauser, *Secretary and Co-chair, Legal Committee, D.C. Open Government Coalition*

Robin Berry, *Executive Director and Records Retention Officer, Louisville Jefferson County Metro Government Office of Records Compliance*

Andrew McKinney, *Data Officer, Louisville Jefferson County Metro Technology Services*

Julie Kipp, *Citywide Public Records Act Program Manager, City of Seattle Information Technology*

Mark Schmidt, *Open Data and Data Governance Program Manager, City of Seattle Information Technology*

Michelle Littlefield, *Chief Data Officer, DataSF, City and County of San Francisco*

David Steinberg, *Executive Assistant to the Director & Custodian of Records, San Francisco Public Works*

Christopher Beauchamp, *Lieutenant, San Francisco Police Department*

Arlo Malmberg, *Data and Policy Analyst, Berkeley Police Department*

Charles Lara, *Lieutenant and Special Projects & Legislative Affairs, San Diego Police Department*

Tanya Marshall, *State Archivist and Chief Records Officer, State of Vermont*

Jennifer Treadway, *Records and Information Management Specialist IV, State of Vermont*

Carmalinda Vargas, *Strategic Advisor, City of Seattle Purchasing and Contracting*

Pat Malai, *Business Systems Analyst, City of Seattle Purchasing and Contracting*

Joe Benton, *Business Systems Analyst, City of Seattle Purchasing and Contracting*

David Tristan, *Executive Director, Los Angeles Public Ethics Commission*

Heather Holt, *Deputy Executive Director, Los Angeles Public Ethics Commission*

Michael Canning, *Policy and Legislative Affairs Manager, San Francisco Public Ethics Commission*

Item 5 - Goldman Student Presentation on Transparency

Eamonn Wilson, *Senior Investigator and Legal Analyst, San Francisco Public Ethics Commission*

Pedro Hernandez, *Legal and Policy Director at California Common Cause and Commissioner, Berkeley Public Ethics Commission*

Faye Harmer, *City Clerk, City of Durango*

Ben Florine, *Deputy Clerk, City of Durango*

Jena Beck, *Records Clerk, City of Durango*

Bonita Chang, *Compliance Director, Hawaii Public Ethics Commission*

Jeremy Farris, *Executive Director, New Mexico Public Ethics Commission*

Jane Kirkpatrick, *Communications and Administrative Manager, New Mexico Public Ethics Commission*

Kristen Denius, *Chief Transparency Officer, City of Atlanta*

Emily Chen, *Assistant to the City Clerk, City of Walnut Creek*

Tricia Lyall, *Secretary and Chief of Staff, UC Board of Regents*

Maria Shanle, *Managing Counsel - Education Affairs and Governance, UC Office of the General Counsel*

The Authors



Chelsea Hall

Chelsea is a Master of Public Policy candidate committed to enhancing local government mechanisms and equitable service delivery. She has experience working in local government at Marin County, where she supported two divisions simultaneously: Housing and Environmental Planning. Before that, she worked for the Sacramento News & Review as a project manager, facilitating the production of engaging public outreach materials on topics ranging from voters' rights to climate change. She received a Bachelor of Arts in Political Science with minors in English and Law & Ethics from the University of San Diego.



Kelsey Perez

Kelsey Perez is a Master of Public Policy candidate at the UC Berkeley Goldman School of Public Policy. Born and raised in Los Angeles, California, Kelsey developed a passion for preserving the diverse communities surrounding her. She is committed to fighting for criminal justice reform, immigration reform, and violence prevention. Prior to joining Goldman, she worked as an immigration paralegal in San Francisco, where she aided clients in their asylum applications at both the San Francisco Asylum Office and San Francisco Immigration Court. She also interned with the Human Rights Campaign in Washington, D.C. Kelsey holds a Bachelor of Arts in Communication Studies from the University of San Francisco.



D. Azarmi

D. is a long-time advocate, campaigner, and organizer who specializes in coalition building. They have assisted non-profit organizations in base-building, campaign, and outreach strategies. A seasoned facilitator and trainer, their work has reached thousands of people in intergenerational, multi-racial social justice spaces. They enjoy acting as a connector between communities, government, and stakeholders. Before pursuing a Master of Public Policy at Goldman, D. acquired a B.A. in Environmental Studies at the University of North Carolina at Wilmington and Certificate in Nonprofit Management at Duke University.



Ryan Manriquez

Ryan is a Master of Public Policy candidate at the Goldman School of Public Policy. Prior to arriving at Goldman, Ryan served as Senator, President, and Chairperson for the Disability Justice Committee for the Associated Students of UC Davis. Currently, Ryan serves as President of the UC Graduate and Professional Council which represents over 64,000 students across the UC system. Their extensive policy background in higher education has allowed them to build relationships with local and state officials. Ryan earned their B.A. in Political Science and Communication from the University of California, Davis.

Spring 2024 Policy Analysis

OPEN BY DEFAULT: A BEST PRACTICES ANALYSIS FOR MEANINGFUL TRANSPARENCY IN THE CITY OF OAKLAND

The Goldman School Team:

Chelsea Hall

Kelsey Perez

D. Azarmi

Ryan Manriquez



Agenda

01

Introduction

02

Current Challenges

03

Methods

04

Analysis & Recommendations



Project Initiation



- This project was part of a policy analysis class for first-year Master of Public Policy (MPP) students at the **UC Berkeley Goldman School of Public Policy**
- Four students partnered with PEC Executive Director Nicolas Heidorn and Commissioner Francis Upton over the course of three months

The Goldman School Team



Chelsea Hall



Kelsey Perez



D. Azarmi



Ryan Manriquez

CHALLENGES IN OAKLAND

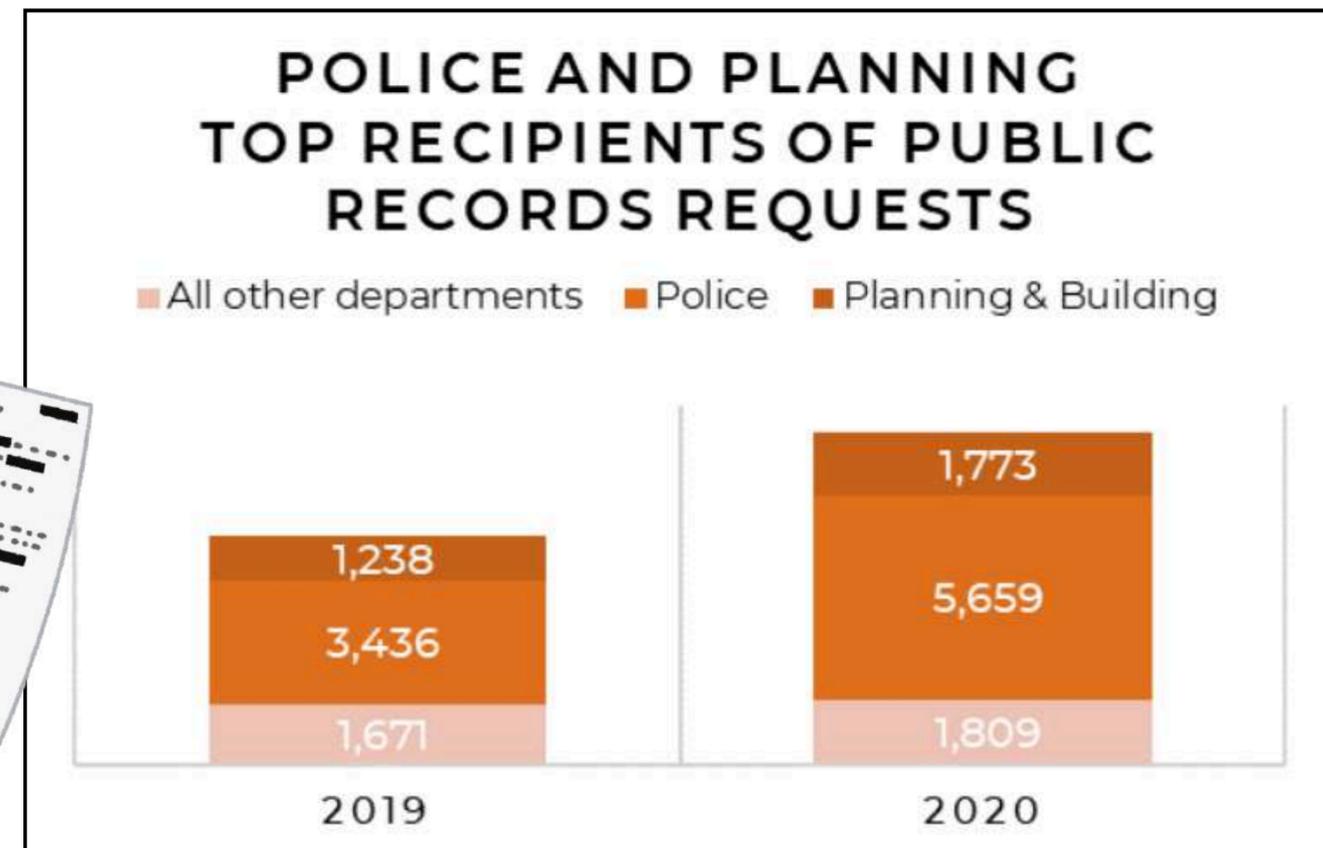
Features of Oakland's Public Records Landscape

High-volume departments

The Police Department receives the most requests for records by far, trailed by Fire and Planning.

Existing disclosure mechanisms

- NextRequest
- Open data portal
- Police data dashboard



Oakland's Policy Problem

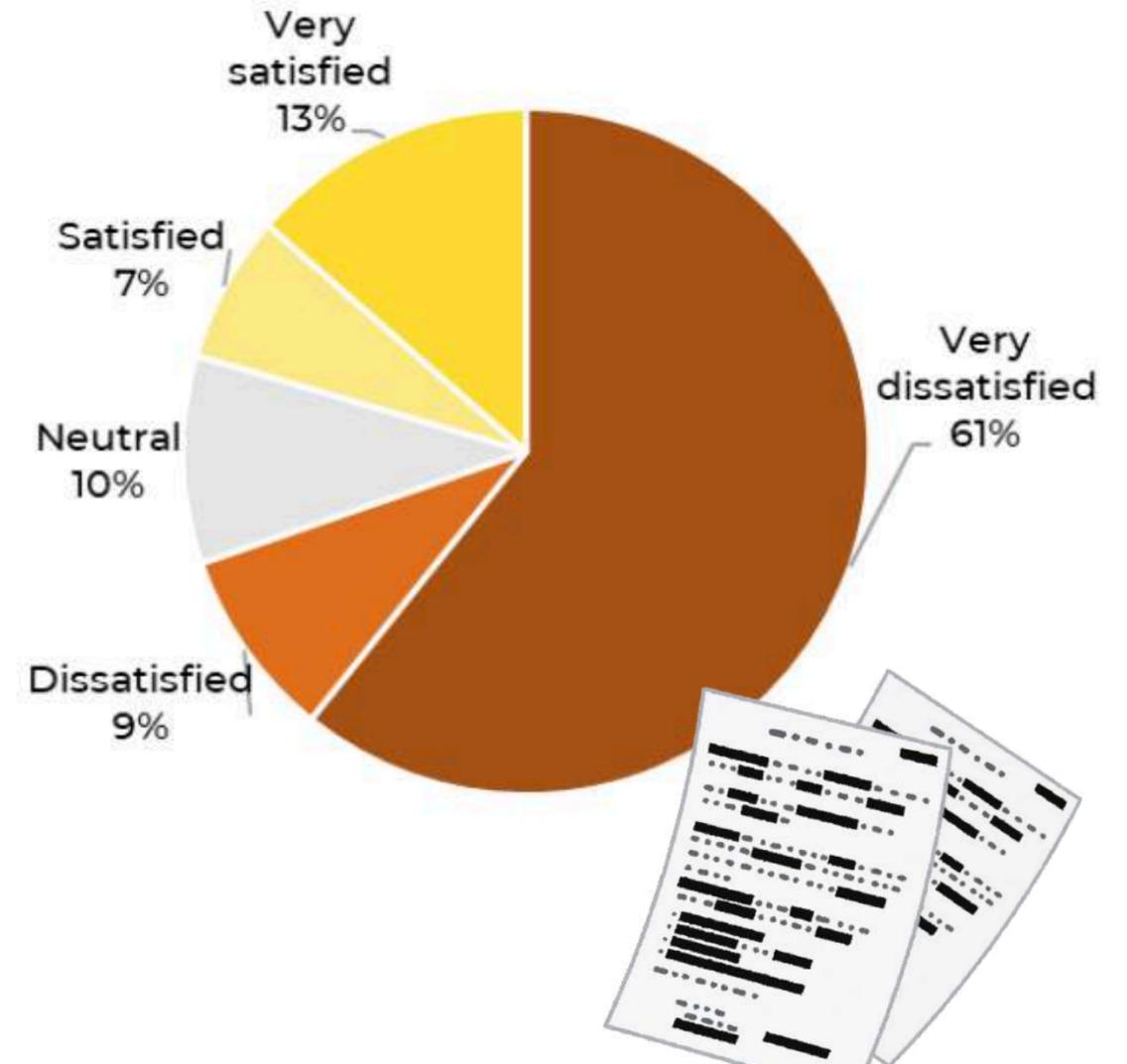
01

70% of public records requesters were dissatisfied with their experience and the public records they did or did not receive.

02

City departments struggle to meet statutory deadlines for responding to public records requests and delivering relevant records.

SEVENTY PERCENT OF RESPONDENTS DISSATISFIED WITH PUBLIC RECORDS EXPERIENCE OVERALL



Specific Challenges

- 1** Decentralization, departmental discretion, and limited interdepartmental collaboration
- 2** Lack of unified training
- 3** Data disclosure is incomplete or challenging to access
- 4** Volume of records requests and capacity of staff



Project Roadmap

PRIMARY OBJECTIVE:

Improve access and responsiveness to Oaklanders' requests for records and create a culture of increased public transparency.

Step 01

Identify other government agencies whose mission is to proactively disclose records, uphold highest transparency standards, and/or empower use of data in agency-wide initiatives.

Step 02

Evaluate those agencies for best practices and analyze feasibility of practices in Oakland.



RESEARCH QUESTIONS



How have other jurisdictions **streamlined their response to public records requests**, both interdepartmentally and with requesters?



What have other jurisdictions done in pursuit of **proactively disclosing information to the public**?



What challenges do other jurisdictions face when implementing these practices, and **what resources does successful implementation require**?

METHODOLOGY

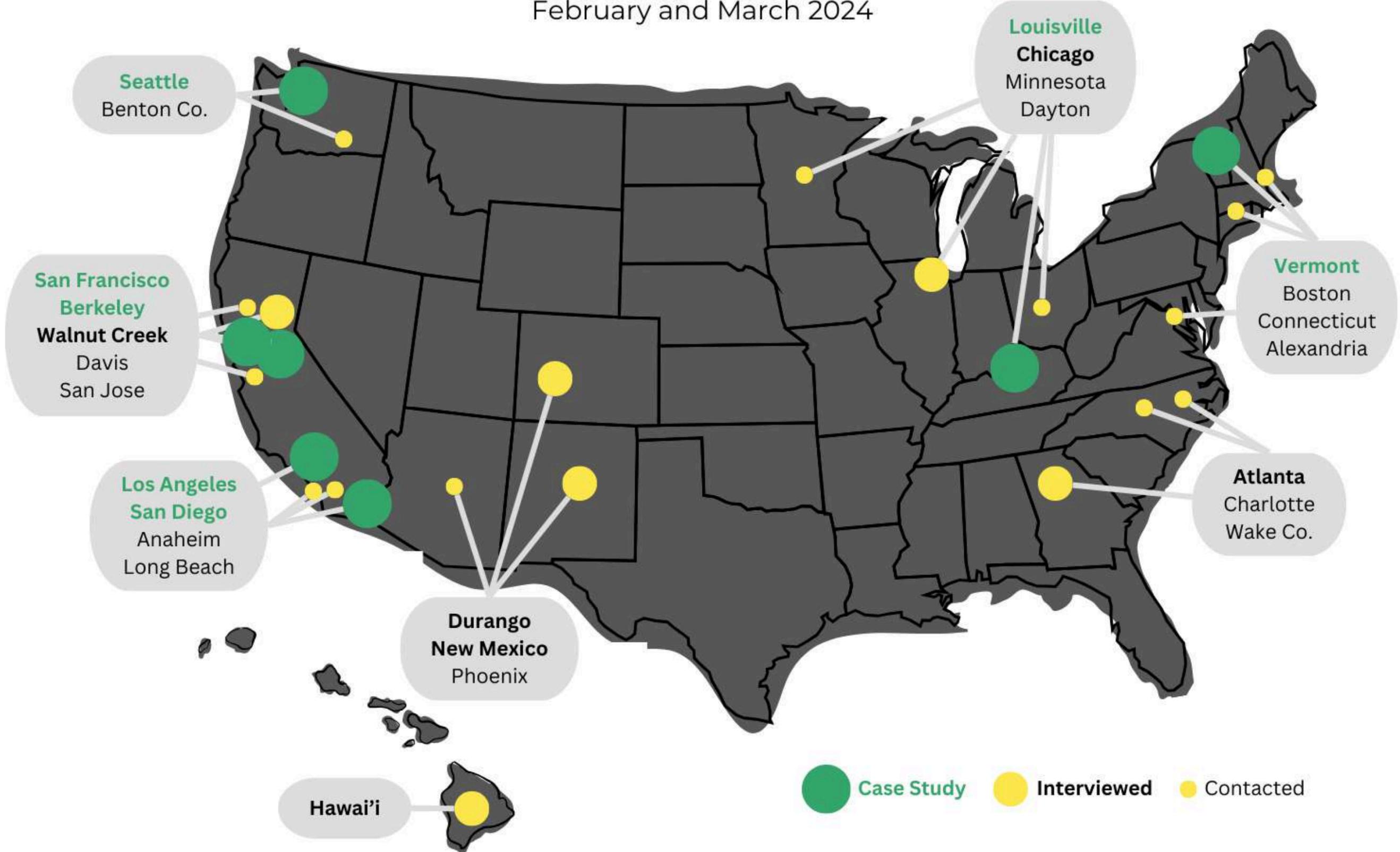
The Goldman Team...

- emailed **61** organizations and agencies
- held **30** informational interviews



Jurisdiction Outreach

February and March 2024



Best Practices:



01 Cross-Departmental Coordination

City and County of San Francisco

City of Seattle

State of Vermont Agency of Human Services

Louisville Jefferson County Metro Government

02 Open Data Portals

City and County of San Francisco

City of Seattle Information Technology

Louisville Jefferson County Metro Government

03 Police Data Dashboards

San Francisco Police Department

San Diego Police Department

Berkeley Police Department

04 Contract Tracking Dashboards

City of Seattle Purchasing & Contracting Division

Key Priorities:



- ▶ **Ease of Implementation**
- ▶ **Use of Technology**
- ▶ **Data Aggregation**
- ▶ **Sensitivity to Confidential Information**
- ▶ **Feasibility in Oakland**
- ▶ **Preliminary Cost Savings**

Cost Savings Analysis



- Factoring in litigation and staff costs, Oakland is currently spending about **\$106,000 every week** on public records requests
- *How much could the City save by implementing changes?*
- Using limited information, we derived a formula for estimating savings
- Refer to full formula and rationale on **pages 19-21** of the provided report

BEST PRACTICES ANALYSIS

Agencies

1. **SAN FRANCISCO:** regular public records meetings
2. **SEATTLE:** centralized division in IT
3. **VERMONT:** centralized independent committee
4. **LOUISVILLE:** centralized independent department

Analysis

- Cross-departmental coordination looks different everywhere
- A top-down approach is crucial for meaningfully streamlining public records systems
- Consistent use of technology and guidance across departments is instrumental
- Greater coordination allows for better handling of sensitive information



KEY FINDINGS: Cross-Departmental Coordination

RECOMMENDATION:



- Establish a new **Public Records Office** that is either independent, housed within IT, or within PEC.
- Hire 4 full-time staff in the Office to coordinate receipt of public records requests, solicit relevant records, make required redactions, and issue responses to requesters.

PRELIMINARY COST SAVINGS:

= \$4,000 Weekly, \$200,000 Annually

Potential Weekly Range: -\$8,000 in costs to +\$15,000 in savings

Actions for the short term:

- **Institute bi-monthly meetings** of all Public Records Liaisons to initiate knowledge-sharing, and mandate regular trainings on NextRequest and public records laws
- **Upgrade the City's NextRequest contract** to include more functionality
- **Create citywide guidance documents** for responding to public records, including how to handle redactions and common issues/questions.

Agencies

1. **SAN FRANCISCO:** DataSF
2. **SEATTLE:** Seattle Open Data
3. **LOUISVILLE:** LouKY Open Data

Analysis

- Accessible data portals serve both City staff and citizens
- Robust open data creates efficiencies for staff and requesters (staff can send direct links to data)
- Publishing frequently requested data helps with the volume of requests
- Including summaries, explanations, and visuals is a best practice



KEY FINDINGS: Open Data Portals

RECOMMENDATION:



- Enlist the Mayor to establish a **revamped Open Data Policy** and build upon the existing open data portal.
- Hire 2 new staff in the IT department to manage it.
- **Establish protocols for determining what kinds of records/data will be published** based on what is commonly requested in NextRequest, defaulting to posting *more* whenever possible.

PRELIMINARY COST SAVINGS:

= \$39,300 Weekly, \$2,000,000 Annually

Potential Weekly Range: +\$25,000 to +\$70,000 in savings

Actions for the short term:

- Begin **conversations with departmental heads** about the importance of publishing more/better data and records.
- Coordinate with City Administrator's Office to **rename existing datasets** in the open data portal and **include explanations and visualizations**.
- **Conduct in-depth analysis of the most commonly requested types of records** in NextRequest for each department, and categorize types of documents that tend to require redaction
- **Expand resources and guides** for how to use the open data portal, geared to both City staff and members of the public



Agencies

1. SAN FRANCISCO POLICE DEPARTMENT
2. SAN DIEGO POLICE DEPARTMENT
3. BERKELEY POLICE DEPARTMENT

Analysis

- User-friendly, multi-format software achieves relatively higher levels of transparency to the public.
- Consistency in uploading data and providing innovative visuals enable more specific searches to increase public safety awareness.
- Body cam compliance, instant downloads, user support, training, and forward-facing communication and data displays help the public regain trust in the government.



KEY FINDINGS: Police Data Dashboards

RECOMMENDATION:



- **Expand the existing police data dashboard**
 - Display up-to-date crime, use of force, public safety, and stop data
 - Use ArcGIS for crime mapping
- Staff one full-time Data Analyst in the IT department
- **Involve the public** via focus groups

PRELIMINARY COST SAVINGS:

= \$48,000 Weekly, \$2,500,000 Annually

Potential Weekly Range: +\$18,000 to +\$70,000 in savings

Actions for the short term:

- Work with OPD and/or IT to **establish a consistent schedule for updating all data** on Oakland's current police data dashboard and add explanations, summaries, and visuals wherever possible
- Begin to involve the public via **focus groups** to give direction for how to best improve the dashboard, including what types of data and records to add



Agency



1. **SEATTLE:** dashboard managed by Contracting & Purchasing Division

Analysis



- Users can search for active and terminated contracts, with the option to view actual documents.
- Excel files are easily exported
- allows for data to be translated into more usable formats for auditors and businesses competing for contracts.
- Disclosure is a huge step toward building the public's trust in government contracting, which is so often directly connected to political corruption.



KEY FINDINGS: Contract Tracking Dashboards

RECOMMENDATION:



- Create an **innovative contract dashboard** using Masterworks software
- Employ one full or part-time Contract Analyst

PRELIMINARY COST SAVINGS:

= \$5,800 Weekly, \$300,000 Annually

Potential Weekly Range: -\$3,000 in costs to +\$15,000 in savings

Actions for the short term:



- Work with the City Administrator's Office to **begin consolidating citywide contract information**
 - Would entail tracking current and recent contracts and compiling an annual citywide report that includes timeline, status, and pricing.
- **Produce preliminary reports that summarize contracts by type** to identify asymmetries in contract distribution and the frequency with which certain contracts are awarded

RECOMMENDATIONS

1

**ESTABLISH
NEW PUBLIC
RECORDS
OFFICE**

2

**ENLIST THE
MAYOR TO
ESTABLISH A
NEW DATA
POLICY**

3

**EXPAND
EXISTING
POLICE DATA
DASHBOARD**

4

**CREATE
CONTRACT
TRACKING
DASHBOARD**

LIMITATIONS

- Three-month project, limited time and capacity
- Scope was limited to interviewing **external organizations** and government agencies; little time to look internally and have conversations with City staff about current costs, policies, and practices
- Each of the recommendations/best practices **deserves its own report** covering the details of implementation in the City of Oakland

Thank You!



Item 6 - Disclosure Report

Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Alex Van Buskirk, Lead Analyst, Compliance and Disclosure
Jelani Killings, Lead Analyst, Education and Engagement
DATE: May 29, 2024
RE: Disclosure and Engagement Monthly Report for the June 12, 2024,
Regular PEC Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities since the last regular meeting.

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 Public Ethics Commission 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.

Compliance with Disclosure Requirements

Commission staff conducts filing officer duties as required by state and local law and aims to help candidates, lobbyists and City officials submit required disclosure reports and ensure residents can easily access campaign finance, lobbyist, and ethics-related data and information.

Campaign Finance Disclosure – Several committees were referred to Enforcement in May 2024 due to their non-filing status of required campaign statements. Referrals were made after numerous attempts by Commission staff to contact the non-filers to gain voluntary compliance. The committees referred for Enforcement are: Move Oakland Forward Now (ID# 1440969); Joel Velasquez for Oakland School Board 2022 (ID# 1450818); Harold Lowe for City Council 2022 (ID# 1453436); and Cherisse Gash for Oakland School Board District 3 (ID# 1428671).

The second semi-annual statement deadline is upcoming, on July 31, 2024, and covers activity through June 30, 2024. Upcoming pre-election deadlines related to the November 5, 2024, election are September 26, 2024, and October 24, 2024.

Campaign statements are available to view and download at the Public Ethics Commission's [Public Portal for Campaign Finance Disclosure](#). Campaign finance data, graphs, and visualizations are available via Commission-sponsored apps [Show Me the Money](#), [OpenDisclosure](#), [Oakland's Open Data portal](#), and links on the Public Ethics Commission website.

Lobbyist Registration Program – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Commission before conducting any lobbying activity. Registration renewals were due January 31. To date, 52 lobbyists have registered with the City of Oakland for 2024.



In November 2023, the Oakland City Council adopted amendments to the Lobbyist Registration Act including a new annual lobbyist registration fee as well as a requirement that lobbyists take an online training provided by the Commission. To date, 47 lobbyists have taken the online training provided by the Commission and the Commission has received new annual lobbyist registration fees from over two-thirds of the registered lobbyists. Commission staff is monitoring online training and new fee payment activity to ensure compliance by registered lobbyists.

The LRA also requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. April 30 was the deadline for quarterly lobbyist activity reports covering the period from January 1, 2024, through March 31, 2024. All registered lobbyists who were required to file their quarterly lobbyist activity reports did so. Three reports were filed several days past the deadline. Commission staff are in the process of assessing late fees in accordance with Commission policies.

An up-to-date list of registered lobbyists and lobbyist activity reports with links to view and download individual reports is available at the Public Ethics Commission's [Lobbyist Dashboard and Data](#) webpage.

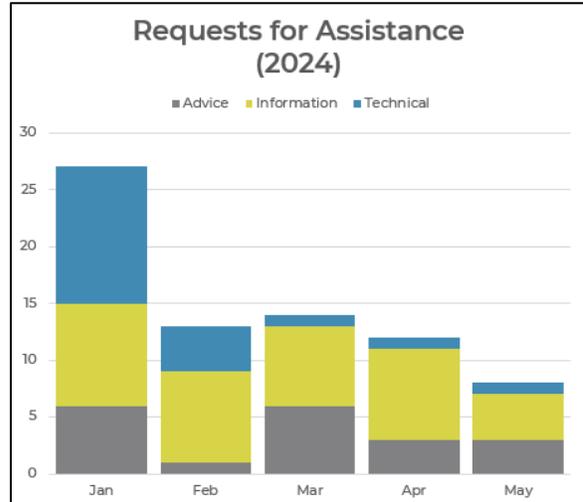
Advice and Engagement

The Commission's Engagement program seeks to ensure Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.

Advice and Technical Assistance – Between April 2024 and May 2024, Commission staff responded to 20 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues.

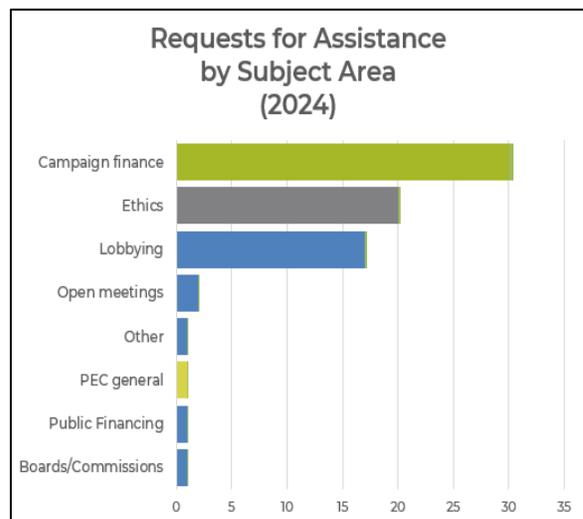
New Employee Orientation – Commission staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the Public Ethics Commission and overview of the Government Ethics Act (GEA).

In the months of April and May, Commission staff trained over 80 new employees on GEA provisions. Employees required to file Form 700 were also assigned the Commission’s mandatory online Government Ethics Training for Form 700 Filers.



Supervisory Academy – On May 23, 2024, Commission staff facilitated an ethics discussion for the City’s quarterly Supervisory Academy. The discussions are intended to allow for more meaningful dialogue concerning ethical values in decision making with a focus on identifying ethical dilemmas that City staff face in carrying out their daily duties.

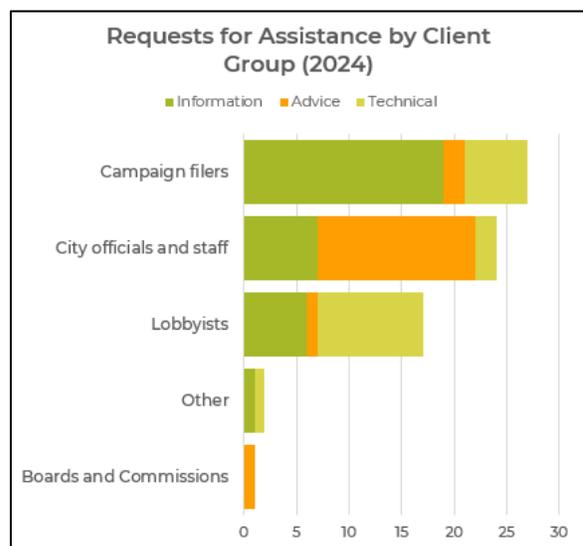
Commission staff provided an overview of the Government Ethics Act including conflicts of interests, gift restrictions, and postemployment restrictions.



A total of 44 employees attended the training.

Candidate and Treasurer Training – On April 12, 2024, Commission staff conducted a joint candidate and treasurer training with representatives from the California Fair Political Practices Commission (FPPC). 15 individuals participated in this training.

The attendees received a two-hour training on the California Political Reform Act and the Oakland Campaign Reform Act. Topics covered included campaign forms, committee IDs, campaign bank accounts, recordkeeping, contribution rules, and advertising disclosures.



OPRYD Ethics Training – On May 29, 2024, Commission staff conducted an ethics training for over 100 new employees of the Oakland Parks, Recreation, and Youth Development Department during their summer staff orientation. Commission staff provided an overview of the Public Ethics Commission and the City’s Government Ethics Act.

Online Engagement

Website Migration – The City of Oakland is in the process of transitioning its website to a new content management system (CMS), OpenCities. The new website is scheduled to launch in July 2025. In the initial phase of the migration process, Commission staff has been working with the City’s project team to review the Public Ethics Commission’s current webpages and determine which ones will migrate to the new website. Concurrently, Commission staff will also be updating current webpages to improve content and formatting.

The table below shows the Public Ethics Commission’s most visited webpages (data is for views that occurred between March 2023 and March 2024).

Page Name	Pageviews
City Council Salaries	356
Democracy Dollars Program Oakland Fair Elections Act	334
Lobbyist Rules	290
What Are Democracy Dollars?	277
Candidates and Campaigns	261
Campaign Finance Rules and Disclosure	253
Public Ethics Commission Enforcement Program	242
Disclosure Information and Data	187
Ethics for City Staff, Elected Officials and Board...	157
Oakland Sunshine Ordinance	156

Social Media – Commission staff has continued producing monthly social media content highlighting the Commission’s upcoming meetings, how to file an enforcement complaint, and transparency requirements for political ads and candidate’s social media accounts.

Item 7 - Enforcement Report



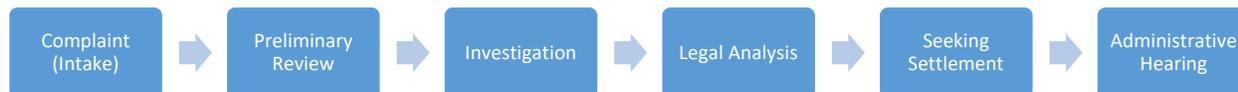
Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 28, 2024
RE: Enforcement Program Report for the June 12, 2024, PEC Meeting

This memo discusses the Enforcement Program's caseload and major programmatic developments since the last Enforcement Report (submitted on March 26, 2024).

Overview of the Enforcement Process



The PEC's Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City's ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. "Formal" complaints are submitted on the PEC's official complaint form and are signed under penalty of perjury. "Informal" complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an investigation into a formal complaint. By contrast, Enforcement has the discretion not to review an informal complaint and does not have to report rejected informal complaints to the Commission. Commission staff may also initiate its own "pro-active" complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called "Preliminary Review," in which Enforcement determines whether there are sufficient legal

and evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If Enforcement is unable to settle a case within a reasonable time (typically sixty days) or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting evidence. A majority of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings

whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

The Enforcement Unit's full Complaint Procedures and Penalty Guidelines can be found on our website.

Current Enforcement Caseload

Since the last Enforcement Unit Program Update submitted to the Commission on March 26, 2024, Commission staff:

- received two formal (sworn) complaints, which are currently in the preliminary review phase;
- received thirteen informal (unsworn) complaints, of which nine were rejected, two were assigned complaint numbers and escalated to the preliminary review phase, and two are awaiting a determination as to whether to reject or escalate them¹; and
- filed six proactive (staff-generated) complaints, of which all six were assigned complaint numbers and escalated to the preliminary review phase.

In the same period of time, Commission staff:

- opened sixty-four complaints for a full investigation following preliminary review (of those, 59 were alleged 2023 Annual form 700 non-filers);
- initiated settlement negotiations in sixteen cases (of those, 15 were alleged 2023 Annual form 700 non-filers);
- reached final or proposed settlement agreements in nine cases (seven of which were streamlined and executed under PEC staff's authority, and two of which are pending Commission approval); and
- for administrative purposes, bifurcated one case into two; and bifurcated another case into 60 cases (alleged 2023 Annual form 700 non-filers).

This brings the total Enforcement caseload to one-hundred and forty-eight (148) open complaints or cases (of which 51 concern alleged 2023 Annual form 700 non-filers): twenty

¹ Reasons for a delay in making this determination can include the need to contact the complainant and/or do further research in order to clarify the allegation(s) being made, and/or a decision to prioritize other matters that appear to be more time-sensitive or of greater public interest.

(20) matters in the intake or preliminary review stage, thirteen (48) matters under active investigation, three (3) matters under post-investigation legal analysis, twenty-eight (28) matters in settlement negotiations, and two (2) matters awaiting an administrative hearing. The remaining forty-seven (47) matters are on hold pending additional staff resources and training (32% of the total, or 48% if the cases involving alleged 2023 Annual form 700 non-filers are excluded).

Enforcement's current staffing is: one (1) Enforcement Chief, one (1) permanent full-time Investigator, and one (1) temporary part-time Law Clerk. One of our Law Clerks, Chris Nardi, completed his clerkship with the PEC and is no longer on staff; we are sorry to see him go but wish him the best of luck in his future endeavors!

Case Resolutions or Submissions

Since the last Enforcement Unit Program report, the following complaints or cases have been resolved or submitted to the Commission:

- 1. In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc.; Lyft Inc. (PEC # 20-41.2).** On February 22, 2021, the PEC opened an investigation into allegations that a campaign committee called "The Committee For An Affordable East Bay" had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled committees, including the prohibition on receiving contributions from City contractors at certain times. Respondents were a City contractor and its sponsored committee, who made a contribution to The Committee For An Affordable East Bay. Respondents have agreed to settle this matter with regard to their own alleged actions, without admitting liability. Enforcement staff has submitted a proposed settlement agreement to be heard at the June 12, 2024, meeting of the PEC.
- 2. In the Matter of Various 2022 Annual Form 700 Non-Filers (PEC ## 23-16.1, 23-16.2, 23-16.5, 23-16.6, 23-16.7).** On October 24, 2023, the PEC opened an investigation into allegations that various City officials had failed to timely file their 2022 Annual Form 700. Enforcement staff has completed its investigation into certain respondents and has submitted its Investigation Summary (Closure Recommendation) to be heard at the June 12, 2024, meeting of the PEC.
- 3. In the Matter of Michael Dabney (PEC # 23-28).** On October 2, 2023, the PEC opened an investigation into allegations that a mobile food vendor named Michael Dabney attempted to bribe a City inspector. Enforcement staff has completed its

investigation and has submitted its Investigation Summary (Probable Cause Report) to be heard at the June 12, 2024, meeting of the PEC.

4. **In the Matter of Jesse Boudart (PEC # 23-38).** On February 2, 2024, the PEC opened an investigation into allegations that City employee Jesse Boudart misused City resources and his City position when he used his City email account to campaign for election to a board seat with a private organization. Enforcement staff has completed its investigation and has submitted its Investigation Summary (Closure Recommendation) to be heard at the June 12, 2024, meeting of the PEC.
5. **In the Matter of Michelle Phillips (PEC # 24-04).** On March 15, 2024, the PEC initiated a proactive complaint alleging that Inspector General Michelle Phillips received a gift valued at \$300 from Campaign Zero, which was in excess of the local gift limit of \$250. Enforcement staff has submitted a proposed settlement agreement (streamlined) to be heard at the June 12, 2024, meeting of the PEC.
6. **In the Matter of Various 2023 Annual Form 700 Non-Filers (PEC ## 24-05.2, 24-05.7, 24-05.9, 24-05.15, 24-05.17, 24-05.20, 24-05.25, 24-05.48, 24-05.53, 24-05.64).** On April 18, 2024, the PEC opened an investigation into allegations that various City officials had failed to timely file their 2023 Annual Form 700. Enforcement staff has completed its investigation into certain respondents and has submitted its Investigation Summary (Closure Recommendation) to be heard at the June 12, 2024, meeting of the PEC.

We also entered “streamlined” settlement agreements for the following low-level violations. Pursuant to recent amendments to the Commission’s Complaint Procedures, the Executive Director has the authority to resolve these minor violations on their own authority, without a Commission vote, so long as they meet the specific requirements laid out in our Complaint Procedures (Section VI(D), (H)) and Penalty Guidelines.

Form 700 (2023 Annual) – Late Filing Violations² Streamlined Settlement Agreements				
Respondent	City Position	Days Late	Resolution	Case #
Castillo, Janny	Commissioner, Oakland Housing Authority	16	Diversion (training)	24-05.8
Harrison, Joey	Commissioner, Commission on Homelessness	20	Diversion (training)	24-05.18
Hicks, Tia	Member, Affordable Housing & Infrastructure	21	Diversion (training)	24-05.23

² Government Ethics Act section 2.24.040(B).

Item 7 - Enforcement Report

	Bond Public Oversight Committee)			
Mayes, William	Commissioner, Oakland Housing Authority	24	Diversion (training)	24-05.38
Ortiz, Xochitl	Housing Development Coordinator, Housing & Community Development	26	Diversion (training)	24-05.49
Plair Cobb, Gay	Member, Police Commission Selection Panel	21	Diversion (training)	24-05.10
Su, Jinnhua	Real Estate Agent, Real Estate Asset Management	22	Diversion (training)	24-05.56

Appendix: Current Caseload by Violation Type

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than our number of total cases, since one case can involve multiple types of violations.

	On Hold	Intake	Preliminary Review	Investigation	Legal Analysis	Seeking Settlement	Administrative Hearing	Grand Total
Campaign Finance	20		6	15	2	16	1	60
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	5			2		2	1	10
Coordination Between Candidate And "Independent" Campaign			2	1			2	5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	1			1	4
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	4		2	3	1	4		14
Late Filing Of Campaign Finance Report	3			4				7
Making/Receiving Campaign Contribution Over The Legal Limit	1			1	1	3		6
Misuse Of Campaign Funds For Personal Purposes	1						1	2
Inaccurate or Missing Disclaimer On Campaign Ad	3		1	1		3		8
Government Ethics	39	5	25	58	4	15	2	148
Bribery	2		3	1		1	1	8
Financial Conflict Of Interest	1	1	4		1			7
Holding Incompatible Public Offices			1					1
Inaccurate Reporting On Financial Disclosure Form 700	2		3					5
Late or Non-Filing Of Financial Disclosure Form 700	1			53		13		67
Misuing Official Powers For Private Gain (Coercion/Inducement)	19	1	7	3	1		1	32
Misuse Of City Resources For Personal Or Campaign Purposes	9			1	2			12
Receiving An Improper Gift Based On Amount	1		3			1		5
Receiving An Improper Gift Based On Source	2		1					3
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")	1							1
Awarding City Contract To Oneself ("Self-Dealing")	1	1	2					4
Leak Of Confidential Info			1					1
Councilmember Interfering In City administration		1						1
Awarding City Job Or Contract To Family Member		1						1
Lobbyists							1	1
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Miscellaneous	5		3	1	1	3		13
Failure To Produce Records To Police Commission Investigators	1							1
Lying Or Providing False Information To PEC Investigators	1				1	3		5
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower	2		3	1				6
Open Meetings & Public Records	7		1	1				9
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	4		1					5



Item 8 - Executive Director's Report

Ryan Mott, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: May 29, 2024, for the June 12, 2024 meeting
RE: Executive Director's Report

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2023-24 for each program area.

Budget

On May 24, 2024, Mayor Thao released her Proposed Midcycle Budget. The proposed budget makes four reductions to the PEC, which will negatively affect the PEC's programs and services:

- **Eliminate all funding for the Limited Public Financing Program (LPF) for 2024.** This change will cancel the LPF for 2024. If adopted, this would be the first election cycle in two decades in which no public financing was provided to candidates running for District Office. Cancelling the Program will also remove restrictions on maximum campaign expenditures and candidate self-financing that candidates participating in the LPF Program must agree to.
- **Reduces Democracy Dollars startup funding by \$97,790.** This change will reduce the amount of funds the PEC has to build the software platform that is necessary to implement the Democracy Dollars Program, from \$525,000 to \$427,210. PEC staff intends to move forward with the start-up funds available to build a database to distribute and process vouchers; however, staff believes a platform that includes a well-designed, accessible portal for residents and candidates should be available for program launch and is continuing to advocate for restoration of these funds to ensure a robust public portal.
- **Eliminates \$50,000 used for Measure W candidate education.** With this reduction, the Ethics Commission will not have any dedicated funds for candidate education and compliance in an election year when new campaign finance rules adopted by Measure W (2022), including new contribution limits and social media disclosure requirements, will first go into effect.
- **Eliminates \$38,121 in carried forward funds for election services.** In the 2019-2021 Budget, the City Council appropriated \$100,000 to the PEC for election-related expenses, with unexpended funds being carried forward each subsequent budget cycle. The PEC uses this fund to meet urgent election-related Program needs that exceed the PEC's staff capacity or O&M funding, which may include hiring temporary investigators or contracting for an Administrative Law Judge (ALJ). Eliminating this

funding may negatively impact the PEC's ability to investigate and prosecute cases, further contributing to its significant enforcement case backlog.

PEC staff will request that the City Council restore the cut funding, particularly to Democracy Dollars startup funding and the LPF Program. In addition, PEC staff continue to push for the PEC's priorities of adding one Ethics Analyst II to assist with the roll-out of the Democracy Dollars Program and to add enforcement staff to address the Commission's case backlog.

Measure W

Staffing – Fifty-four candidates applied for the grant-funded limited duration Democracy Dollars Community Engagement Specialist position. In May, staff completed interviews and anticipates concluding recruitment by June and onboarding the new analyst in July.

Administrative Processes and Technology – On May 28, 2024, PEC Staff presented before the City Council's Finance Committee a Resolution authorization the City Administrator to enter into a contract with MapLight not to exceed \$700,000 over five years for the development of the software platform necessary to administer the Democracy Dollars Program. The Finance Committee voted 4-0 to advance the Resolution to the full City Council at its June 18, 2024, meeting.

In addition, staff met with the Alameda County Registrar of Voters in May to begin a discussion of services required for Democracy Dollars program administration, such as regularly updated voter file data and signature verification.

PEC Charter Amendment Proposal

On May 30, 2024, Chair Micik and PEC Staff presented before the City Council's Rules Committee a Resolution which would place the PEC's proposed Charter and Oakland Municipal Code amendments on the November 2024 ballot. The Rules Committee voted to have the item return to Rules Committee.

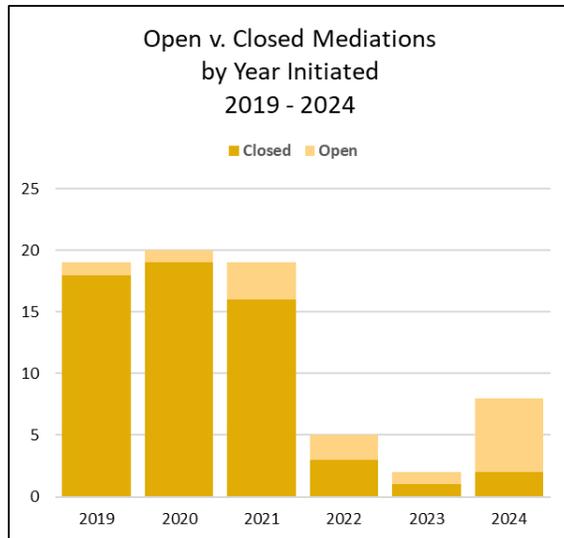
Mediation Program

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. The PEC currently has 14 open mediations, down from 16 as of the last Commission meeting.

Seven mediations were conducted by staff and subsequently closed since the last Commission meeting. The following mediation summaries are attached:

1. *In the Matter of the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department* (Case Nos. M2020-19 and M2021-05)

2. *In the Matter of the Planning and Building Department (Case No. M2021-09)*
3. *In the Matter of the City Council, Fire Department, and Planning and Building Department (Case No. M2021-16)*
4. *In the Matter of Oakland Public Works and the City Clerk (Case No. M2023-01)*
5. *In the Matter of the Oakland Police Department (Case No. M2024-03)*
6. *In the Matter of the City Administrator and the Office of the Mayor (Case No. M2024-04)*



Additional Attachment: Commission Programs and Priorities.

PUBLIC ETHICS COMMISSION

Programs and Priorities 2023/24 (new additions in **bold**)

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
<p>Lead/ Collaborate (Policy, Systems, Culture)</p>	<p>PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity, and innovation.</p>	<p>Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies</p>	<ul style="list-style-type: none"> ○ Lead Measure W implementation ○ Engage in review of laws PEC enforces 	<ul style="list-style-type: none"> ✓ Lobby Registration Act amendment to incorporate new fees and waiver policy ✓ Ordinance for one-time LPF for 2024 elections ○ Voter Guide Pilot – may be delayed ✓ Mayor Salary Setting Guidance ✓ Charter Review Options ○ Policy Review: Lobbyist Registration Act– may be delayed ✓ Ethics Commission Network ✓ Invite Department Presentations on Records Request Responses
<p>Educate/ Advise</p>	<p>Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.</p>	<p>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.</p>	<ul style="list-style-type: none"> • Regular ethics training • Information, advice, and technical assistance • Targeted communications to regulated communities • New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance ✓ Public Records training
<p>Outreach/ Engage</p>	<p>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.</p>	<p>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.</p>	<ul style="list-style-type: none"> • Public Records mediations • Commissioner-led public outreach • Outreach to client groups – targeted training and compliance • PEC social media outreach 	<ul style="list-style-type: none"> ○ Update guides and trainings to reflect OCRA, <u>LPF</u>, and LRA changes ✓ Update public and stakeholders on Democracy Dollar postponement ✓ Update Lobbyist Registration Act educational materials and share with Council ✓ Recruit for PEC vacancy ✓ Publicize Enforcement Needs ○ Publicize PEC campaign finance tools

Item 8 - Executive Director's Report

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
				<ul style="list-style-type: none"> ○ Publicize how to file complaints
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>	<ul style="list-style-type: none"> ● Monitor compliance (campaign finance/lobbyist/ticket use) ● Proactive engagement with filers ● Technical assistance ● Assess late fees/refer non-filers for enforcement ● Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars admin system development/seek authorization to hire a vendor/enter into contract ○ Updates to Ticket Distribution (Form 802) database ✓ Lobbyist App Updates ○ Public Records Performance Dashboard ○ Update Open Disclosure 2024 ✓ Update Show Me The Money ○ Digitize Schedule O Form
Detect/ Deter	<p>PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.</p>	<p>Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.</p>	<ul style="list-style-type: none"> ● Process and investigate complaints ● Initiate proactive cases ● Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/ mediation request ✓ Improve Enforcement database
Prosecute	<p>Enforcement is swift, fair, consistent, and effective.</p>	<p>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.</p>	<ul style="list-style-type: none"> ● Prioritize cases ● Conduct legal analyses, assess penalty options ● Negotiate settlements ● Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual ✓ Expand streamline and diversion program
Administration/ Management	<p>PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.</p>	<p>PEC staff model a culture of accountability, transparency, innovation, and performance management.</p>	<ul style="list-style-type: none"> ● Annual Report ● Budget proposal ● Ongoing professional development and staff reviews ● Fill staff vacancies 	<ul style="list-style-type: none"> ✓ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council ○ Increase enforcement capacity

Item 8 - Executive Director's Report

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
			<ul style="list-style-type: none">• Commissioner onboarding	

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department (Case Nos. M2020-19 and M2021-05); Mediation Summary*

I. INTRODUCTION

On December 28, 2020, and March 2, 2021, the Commission received requests for mediation alleging the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department were unlawfully delaying responding to public records requests made by the Requester on October 1, 2020, and January 22, 2021. Staff initiated its mediation program on December 28, 2020, and March 10, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Planning and Building Department provided responsive records on January 15, 2021, and March 27, 2024; the remaining departments stated that they held no responsive records; and the Requester stated that mediation was complete, this mediation was closed with no further action.

II. SUMMARY OF LAW

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

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

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

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

III. SUMMARY OF FACTS

On October 1, 2020, the City received the following records request via NextRequest (20-6811):

Please provide any communications between the City (any department) & any and all telecommunication applicants or their agents regarding compliance to Ordinance 17.128.130 Sections B or C. (Radio Frequency Emission Standards)

On October 21, 2020, the Planning and Building Department posted the following message:

Hello and thank you for your request. If possible can you please narrow your request so we can research and provide you with the most accurate information possible.

The Requester responded the next day:

Please narrow your search to those communications dated December 1, 2019 to current.

On November 18, 2020, the Planning and Building Department posted the following message:

Thank you for providing a date range. Without specific departments or staff names, any responsive records will be specific to Planning and Building department.

The Planning and Building Department posted identical messages on November 30, 2020, and December 7, 2020.

On December 14, 2020, the Planning and Building Department closed the request with the following message:

Requester is no longer interest in obtaining this record.

Later that day, the Requester responded:

I do not recall closing this message. Please provide me with who made and when this request was made. OPEN this record again to provide this information.

About a half hour later, the Planning and Building Department reopened the request and posted the following message:

Hello, thank you for your message. In order to process your request, we need additional information, which we requested on 11/18, 11/30 and 12/7/20. Can you please provide any specific departments or staff names? Please note that without that information, any responsive records will be specific to the Planning and Building Department. I have re-opened your request.

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

The Requester responded about three hours later:

I assumed that I would get all communications that were received or sent from the Planning AND Building Departments, City Administrator and/or Mayor. I do not have specific names of individuals. These communications could be at the lowest staff member all the way up to the City's Mayor. Please provide records since December 1st, 2019. Thanks. Sorry for the confusion.

The Planning and Building Department subsequently added the City Administrator's Office and Mayor's Office to the request, stating: "Please see the requester's message posted today."

On December 28, 2020, the Commission received a mediation request from the Requester alleging that the City Administrator's Office, Mayor's Office, and Planning and Building Department had unlawfully delayed responding to this request. It was assigned number M2020-19. Staff initiated its mediation program that same day and notified the departments of the mediation request.

On January 12, 2021, the Planning and Building Department provided Staff with the following update:

As of 1/8/21, IT has completed the search and CD for EDDR is ready for pick-up

On January 15, 2021, the Planning and Building Department released ten PDFs to the Requester, including seven email threads, two reports, and one copy of a permit approval. The Department stated it did not provide documents covered by attorney-client privilege under Government Code Section 6254(k) and redacted personal information under Government Code Section 6254(c).

On January 19, 2021, the Planning and Building Department provided Staff with the following update:

As of 1/15/21, PBD uploaded all responsive documents from EDDR request (with redactions). Former Citywide Records Manager Deidre Scott advised staff that we can only provide responsive docs related to PBD. PBD has removed themselves from this PRR and reassigned to CAO.

On January 22, 2021, the City received the following records request via NextRequest (21-615):

Please provide proof of contribution (and dollar amount) to the Sinking Fund for the cell antenna project: PLN17029.

The address is 2030 Franklin Street.

If there is no proof of contribution, please write back that no contribution was found to be made for this project. If this location does have a contribution to the Sinking Fund under a different project, please provide this information as well.

On January 26, 2021, the Finance Department posted the following message on request 21-615:

We are working to provide a response to your request. Please provide a direct telephone contact number to allow staff to contact you to clarify your request. Thank you.

Item 8 - Executive Director's Report

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

On March 2, 2021, the Commission received a mediation request from the Requester alleging that the City Administrator's Office, Mayor's Office, Finance Department, and Planning and Building Department had unlawfully delayed responding to this request. It was assigned number M2021-05. Staff initiated its mediation program on March 10, 2021, and notified the departments of the mediation request.

On March 17, 2021, the Finance Department posted the following message on request 21-615:

The City stopped collecting permit fees for the removal of telecommunications facilities over a decade ago and there have been no deposits to this fund for many years, including FY 2017-18. All revenues accrued in recent years have resulted from interest earnings on existing deposits. Withdrawals may be requested by the parties that initially made the deposits, or their successors, for the purposes specified in their permit applications, i.e., for removal of specific permitted telecommunications facilities upon their obsolescence.

The City created fund 7460 pursuant to Ordinance No. 11904 C.M.S., which is codified in the City's Planning Code. Chapter 17.128.030 of the Planning Code addresses the removal of telecommunications facilities and provides for the establishment of a sinking fund for this purpose. It may be accessed on-line at the following address:

https://library.municode.com/ca/oakland/codes/planning_code?nodeId=TIT17PL_CH17.128TERE_17.128.030RETEFA

It subsequently closed out the request, stating: "We released all of the requested documents."

On March 22, 2021, the City Administrator's Office stated in an internal message on request 20-6811 that it held no responsive records.

On June 4, 2021, Staff reached out to the Requester to see if they received all responsive records to these requests. The Requester responded on June 6, 2021:

20-6811 - this public record has a document provided which is 12 pages long of which 7 pages are completely redacted. These communications with the telecom are the purpose of my record request. Can there be another set of eyes on this document to confirm that the information is truly worthy of being redacted?

21-615 - I think the answer incongruent to required conditions of approval. You, Planning Dept. ask for this sinking fund contribution but then you tell me that this fund was discontinued in that year. No wonder the applicants are so casual about fulfilling the conditions of approval in other areas. Where is the enforcement of the terms and the Ordinance? It makes it hard to hold applicants accountable when the departments are not consistent in their implementation of the requirements or posing them as conditions of approval. With that said, 21-615 can be closed even though I think the reply is weak.

Item 8 - Executive Director's Report

Do not close 20-6811 until the redacted document is reviewed by another set of eyes.

On April 7, 2022, the Mayor's Office stated in an internal message on request 20-6811 that it held no responsive records. It subsequently closed the request, stating that personal information was redacted under Government Code Section 6254(c).

On May 2, 2023, Staff contacted the Planning and Building Department to determine if the City Attorney's Office had reviewed the redacted emails released in request 20-6811. Staff followed up with the Department on May 8, 2023. The Department responded later that day:

The person who handled that request works for a different department now, but they did post the exemption on the NextRequest site. The message posted was:

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

We do not always send redactions to the City Attorney's Office for review. We redact based on our training and communications with the City Attorney's Office, and only send them for review when we have specific questions or need guidance.

We are not able to provide any additional context for these two files.

Staff let the Department know that to close out the mediation, the City Attorney's Office would need to review the redactions in the emails. The Department provided Staff with the name of an attorney in the office who the Department usually contacts when they have legal questions. Staff contacted the attorney, who agreed to review the emails; Staff let the Department know that they should send the emails over to the attorney for review.

On May 16, 2023, Staff followed up with the attorney to see if they had a chance to review the emails. The attorney explained later that day that they had not received a copy of the emails. The Planning and Building Department subsequently explained:

Again, I didn't work on this case, but we obtain email communications through the EDDR process with IT. We receive and review the responsive emails, complete redactions, and then release the redacted version. We do not keep the unredacted version.

If the unredacted original is needed we will have to submit a new EDDR to the IT Department. It is currently taking at least two months to receive responsive communications for EDDRs.

That same day, Staff confirmed with the Planning and Building Department that they should submit an EDDR for the unredacted original emails.

On June 21, 2023, Staff followed up with the Planning and Building Department to determine if the EDDR was in progress. Staff did not receive a response.

Item 8 - Executive Director's Report

On March 5, 2024, Staff followed up on the status of the EDDR with the Planning and Building Department. Staff again followed up with the Department on March 8, 2024, March 14, 2024, and March 15, 2024. In a Microsoft Teams call with a public record liaison for the Department on March 19, 2024, the liaison explained that they had been recovering from an illness. They stated that they had not yet submitted an EDDR for the unredacted original emails because they believed that the City Attorney's Office needed to take certain steps first. Staff explained that was not the case, so the liaison agreed to (1) submit an EDDR for the unredacted emails, and (2) see if the emails could be obtained directly from Department employees to shorten the process.

Staff followed up with the Planning and Building Department on March 25, 2024. Two days later, the Department told Staff: "I haven't received the EDDR response from IT yet. I'll email them again and ask for a status update."

That same day, Staff reached out to an employee of the Planning and Building Department who was included in the email chain released to the Requester. Staff requested that the employee search for the email chain in their account and, if they had copies of it, to forward it to Staff. The employee responded later that day with a copy of the email chain. Staff let the Planning and Building Department know that an unredacted copy of the email chain had been acquired. The Department responded:

I just looked at it and can say it is definitely over-redacted. The emails that are completely redacted are relevant to the discussion and should have only had the email addresses and phone numbers redacted.

If you'd like, and to save time, I can do a proper redaction of the email and submit it for your review

Staff agreed, so the Department re-redacted the email chain. Later that day (March 27, 2024), the Department released this new copy of the email chain to the Requester. It also released an attachment to the email that was not previously disclosed to the Requester.

Staff subsequently emailed the Requester to see if this updated release satisfied their mediation request. The Requester responded on March 29, 2024:

You can close these requests. However, the fulfillment of them exceeded the time limits. I find that four years is an excessive wait time. Unfortunately, I have been unable to take appropriate action due the delays. Hopefully, the next requests will go a bit faster in processing.

As a result, Staff notified the Requester later that day that their mediation was closed.

IV. RECOMMENDATION

Because the Planning and Building Department provided the Requester with records responsive to request 20-6811, the remaining departments stated that they held no responsive records, and the Requester stated that mediation was complete, the mediation has been closed with no further action.

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the Planning and Building Department (Case No. M2021-09); Mediation Summary*

I. INTRODUCTION

On April 9, 2021, the Commission received a request for mediation alleging the Planning and Building Department was unlawfully withholding records responsive to requests made by the Requester on March 2, 2021, and March 5, 2021. Staff initiated its mediation program on April 9, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Requester is no longer interested in receiving a revised response to these public record requests, this mediation was closed with no further action.

II. SUMMARY OF LAW

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

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

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

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

III. SUMMARY OF FACTS

On March 2, 2021, the City received the following records request via NextRequest (21-1899):

For the Building Department:

In keeping with transparency of planning/building projects, I am requesting an excel spreadsheet of all the addresses of the small wireless facilities in the public right of way on either a light pole or wood pole or other structure in the City of Oakland to date. These sites should be for those already in final sign-off status and those in progress.

Please include:

Application Reference Number

Application date in the building department (open date)

Close Date (final building permit sign-off) and Status of Building Permit

Company/Applicant

Street Number

Street Direction

Street Name

Zip Code

Description of the Project

District within Oakland (if possible)

I am also requesting an excel spreadsheet of all cell antennas placed or to be placed on private property whether that be a monopole (cell tower) or roof-top or side-attached to structure with the same information as above.

Example: Go to this link and look at the list of Small Wireless Facilities which is near the bottom of the page. Please provide my information in a similar format.

<https://www.indy.gov/activity/small-cell-facilities>

The next day, a public records liaison for the Planning and Building Department added the Department of Transportation and Public Works to the request, asking in an internal message "Based off the request, is this something either of the department's might cover?" Public Works responded in an internal message: "OPW does not have any information regarding this request."

On March 4, 2021, the Planning and Building Department released a spreadsheet of building permits to the requester, stating: "Our staff provided the list with a 10 year date range." It then closed the request with the message, "We released all of the requested documents."

On March 5, 2021, the City received another records request from the Requester via NextRequest (21-2063). It was substantially similar to request 21-1899 except it stated: "NEW DATE RANGE: ALL RECORDS PRIOR TO MARCH 9, 2011."

On March 10, 2021, the Department of Transportation released on request 21-1899 a spreadsheet containing locations of cell antennas placed in the city right of way. It stated: "Attached is the information DOT has. Thank you."

Item 8 - Executive Director's Report

Later that day, the Planning and Building Department released a spreadsheet of building permits on request 21-2063. It closed the request with the message, "We released all of the requested documents."

On April 9, 2021, the Commission received a mediation request from the Requester alleging that there was information missing from the Planning and Building Department's response to these requests. Staff initiated its mediation program that same day and notified the Planning and Building Department of the mediation request.

On May 3, 2021, the Planning and Building Department released on request 21-1899 a spreadsheet of permits for 1720 MacArthur Blvd. It stated:

Planning & Building staff has worked with the Information Technology Department to revise the response and have identified the missing records. We have released the missing documents for 1720 MacArthur Blvd. If there are any additional properties that you believe were missing from the original responsive document, please provide the address(es).

The requester stated in a series of messages on request 21-1899 later that day:

I think the search criteria you employ to provide these public records should be modified so that ALL cell antenna records will be captured and included on the spreadsheet. I don't feel it is the obligation of the public to provide you a list of all the missing addresses especially since I don't know all of what is missing from your report. Public records should be complete. That is the expectation of the public when they ask for public records. Please let me know if you will be able to fulfill my request with all the records. If not, please provide me a explanation of the City's limitations in this regard. Thank you.

While I appreciate the records for 1720 MacArthur Blvd specifically, unfortunately, upon my review of these limited records, this list is missing a Building Permit B1902565 associated with the Application DS190165.

I have found that this permit is inactive but you did include an inactive permit in the report you provided so this one should have been included too since it is associated with a planning application at this property address.

Not sure why this permit was omitted from the list. You can now see why I am concerned about the accuracy and completeness of the public records being provided to the public.

On the DOT spreadsheet, what is the timeframe used for the data provided?

Also, my request was for those sites that are in "final" status (now known as the end of phase IV with DOT signing off on permit) or in progress (now known as after the shot clock ends and DOT has issued permit - end of phase III).

I know that there are missing records from this DOT list. For example, there is a cell antenna on a utility pole just down the street from me that is not on this list.

Thank you.

Note: Phases are from the Small Wireless Facilities Review process dated 8/16/2019.

Item 8 - Executive Director's Report

On June 4, 2021, Staff followed up with the Requester to see if they received all responsive records from these requests. The Requester replied two days later, stating:

There has been NO contact made with me regarding the issue of INCOMPLETE records provided. I contacted the contact name on the public record and since I had filed a complaint with PEC, she would not talk to me. I know there is missing data and have not received any explanation about this omissions on both public record requests. DO NOT CLOSE until it is determined why I have not received all the data available.

On April 4, 2024, Staff contacted the Planning and Building Department to see if it could provide a revised spreadsheet to the requester. A public record liaison for the Department explained that the spreadsheets were generated by searching for various keywords related to cell phone equipment, but inconsistencies in file names could cause some permits to be omitted without a comprehensive set of keywords. The liaison agreed to conduct a new search with an expanded set of keywords.

The next day, Staff contacted the Department of Transportation to see if it could supplement its previously released spreadsheet of small wireless facilities placed in the public right of way. Staff followed up with the Department of Transportation on April 11, 2024. Staff did not receive a response.

On April 13, 2024, the Requester sent the following email to Staff:

Please close out all the open mediations I have. There is no longer any relevance to the matters into which I was inquiring with public records. Too much time passed for me to take any action.

As a result, Staff notified the Requester on April 15, 2024, that their mediation was closed.

IV. RECOMMENDATION

Because the Requester is no longer interested in receiving a revised response to these requests, the mediation has been closed with no further action.

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Chris Nardi, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the City Council, Fire Department, and Planning and Building Department (Case No. M2021-16); Mediation Summary*

I. INTRODUCTION

On July 23, 2021, the Commission received a request for mediation alleging the City Council, Fire Department, and Planning and Building Department were unlawfully delaying responding to public records requests made by the Requester on May 12, 2021, and May 19, 2021. Staff initiated its mediation program on July 26, 2021, pursuant to the Oakland Sunshine Ordinance.

Because Councilmember Gallo's office, the Fire Department, and the Planning and Building Department provided the Requester with responsive records on July 27, 2021, July 29, 2021, August 5, 2021, and August 16, 2021, and the Requester is no longer interested in receiving additional records, this mediation was closed with no further action.

II. SUMMARY OF LAW

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

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

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

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

III. SUMMARY OF FACTS

On May 12, 2021, the City received the following records request via NextRequest (21-4274):

Please provide all communications, documents and correspondence between any members of the City staff and councilmembers (and their staff), telecom applicants, property owners/property management/property residents and the public regarding the cell antenna applications and building permits or any other related projects at 1720 MacArthur Boulevard (The Altenheim) from April 21, 2021 to current date.

On May 17, 2021, the Planning and Building Department released an inspection log to the Requester. The next day, Councilmember Bas' office removed itself from the request, and Councilmember Thao's office stated in an internal message that it had no responsive records.

On May 19, 2021, the City received the following records request via NextRequest (21-4491):

Please provide all fire inspection reports for 1720 MacArthur Boulevard.

Please include any communications and documents to/from/between the City, the property owner/management, contractors working on the property, fire department as well as the public.

Later that day, the City received another records request via NextRequest (21-4493):

Please provide any documents or communications relevant to 1720 MacArthur Boulevard regarding the protection of this landmarked location from fire or other threats. If there are any procedural manuals or inspection reports to insure compliance to codes and fire safety, please include that information. If the owner of the building or property manager has to submit these documents to the City as part of their landmarked status on a regular basis, please provide those as well from 2000 to current.

On May 24, 2021, the Fire Department posted the following message on request 21-4491:

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

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

Your request has been forwarded to the Fire Prevention Bureau and any documents will be released as available.

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

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

Later that day, Councilmember Fife's office stated in an internal message that it had no responsive records to request 21-4274. Two days later, Councilmember Kaplan's office stated the same in a message to the Requester. Councilmember Kaplan's office subsequently removed itself from the request.

On May 27, 2021, the Housing and Community Development Department reassigned request 21-4493 to the Planning and Building Department. It stated in an internal message: "Sorry I am just sending this request to PB. I have been on vacation." The next day, the Planning and Building Department added the Fire Department to the request.

On June 1, 2021, the Planning and Building Department posted the following message on request 21-4493:

Planning & Building is working with our off-site vendor to retrieve the specified records related to your request. We will provide responsive documents on a rolling basis as they are identified. Thank you.

On June 8, 2021, Councilmember Taylor's office posted a message on request 21-4274 that it had no responsive records.

On July 23, 2021, the Commission received a mediation request from the Requester alleging that that the City Council, Fire Department, and Planning and Building Department had unlawfully delayed responding to these requests. Staff initiated its mediation program and notified the councilmembers and departments of the mediation request on July 26, 2021.

Later that day, the Planning and Building Department emailed staff, stating that they were "currently gathering the responsive documents for this request." The Department subsequently posted the following message on request 21-4493:

Staff has located responsive documents at our off-site facility. An update will be provided once the documents have been delivered.

The next day, Councilmember Gallo's office released 10 documents to the Requester on request 21-4274. It subsequently stated that it released all records related to the request and removed itself from the request.

On July 29, 2021, the Fire Department released a 62-page PDF of inspection reports to the Requester on request 21-4491. It subsequently closed out the request, stating "We released all of the requested documents."

On August 2, 2021, the Planning and Building Department posted the following message on request 21-4493:

Item 8 - Executive Director's Report

Staff has received the box of documents from our off-site facility. They will need to review/sort through the box to locate the responsive documents to your request. Once complete, we will upload your documents to this request.

The next day, the Fire Department had a phone call with the Requester regarding request 21-4493. In an internal message, the Fire Department reported that the Requester sought "all fire inspections, and fire reports for alarm calls and fire/electrical."

On August 5, 2021, the Planning and Building Department released 7 PDFs to the Requester on request 21-4493. It stated:

Hello, Planning & Building has provided some documents responsive to your request. Staff is still compiling documents responsive to the request.

Later that day, Councilmember Reid's office posted a message on request 21-4274 that it had no responsive records and removed itself from the request.

On August 16, 2021, the Planning and Building Department released another PDF to the Requester on request 21-4493. It subsequently stated: "Planning & Building has released all of the requested documents."

On December 6, 2021, the Fire Department closed request 21-4493. It stated:

These documents do not exist.

On December 27, 2021, the Requester posted the following message on request 21-4493:

I did not see the reply that Fire Department did not have any relevant documents. I would expect they would have documents based on my phone conversation with some fire personnel over the last few months.

Please open this request and check again. Thanks.

On February 4, 2022, Councilmember Taylor's office posted a message on request 21-4274 that it had no responsive records. It had already posted such a message on June 8, 2021.

On November 23, 2022, Councilmember Kalb's office posted a message on request 21-4274 that it had no responsive records. It subsequently removed itself from the request.

On April 11, 2024, Staff emailed the Requester to determine the status of this mediation. The next day, Staff emailed the Fire Department to determine whether it held records responsive to request 21-4493, as per the Requester's last message on that request. Later that day, the Fire Department informed Staff that they spoke with the Requester and the Requester was no longer interested in receiving these records. The following day, the Requester emailed a similar message to Staff:

Please close out all the open mediations I have. There is no longer any relevance to the matters into which I was inquiring with public records. Too much time passed for me to take any action.

Item 8 - Executive Director's Report

As a result, Staff notified the Requester on April 15, 2024, that their mediation was closed.

IV. RECOMMENDATION

Because Councilmember Gallo's office, the Fire Department, and the Planning and Building Department provided the Requester with responsive records to the three requests, and the Requester is no longer interested in receiving additional records, the mediation has been closed with no further action.

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 25, 2024
RE: *In the Matter of Oakland Public Works and the City Clerk (Case No. M2023-01); Mediation Summary*

I. INTRODUCTION

On January 17, 2023, the Commission received a request for mediation alleging that the City failed to respond to public records requests made by the Requestor on December 8, 2022 (22-9369) and January 6, 2023 (23-179). Staff initiated its mediation program on January 18, 2023, pursuant to the Oakland Sunshine Ordinance.

Because Oakland Public Works (OPW) and the City Clerk provided the Requestor with the responsive documents and the Requestor considers the mediation resolved, the mediation has been closed with no further action.

II. SUMMARY OF LAW

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

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

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

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

III. SUMMARY OF FACTS

On December 8, 2022, the City received the following records request via NextRequest (22-9369):

This is a formal request for records pursuant to the California Public Records Act. I am seeking the following documents:

Surveillance video footage for 3p.m. to 5 p.m. from outside the City Clerk's office from the following dates:

- August 11, 2022
- August 15, 2022
- September 7, 2022
- September 12, 2022
- October 5, 2022
- October 9, 2022

Surveillance video footage for 3p.m. to 5 p.m. from outside City Hall from the following dates:

- August 11, 2022
- August 15, 2022
- September 7, 2022
- September 12, 2022
- October 5, 2022
- October 9, 2022

That same day, public records request 22-9369 was assigned to OPW and the City Attorney.

On December 9, 2022, OPW provided the relevant video footage for outside City Hall.

On January 6, 2024, the City received the following records request via NextRequest (23-179):

This is a formal request for records pursuant to the California Public Records Act. I am requesting the following records:

1. All communications and other documents between the City Clerk's office and other Oakland officials and representatives of Alameda County, and/or between themselves, referring or relating to the number of choices voters would have in RCV for the November 2022 election.
2. All documents referring or relating to whether voting equipment could accommodate five or more choices in RCV.
3. All documents referring or relating to how the decision to limit the number of choices to five in the November 2022 election,

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report

4. all documents referring or relating to determining the number of votes voters would have for the November 2022 election.

That same day, public records request 23-179 was assigned to the City Clerk.

On January 10, 2023, the City Clerk released two responsive documents including a Rank Choice Voting MOU and a November 2020 Sample Ballot. Subsequently, the City Clerk closed public records request 23-179 stating:

We released all of the requested documents.

On January 17, 2023, the Commission received a mediation request from the Requestor seeking assistance with obtaining records from Oakland Public Works and the City Clerk.

On January 18, 2023, OPW informed the Requestor that additional time would be necessary to answer the public records request because they needed to search for, collect, or examine a large number of documents.

On January 19, 2023, OPW informed the Requestor that no video footage is available from the cameras outside of the City Clerk's office that is responsive to this request. OPW also informed the Requestor that the upload of video footage from outside City Hall was not successful because of a technical difficulty.

On January 26, 2023, OPW informed the Requestor that staff was attempting to download video files onto a memory stick. Once that was successful, OPW would arrange a date and time for pick up.

On January 27, 2023, OPW staff informed the Requestor that they had turned over a 1 GB memory stick with the video files they previously attempted to post to Next Request.

On January 30, 2023, OPW staff provided a OneDrive link with the video footage.

On February 2, 2023, the City Clerk re-opened public records request 23-179.

On May 15, 2023, the City Clerk released an additional responsive document to public records request 23-179. Subsequently, the City Clerk closed the request stating:

We released all of the requested documents.

On November 6, 2023, OPW staff closed public records request 22-9369.

On April 22, 2024, the Requestor informed the Public Ethics Commission that they considered the mediation resolved.

IV. RECOMMENDATION

Because Oakland Public Works and the City Clerk provided the Requestor with the responsive documents and the Requestor considers the mediation resolved, the mediation has been closed with no further action.

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 19, 2024
RE: *In the Matter of the Oakland Police Department (Case No. M2024-03); Mediation Summary*

I. INTRODUCTION

On March 6, 2024, the Commission received a request for mediation alleging that the City failed to respond to a public records request made by the Requestor on February 15, 2024 (24-1751). Staff initiated its mediation program on March 20, 2024, pursuant to the Oakland Sunshine Ordinance.

Because the requested document(s) are not something that the Public Ethics Commission can assist with obtaining, the mediation was closed with no further action.

II. SUMMARY OF LAW

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

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

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 8 - Executive Director's Report

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

III. SUMMARY OF FACTS

On February 15, 2024, the City received the following records request via NextRequest (24-1751):

Request to access Police Report #23-031525

That same day, the request was assigned to the Oakland Police Department (OPD).

On February 23, 2024, OPD informed the requestor that they could not provide the report, because juvenile suspect and arrestee information is only provided through an order from the Court. OPD informed the requestor what documents would be needed should they wish to go through the Court.

On March 6, 2024, the Commission received a mediation request from the requestor seeking assistance in obtaining a copy of the police report.

On April 4, 2024, the PEC informed the Requestor that they could not help obtain this document because a Court order was required. The PEC shared the same information about how to go about obtaining a Court order. Subsequently, Staff informed the Requestor that the mediation would be closed.

IV. RECOMMENDATION

Because the requested document can only be obtained by an order from the Court, the mediation has been closed with no further action.

⁵ Complaint Procedures § IV (C)(5).

Item 8 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Graham Willard, Law Clerk
Jelani Killings, Ethics Analyst
DATE: April 30, 2024
RE: *In the Matter of the City Administrator and the Office of the Mayor (Case No. M2024-04);*
Mediation Summary

I. INTRODUCTION

On April 19, 2024, the Commission received a request for mediation alleging that the City failed to respond to a public records request made by the Requestor on February 21, 2024 (24-2037). Staff initiated its mediation program on April 23, 2024, pursuant to the Oakland Sunshine Ordinance.

Because there are no responsive documents to this request, the mediation was closed with no further action.

II. SUMMARY OF LAW

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

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

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

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

⁵ Complaint Procedures § IV (C)(5).

III. SUMMARY OF FACTS

On February 21, 2024, the City received the following records request via NextRequest (24-2037):

This is a formal request for public records pursuant to the California Public Records Act. I am seeking the following records:

1. All contracts for services with KANO Special Services and/or Shedrick Henry for security services from 2015 through the present.
2. All documentation showing what effort the City made to conduct bidding/informal solicitation for the services provided by KANO/Shedrick Henry.
3. All documentation showing the total amount of money paid by the City of Oakland to KANO and/or Shedrick Henry since 2015, including but not limited to invoices from the company and check ledgers showing when the City paid the invoices.
4. All correspondence to/from employees/officials for the City of Oakland regarding hiring KANO/Shedrick Henry.
5. All documentation regarding KANO's/Shedrick Henry's qualifications to provide security services.

That same day, the request was assigned to the City Administrator.

On February 21, and 22, 2024, the following Departments were added: Public Works, Finance Department – Controller & Purchasing, Oakland Police Department, and the Department of Violence Prevention. Over the next month, all of the Departments were removed, without comment, except for the Oakland Police Department.

On April 19, 2024, the Commission received a mediation request from the Requestor alleging that that the City had failed to timely respond to a public records request.

On April 22, 2024, the Oakland Police Department told the Requestor that the Policy and Publications Unit does not have any records associated with the mentioned vendor. The Oakland Police Department further explained that an update from the Fiscal Division would be coming soon.

On April 24, 2024, the Requestor informed Staff that they had received no documents related to the request.

On April 29, 2024, the Oakland Police Department informed the Requestor that the Fiscal Division did not have any contracts or invoices from the vendor. The Oakland Police Department then closed the request.

On April 29, 2024, the Requestor emailed Staff:

Hi Graham - I see OPD has closed the records request. I believe that there are still responsive documents that have not been provided. As you can see from this article (see below) KANO and members of this pseudo-security company were providing security for Sheng Thao on the date of this incident in February. This was an official city event (a press conference) and clearly, somebody inside of City Hall asked for "KANO" to show up and provide security services. Therefore, I am entitled to all documentation regarding how they happened to show up. Has the Mayor's office provided responsive documents?

Item 8 - Executive Director's Report

On April 29, 2024, Staff reopened the request and added the City Administrator and the Office of the Mayor to the request.

On April 29, 2024, the City Administrator informed the Requestor that the office did not have any records related to this request.

On April 29, 2024, the Office of the Mayor informed the Requestor that they have no responsive records. The Office of the Mayor said that Mayor Thao had no private security, and she is provided a detail from OPD. The Mayor's office also provided the following additional context:

Providing additional context -- members of Oakland City staff saw the security guards in question were attending a separate press conference in front of city hall 30 minutes before our own event on Broadway. These individuals witnessed us setting up our own event and came over after theirs to watch ours. They also had counterprotestors at their event which followed them over to ours which was held in a public plaza.

On April 30, 2024, the Requestor informed Staff that she assumed that the city had no responsive documents and the mediation could be closed.

IV. RECOMMENDATION

Because the City has no responsive documents and the Requestor stated that she views the mediation as complete, this Mediation has been closed with no further action.



DAN KALB

COUNCILMEMBER – DISTRICT ONE

CITY HALL • ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CA 94612

(510) 238-7001 • dkalb@oaklandca.gov

TO: Members of the City Council and Members of the Public

SUBJECT: Proposed Ballot Measure to Modernize and Strengthen Ethics Oversight in the City of Oakland

FROM: Councilmember Kalb

DATE: 6/6/24

RECOMMENDATION

Councilmember Dan Kalb recommends the City Council adopt a:

RESOLUTION ON THE CITY COUNCIL’S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 300, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);**
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;**
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;**
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;**
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;**
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO CHOOSE CONFLICT COUNSEL IF THE CITY ATTORNEY DETERMINES A CONFLICT OF INTEREST EXISTS IN THE CITY ATTORNEY’S REPRESENTATION OF THE COMMISSION;**
- (7) REQUIRE THE CITY COUNCIL OR A COUNCIL COMMITTEE TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;**

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

- (8) **TRANSFER THE DUTIES OF SETTING THE MAYOR'S SALARY FROM THE CITY COUNCIL TO THE PUBLIC ETHICS COMMISSION TO BE ADJUSTED EVERY TWO YEARS BY THE INCREASE IN THE CONSUMER PRICE INDEX OVER THE PRECEDING TWO YEARS, UP TO A TOTAL OF FIVE PERCENT BEGINNING IN 2027;**
- (9) **AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY EVERY TWO YEARS;**
- (10) **AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY IN WHICH THE CUMULATIVE VALUE EXCEEDS FIFTY DOLLARS (\$50) IN A CALENDAR YEAR; AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION**

SUMMARY

In 2014, I put forth Measure CC, landmark legislation to strengthen Oakland's Public Ethics Commission (PEC). The measure passed with an overwhelming 73.9% of the vote. This year, the PEC reached out to my office and other councilmembers in order to update the Commission's governance structure to incorporate best practices proven in other jurisdictions and to align the Commission's structure and staffing to better accomplish its responsibilities. This report describes the changes proposed by the PEC and by myself to the original legislation passed in 2014.

In the Attachment to this report I have included the legislative update the PEC proposed to the Council, which does not include my recommended changes. That report also provides more detail on the history of this legislation and the PEC's process in designing this updated legislation. I have also included the PEC's staff report as well as legislation originally submitted by the City Administrator's Office to propose that the PEC handle setting the Mayor's salary. The attachments are enumerated at the bottom of this document.

I want to thank the PEC for putting forward a multi-faceted and well-researched proposal. Having a modernized PEC can increase the public's trust in government and re-establish Oakland as a leader in ethical and accountable government.

A summary of the additions and changes to the original 2014 legislation made by both myself and the PEC can be found below.

- **Mission:** Amending the Charter to include in the PEC's listed purposes promoting a more inclusive, representative, and accountable democracy in Oakland, consistent with Measure W (2022).
- **Commissioner Qualifications:** Adopting additional minimum qualifications for a person to be appointed to the Commission to promote Commissioner independence and avoid the appearance that a Commissioner is biased in favor of or against an elected official or political

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

faction.

- **During and Post Service Restrictions:** Prohibiting Commissioners from being compensated by or receiving gifts from an elected official during their tenure.
- **Commissioner Removal:** Permitting the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause and specifying that one cause may be conviction of a felony of moral turpitude, which is consistent with causes for removal of Police Commissioners
- **Commissioner Vacancy Appointment:** Providing that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the PEC may make the appointment in order to ensure extended vacancies do not impact Commission operation.
- **Staffing:** Increasing Enforcement's minimum staffing by 1 Investigator no earlier than July 2026 to address the Commission's critical case backlog.
- **Legal Capacity:** Provided that the City Attorney has identified a conflict of interest, the Executive Director shall have sole discretion to select conflict counsel.
- **Salary-Setting:** Charging the Commission with setting the salary of the Mayor every two years and changing the frequency in which the Commission adjusts the salaries of the City Attorney and City Auditor from annually to every two years, aligning those increases with the same schedule the Commission uses for setting the Council's salary.
- **Legislative Proposals:** Requiring that Commission legislative proposals be referred to the City Council for consideration within 180 days.
- **Lobbyist Gifts:** Prohibiting registered lobbyists from giving gifts to elected officials, candidates, and their immediate family, whose value cumulatively exceeds \$50 during any calendar year.

Thank you for your consideration of these important charter amendments. For questions, please contact dkalb@oaklandca.gov and my Chief of Staff Keara O'Doherty, kodoherty@oaklandca.gov.

Respectfully submitted,



Dan Kalb
City Councilmember, District 1

ATTACHMENT A: PEC Charter Proposal

ATTACHMENT B: PEC Agenda Report

ATTACHMENT C: Mayoral Salary Proposal

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 300, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);**
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;**
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;**
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;**
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;**
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO CHOOSE CONFLICT COUNSEL IF THE CITY ATTORNEY DETERMINES A CONFLICT OF INTEREST EXISTS IN THE CITY ATTORNEY'S REPRESENTATION OF THE COMMISSION;**

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

- (7) REQUIRE THE CITY COUNCIL OR A COUNCIL COMMITTEE TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;**
- (8) TRANSFER THE DUTIES OF SETTING THE MAYOR'S SALARY FROM THE CITY COUNCIL TO THE PUBLIC ETHICS COMMISSION TO BE ADJUSTED EVERY TWO YEARS BY THE INCREASE IN THE CONSUMER PRICE INDEX OVER THE PRECEDING TWO YEARS, UP TO A TOTAL OF FIVE PERCENT BEGINNING IN 2027;**
- (9) AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY EVERY TWO YEARS;**
- (10) AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY IN WHICH THE CUMULATIVE VALUE EXCEEDS FIFTY DOLLARS (\$50) IN A CALENDAR YEAR; AND**

DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION

WHEREAS, in 2014, Oakland voters passed Measure CC, with 73.9% of voter support, adding Section 603 to the City Charter to significantly strengthen the independence, authority, and staffing of the Public Ethics Commission (Commission); and

WHEREAS, the Commission's workload and responsibilities have increased significantly since the passage of Measure CC; and

WHEREAS, after ten years, the provisions in Section 603 no longer reflect the Commission's actual staffing and budgetary needs and have not kept pace with best practices in other jurisdictions for ensuring ethics commission independence; and

WHEREAS, on April 10, 2024, the Commission adopted a set of recommendations to strengthen its independence, modernize its governance procedures to align with best

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

practices in other jurisdictions, and enhance its staffing and administrative capacity to meet current program needs; and

WHEREAS, there have been no significant revisions to the Commission's governance structure since 2014; and

WHEREAS, in 2022 Oakland voters passed Measure W, the Fair Elections Act, with 73.9% voter support, which commits the Commission to implementing the Democracy Dollars public campaign financing program to make Oakland elections more equitable, accessible, and fair ; and

WHEREAS, the Commission's enforcement caseload now vastly outpaces staff capacity, forcing over half its cases to be put on indefinite hold, leading to diminished enforcement and deterrence, which is contrary to the goals and purpose of the Commission; and

WHEREAS, the Commission requires an adequate staffing level to meet its commitment to voters to implement the Fair Elections Act, enforce ethics laws, and keep up with its other core functions; and

WHEREAS, an effective, autonomous, and adequately funded watchdog agency is critical to increasing the public's trust in the governance of the City of Oakland; and

WHEREAS, the City Council finds that amendments to the Lobbyist Registration Act further the purposes of that ordinance, by prohibiting gifts exceeding a certain value to elected officials, candidates, and their immediate family which may create a risk or the appearance of corruption; now therefore be it

RESOLVED: That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

FURTHER RESOLVED: That the City Council hereby proposes to amend Charter section 603, 401(1), 403((3) and Oakland Municipal Code Chapter 2.24 AND 3.20 to add, delete, or modify sections as set forth below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by ~~strike-through type~~; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed).

The people of the City of Oakland do ordain as follows:

Section 1. Amendments of Section 603 of the Charter of the City of Oakland. Section 603, *Public Ethics Commission*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~strike-through~~ and new text shown as underscoring:

SECTION 603 – PUBLIC ETHICS COMMISSION

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

(a) Creation, ~~and Role~~ Purpose and Responsibilities.

(1) There is hereby established a Public Ethics Commission as an autonomous department of the City whose purpose shall be to promote more inclusive, representative, and accountable democracy in Oakland and to promote fairness, openness, honesty and integrity in City government.

~~which~~ (2) The Commission shall be responsible for:

~~(i)~~ (1) enforcement of laws, regulations and policies intended to assure fairness, openness, honesty and integrity in City government, including compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, lobbyists, candidates, campaign committees, and other persons subject to laws within the jurisdiction of the Commission;

~~(2)~~ (ii) education and responding to issues regarding the aforementioned laws, regulations and policies, and;

~~(3)~~ (iii) impartial and effective administration and implementation of programs to accomplish the goals and purposes of the Commission as defined by this Section, including programs to promote more inclusive, representative, and accountable democracy in Oakland.

Such laws, regulations, policies, and programs shall include those relating to campaign finance, lobbying, transparency, and governmental ethics, as they pertain to Oakland.

(3) The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing.

(4) Nothing in this Section shall preclude other City officials, agencies, boards and commissions from exercising authority heretofore or hereafter granted to them, with the exception of Charter Section 603(b)(5).

(b) Functions and Duties. It shall be the function and duty of the Public Ethics Commission to:

(1) Foster and enforce compliance with:

(i) Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") of this Charter, for violations occurring on or after January 1, 2015;

(ii) The Oakland Campaign Reform Act, Oakland Fair Elections Act, False Endorsement in Campaign Literature Act, Oakland's Conflict of Interest Code, code of ethics and governmental ethics ordinance, the Oakland Lobbyist Registration Act, the Oakland Sunshine Ordinance, any ordinance intended to protect City whistleblowers from retaliation, and other Oakland laws regarding campaign finance, lobbying, transparency, or governmental ethics, as provided by ordinance or this Charter.

(iii) Related state laws including, but not limited to, the Political Reform Act, Ralph M. Brown Act, and Public Records Act, as they pertain to Oakland.

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

- (2) Report to the City Council concerning the effectiveness of all local laws regarding campaign finance, lobbying, transparency, and governmental ethics.
- (3) Issue oral advice and formal written opinions, in consultation with the City Attorney.
- (4) Within the time period for submission of such information for the timely completion of the City's regular budget process, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.
- (5) Act as the filing officer and otherwise receive and retain documents whenever the City Clerk would otherwise be authorized to do so pursuant to Chapter 4 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), ~~provided that this duty shall be transferred to the Commission during the 24 months following the effective date of this provision and the Commission shall be the sole filing officer for the campaign finance programs by January 1, 2017.~~
- (6) Educate and promote understanding regarding the requirements under the Commission's oversight and study any significant non-compliance problems or trends with Oakland's campaign finance, lobbying, transparency, and governmental ethics laws and identify possible solutions for increasing compliance.
- (7) Review and make recommendations regarding all City systems used for public disclosure of information required by any law within the authority of the Commission.
- (8) Administer and adopt policies to implement the Democracy Dollars Program or any other campaign public financing program.
- ~~(98) Perform such other functions and duties as may be prescribed by laws of this Charter or City ordinance.~~

(c) ~~Councilmember~~ Elected Official Salary Increases. The Public Ethics Commission shall set the salary for the City Councilmembers, the Mayor, the City Attorney, and the City Auditor as provided for in Charter Sections 202, 300, 401(1), and 403(1) ~~Council compensation as provided for in Charter Section 202.~~

(d) Appointment, Qualifications, Vacancies, Terms. The Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents. Commissioners shall serve without compensation.

The Commission shall be appointed as follows in subsection (1) and (2).

- (1) (i) Appointments by Mayor, City Attorney and City Auditor.

The Mayor shall appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

The City Attorney shall appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters.

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

The City Auditor shall appoint one member who has a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.

~~Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting. The Mayor, City Attorney, and City Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official.~~

~~Upon the effective date of this section, the three members appointed by the Mayor prior to 2015 shall continue to serve the remainder of their terms. Vacancies in the three positions appointed by the Mayor shall be filled in the following manner: the City Attorney shall appoint a member to fill the first vacancy; the City Auditor shall appoint a member to fill the second vacancy and the Mayor shall appoint the member to fill the third vacancy. Thereafter, the positions appointed by the Mayor, City Attorney and City Auditor shall be filled in the same manner and upon consideration of the same criteria as the initial appointments.~~

The appointments made by the Mayor, City Attorney, and City Auditor may be rejected by City Council Resolution within 45 days of receiving formal notice of the appointment. An appointment shall become effective once written notice is made by the appointing authority to the City Clerk. Upon receiving such written notice, the Clerk shall promptly provide formal notice to the City Council and the Executive Director of the Commission.

~~(2) (ii) Commission Appointments. The four members of the Commission who are not appointed by the Mayor, City Attorney or City Auditor shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities. Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.~~

(2) Commissioner Qualifications.

(i) Each member of the Commission shall be a resident of Oakland and registered to vote in a City or Oakland Unified School District election.

(ii) Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.

(iii) A person is ineligible to be appointed to the Commission if that person, in the two (2) years preceding their appointment, has been any of the following:

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

(A) A City or Oakland Unified School District elected official;

(B) A spouse, registered domestic partner, parent, sibling, or child of a City or Oakland Unified School District elected official;

(C) An employee of a City or Oakland Unified School District elected official;

(D) A candidate for a City or Oakland Unified School District elected office;

(E) An employee of, or paid consultant to, a candidate running for a City or Oakland Unified School District elected office, or a campaign committee controlled by a City or Oakland Unified School District elected official;

(F) An officer or paid employee of a political party;

(G) A person who has contributed, in the aggregate, more than two times the individual contribution limits (excluding any contributions attributable to public campaign funds) to one or more candidates for a City or Oakland Unified School District elected office, to a campaign committee controlled by a City or Oakland Unified School District elected official, or to a campaign committee that supported or opposed a candidate for a City or Oakland Unified School District elected office;

(H) A registered Oakland lobbyist, or person who is required to register as an Oakland lobbyist.

Notwithstanding the requirements of this Paragraph, a Commissioner appointed prior to January 1, 2025, shall be subject only to the qualifications in effect at the time of the Commissioner's appointment.

(3) Terms of Office. All categories of member shall be appointed to staggered terms. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three (3) years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, such member may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, such member may serve two consecutive full three-year terms. In the event a member's replacement has not been appointed by the conclusion of the member's term, that member may continue to serve as a member of the Commission during the following term in a holdover capacity for a period not to exceed one year until a new member is appointed to serve the remainder of such following term.

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

(4) Quorum and Voting. Four (4) members shall constitute a quorum. Provided that a quorum exists, the Commission may take action by majority vote of the members present at a meeting, except as otherwise required in this Section or another law.

(5) Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or ~~is absent continuously from the City for a period of more than 30 days~~ is absent from three (3) consecutive regular Commission meetings without permission from the Chair of the Commission, is convicted of a felony involving moral turpitude, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four (4) members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member.

Vacancies not filled by the Mayor, City Attorney, or City Auditor within ~~120~~90 days of the occurrence of such vacancy may be filled by the Commission ~~City Council~~ in the same manner as provided by Charter, Section 604 following a public recruitment and application process and by the affirmative vote of at least four (4) members of the Commission. The Commission's appointee shall possess the same background qualifications that would otherwise be required of an appointee of the Mayor, City Attorney, or City Auditor as set forth in (d)(1)(i). For purposes of this paragraph, a seat filled by a member acting in a holdover capacity will be considered vacant as of the expiration of the holdover's prior term of office.

(6) Removal. Members of the Commission may be removed, after a hearing, by either the City Council by the affirmative vote of at least six (6) members of the Council or by the Commission by the affirmative vote of at least five (5) members of the Commission, by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony involving moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, ~~absence from three consecutive regular meetings except on account of illness or when absent by permission of the Commission,~~ or substantial violation of this Charter Ssection. Prior to the hearing, the member at risk of removal shall be provided with ~~after~~ written notice of the grounds on which removal is sought and an opportunity for a written response. The City Council or the Commission may initiate removal proceedings and shall provide such written notice to the member.

(e) Qualifications and During and Post-Service Restrictions. ~~Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections.~~ No member of the Commission shall:

- (1) Have an employment or contractual relationship with the City during the member's tenure and for a period of one year after the date of separation.
- (2) Have an employment or contractual relationship with an elected official of the City or Oakland Unified School District, or receive a gift or other compensation from such officials, during the member's tenure.

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

~~(32)~~ Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for a period of one year after the date of separation.

~~(43)~~ Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland; during the member's tenure ~~or participate in or contribute to an Oakland municipal campaign.~~

~~(54)~~ Endorse, support, oppose, ~~contribute to,~~ or ~~volunteer or~~ work on behalf of any candidate or ballot measure in an City or Oakland Unified School District election during the member's tenure, except for a ballot measure that expressly pertains to the activities or authority of the Commission or to the laws under the jurisdiction of the Commission. The Commission may adopt rules to implement this exception.

(6) Serve as an officer or employee of a political party during the member's tenure.

Notwithstanding the requirements of this Subsection, a Commissioner appointed prior to January 1, 2025, shall be subject only to the during and post-service restrictions in effect at the time of the Commissioner's appointment.

(f) Enforcement.

(1) Authority. In furtherance of Charter Section 603(b)(1) and (5). the Public Ethics Commission is authorized to:

(i) Conduct investigations;

(ii) Conduct audits of compliance with disclosure requirements with the Commission;

(iii) Conduct public hearings as provided by the Commission's complaint procedures or other law;

(iv) Issue subpoenas to compel the production of books, papers, records and documents and take testimony on any matter pending before the Commission. The Commission may seek a contempt order as provided by the general law of the state for a person's failure or refusal to appear, testify, or to produce required books, papers, records and documents;

(v) Impose penalties, remedies and fines, as provided for by ordinance. Ordinances enforced by the Public Ethics Commission shall not be subject to the ~~\$1,000 limits on fines~~ provided by Sections 217 and 1208 of this Charter. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to the Alameda County Superior Court by filing a petition for writ of mandamus;

(vi) Submit referrals to other enforcement authorities, including but not limited to the Alameda County District Attorney, California Fair Political Practices Commission, and California Attorney General;

(vii) Seek remedial relief for violations and injunctive relief;

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

(viii) By an affirmative vote of at least five (5) members, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 218 and 1202 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;

(ix) Reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 907 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;

(x) Perform other functions as authorized by law.

(2) Final enforcement action. Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four (4) members.

(3) ~~Investigations. Preliminary review by Commission staff of allegations~~ Confidentiality. Records and information obtained by the Commission during the preliminary review and investigation of a complaint shall be confidential and exempt from public disclosure, to the extent permitted by law, until any of the following occurs:

~~(i) Placement of the item on a Public Ethics Commission meeting agenda~~ Final enforcement action by the Commission;

~~(ii) Passage of one year since the complaint was filed;~~

~~(iii) Action by the Executive Director closing the file~~ matter without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or

~~(iiiiv) Expiration of the Statute of Limitations.~~

Nothing in this section limits the ability of the Commission to disclose such records or information when charging, prosecuting, closing, or dismissing an investigation or complaint into alleged violations of the laws under its jurisdiction. This section does not prevent the Commission from applying any other exemption from disclosure that may be available under City or state public records disclosure laws. To the extent permitted by law, disclosure of records or information in the course of making a referral to other enforcement authorities shall not constitute a waiver of the confidentiality protections under this section.

(4) Penalty guidelines and Enforcement Discretion. The Public Ethics Commission shall develop a policy setting forth standards for imposing penalties and exercising enforcement discretion. Commission staff shall adhere to the policy when recommending penalties under each of the different penalty provisions that the Commission has the power to enforce.

(5) Per diem late filing fees. Regarding per diem fees that are authorized due to the late filing of disclosure reports, including campaign finance statements, lobbyist reports, and other ethics-related disclosures filed with the Commission by law, the following shall apply:

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

- (i) Assessments. Any instance of late filing that triggers the assessment of a fee of \$1,000 or more by the Commission shall be placed on a Commission meeting agenda before issuance of the fee;
- (ii) Waiver guidelines. The Commission shall establish waiver guidelines in accordance with state law, which the Commission, as the filing officer, shall follow in determining whether or not to grant a waiver. These guidelines shall be published on the Commission's website. The Commission shall prescribe criteria for appeal to the Commission of waiver decisions made by the Executive Director. At each regular Commission meeting, the Executive Director shall provide a written report, which shall be published online, regarding any waivers decisions made since the previous regular meeting;
- (iii) Referral of final, uncollected fees to collections. Unpaid non-investigatory, per diem late filing fees for disclosure programs that are past due for more than 90 days shall be referred to a City delinquent revenue collection office.

(6) Private right of action. Oakland residents shall have a private right of action to file suits to enforce the Oakland Campaign Reform Act, Oakland Lobbyist Registration Act, Oakland Sunshine Ordinance, and any City governmental ethics ordinance when the City does not impose or stipulate to a penalty or file suit for a particular violation. Such private right of action shall be enabled for a given ordinance once criteria for such suits, including but not limited to a required notice period, actionable violations and remedies that may be sought, are prescribed by the ordinance.

(g) Staff Assistance & Budget.

- (1) The City shall appropriate a sufficient budget for the Public Ethics Commission to fulfill the functions and duties as set forth above.
- (2) Sufficient staffing shall not be less than the following minimum staffing requirement. The City shall meet a minimum staffing requirement for the Commission. The minimum staffing shall consist of the following full-time positions or their equivalent should classifications change:
 - (i) Executive Director;
 - (ii) Enforcement Chief;
 - (iii) Ethics Investigator and effective July 1, 2026, one additional Ethics Investigator;
 - (iv) Any Three (3) of the following: Ethics Analyst I, Ethics Analyst II, Administrative Analyst I, or Administrative Assistant I.
 - (vi) Effective July 1, 2023, the City shall also provide additional adequate staff necessary to properly administer the Democracy Dollars Program established by the Oakland Fair Elections Act, including, but not limited to, one full-time Democracy Dollars Program Manager and three (3) full-time equivalent positions, to be determined as necessary by the Commission, all of whom shall report to the Executive Director of the Public Ethics Commission.

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

(3) The minimum staffing budget set-aside may be ~~suspended or~~ reduced, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution. A reduction may occur only as part of a general reduction in expenditures across multiple departments.

(4) The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four (4) members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.

(5) The Enforcement Chief may be a licensed California attorney and shall serve at the pleasure of the Executive Director.

(6) Other than the Executive Director and Enforcement Chief, staff shall be civil service in accordance with Article IX of the City Charter. Candidates for staff vacancies shall be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time, except that said selective certification shall not be subject to discretionary approval by the Personnel Director.

(7) All staff are subject to the restrictions in Charter Section 603(e), except that staff are not prohibited from employment with the City and the ~~one-year~~ post-service restrictions shall apply only to the Executive Director.

(h) Amendment of Laws. Prior to adopting, or enacting any amendments to, laws that the Commission has the power to enforce or administer, the City Council shall make a finding that the proposed changes further the goals and purposes of the ~~ordinance~~ law or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to such laws ~~that the Commission has the power to enforce~~ and proposed ballot measures that would adopt or amend such laws shall be submitted to the Commission for review and comment, prior to passage of the amendments or approval of the proposed measures for the ballot by the City Council.

(i) Legal Services. If the City Attorney determines a conflict of interest exists in the City Attorney's representation of the Commission regarding a particular matter, the Executive Director shall have sole discretion to select conflict counsel for that matter.

(j) Consideration of Commission Proposals. The Commission may propose amendments to any law it enforces or administers which, upon being submitted to the Chair of the Rules Committee, shall be considered by the City Council or a standing committee of the City Council within 180 days.

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

(ki) References to Other Laws in this Section. All references to other laws in this Section shall refer to these laws as they may be amended from time to time.

SECTION 2. Amendments of Section 401(1) of the Charter of the City of Oakland. Section 401(1), *City Attorney*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

Section 401(1). City Attorney. The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set ~~annually~~ every two years by the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

SECTION 3. Amendments of Section 403(1) of the Charter of the City of Oakland. Section 403(1), *City Auditor*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

Section 403(1). City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible for the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the City Auditor shall be set ~~annually~~ every two years by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

SECTION 4. Amendments of Section 300 of the Charter of the City of Oakland. Section 300, *Mayor*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

Section 300. The Mayor. The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, ~~and without any additional compensation or fees provided for in Section 202 in this Charter.~~ ~~The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland.~~ ~~The Mayor's salary shall be reviewed by the City Council in odd numbered years and may be adjusted by the Council as provided for herein.~~ The Public Ethics Commission shall, every two years, adjust the salary for the Office of Mayor by the increase in the consumer price index over the preceding two years, up to a total of five percent, to take effect in the first pay period after the first Monday of January, beginning in 2027 and every two years thereafter. The Commission, in its discretion, may reduce the bi-annual salary increase where the City Council has declared, in a budget resolution for the fiscal year in which the adjustment is adopted, that the City is facing an extreme fiscal necessity or if the General Purpose Fund revenue for that fiscal year is projected to be less than the revenue in the prior fiscal year.

SECTION 5. Repeal and Reenactment of Oakland Municipal Code, Section 3.20.180.

Oakland Municipal Code, Section 3.20.180, *Restrictions on payments and expenses benefitting local public officials, candidates for local office, designated employees and immediate families*, is hereby repealed and reenacted as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored.

3.20.180 - Restrictions on payments and expenses benefitting local public officials, candidates for local office, designated employees and immediate families.

A. ~~No local governmental lobbyist or a local governmental lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected City officeholder, candidate for elected City office, a designated employee, or a member of the immediate family of one (1) of these individuals, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.~~

B. No local governmental lobbyist shall make any payment or incur any expense that directly benefits a designated employee, or a member of the immediate family of a designated employee, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.

C. No local governmental lobbyist shall make any payment or incur any expense that directly benefits an elected City officeholder, candidate for elected City office, or a member of the immediate family of one (1) of these individuals in which the cumulative value of such payments or expenses exceeds fifty dollars (\$50.00) during any calendar year.

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

D. The payments and expenses specified in subsections (A) through (C) include gifts, honoraria and any other form of compensation but- do not include (1) campaign contributions; (2) payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal. Code of Regs. No. 18944. 1 (a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this Section.

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Measure shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council, except the amendments to the Lobbyist Registration Act shall go into effect on January 1, 2025.

and be it

FURTHER RESOLVED: That each ballot used at the November 5, 2024 election shall have printed therein, in addition to any other matter required by law the following:

**CHARTER AMENDMENT TO SECTIONS 603, 401 AND 403 OF THE CITY
CHARTER AND AMENDMENT TO OAKLAND MUNICIPAL CODE,
CHAPTERS 2.24 AND 3.20**

MEASURE ____

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

Measure ____. [FINAL BALLOT QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]	Yes	
	No	

;and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the Clerk of the City of Oakland (“City Clerk”), at least 88 days prior to the November 5, 2024 General Municipal Election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

FURTHER RESOLVED: That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter and Oakland Municipal Code amendments, and said date shall be posted by Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice, publication and printing of notices as to said proposed Charter and Oakland Municipal Code amendments in the manner provided for by law; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2024 General Municipal Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 5, 2024 General Municipal Election, consistent with applicable law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID,
AND PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

Item 8 Supplemental - Kalb Staff Report & Draft Measure Language

ATTEST: _____

ASHA REED
Acting City Clerk and Clerk of
the Council of the City of
Oakland, California

3354636v4

Item 9 - Probable Cause Report - PEC 23-28



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 29, 2024
RE: Investigation Summary (Probable Cause Report) in PEC # 23-38, *In the Matter of Michael Dabney*

CONTENTS

INTRODUCTION 2

SUMMARY OF FACTS 2

 General Background on the City’s Mobile Food Permit Process2

 General Background on Michael Dabney 3

 The Attempted Bribery Incident 4

 Dabney’s Statements to the PEC 5

SUMMARY OF LAW & LEGAL ANALYSIS..... 6

 Dabney Offered to Bribe Campos 7

 Dabney Lied To PEC Investigators 12

 Liability..... 14

VIOLATIONS: MICHAEL DABNEY 15

Count 1: Bribery..... 15

Count 2: Lying to/Misleading the PEC 15

RECOMMENDATION..... 15

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

INTRODUCTION

1
2
3 This is a bribery case involving a mobile food vendor named Michael Dabney
4 (Respondent) who called a City permit inspector and offered him an undisclosed amount of
5 cash. The inspector declined the bribe and immediately notified his supervisors. Another
6 witness overheard the phone call (which was on speaker phone) and verified the inspector's
7 version of events. In an interview with the PEC, Dabney denied offering a bribe and instead
8 claimed that he had asked the inspector for a loan.

9 Efforts between PEC staff and Respondent to settle this matter without an
10 administrative hearing have been unsuccessful. PEC staff now presents its investigative
11 findings to the Commission and recommends that the Commission (1) vote to find probable
12 cause that the violations listed below were committed by the person(s) named in this report,
13 and (2) order that the matter be scheduled for an administrative hearing before a single
14 Commissioner.

SUMMARY OF FACTS

General Background on the City's Mobile Food Permit Process

15
16
17
18
19
20 Food trucks, tents, and carts are known within the City's permitting scheme as
21 "mobile food vendors." Anyone who wants to operate a mobile food vending business in
22 Oakland needs to obtain a permit from the City's Special Activity Permits office.

23 In order to qualify for a City permit, applicants first need to have obtained a permit
24 from the county health department. They often need to attach certain other documentation
25 as well, such as proof that they carry workers compensation insurance (if they have
26 employees). They may also need to pass inspections conducted by City inspectors. Those
27

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

The Attempted Bribery Incident

1
2
3
4 In July 2023, Special Activity Permits inspector Moises Campos was assigned to Lake
5 Merritt to document unpermitted food vending. While there, he encountered Dabney
6 operating his business. In the course of a conversation about the City’s permit requirements,
7 Dabney told Campos that he was hoping to purchase a food truck (Dabney was vending out
8 of a cart). Wanting to help Dabney and encourage him to legalize his business, Campos
9 provided him with an informational flyer about a private program that offers loans to
10 qualifying mobile food vendors to purchase a truck. Dabney subsequently contacted the loan
11 program, which requires loan applicants to have a mobile food vending permit.

12 On Thursday, August 17, 2023, Dabney sent a text message to Campos on the latter’s
13 work-issued cell phone, stating, “Rainbow Italian ice calling you. Hit me back if you got a
14 minute.”

15 Though he did not know Dabney well, Campos did not find it unusual that a vendor
16 would want to speak to him on the phone. Vendors often called him to ask about the
17 requirements of the permit process.

18 The following day, August 18, 2023, Campos called Dabney back. At the time of making
19 the call, Campos was in the Special Activity Permits office located in City Hall. When Dabney
20 answered the phone, he told Campos that he had “some business to talk to you about.”

21 This struck Campos as unusual. His suspicions raised, Campos put Dabney on
22 speakerphone and indicated to a nearby co-worker, Nancy Marcus, that he wanted her to
23 listen.

24 Campos then asked Dabney what type of business he wanted to talk about. Both
25 Campos and Marcus heard Dabney reply that he had “money” or “cash” and that it was “for”
26 Campos or to “pay” Campos. Campos asked Dabney what the money was supposed to be for.
27

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

1 Dabney did not answer directly but said the money was for “you know” (emphasis added
2 based on how Marcus later described Dabney’s intonation to the PEC). At that point, Campos
3 declined Dabney’s offer and terminated the call soon afterward. He then reported the
4 incident to his supervisors.

Dabney’s Statements to the PEC

5
6
7
8 In an interview with the PEC, Dabney confirmed that he had spoken on the phone to
9 Campos but denied expressing an intention to give Campos money. Instead, Dabney claimed
10 that he had asked Campos to lend him \$500.

11 When asked what the \$500 loan was meant to be for, Dabney said it was “personal”
12 and not meant to be a business loan. He did not provide any more specifics when asked about
13 the purpose of the supposed loan, other than to say that it was meant to help him “get by”
14 for a “couple of weeks.”

15 When asked why he would ask Campos, in particular, for a loan, Dabney said he didn’t
16 know, just that he was hoping to get a loan. He admitted that he knew Campos solely as a City
17 inspector, that they were not personal friends, and that they had never spent time together
18 socially.

19 When informed by the PEC that his phone call with Campos had been overheard by
20 others on speakerphone, Dabney stated that he had been unaware of that. When told by the
21 PEC that Campos and others who heard the call were claiming that Dabney had told Campos
22 that he (Dabney) wanted to give money to Campos, Dabney said that they must have
23 misheard or misunderstood the conversation. During his interview with the PEC, Dabney
24 never stated that anyone else had also been a witness to the call on his end or could otherwise
25 verify his version of events.
26
27
28

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

1 Several months later, Dabney contacted the PEC and claimed to also have a witness
2 who could corroborate his story. When asked why he had not mentioned or produced this
3 witness earlier, Dabney replied “My witness was out of touch for quite some time lost in Las
4 Vegas. Resurfaced.”

5 Dabney subsequently produced a brief written affidavit from someone named
6 Christopher Williams, which stated in relevant part: “I was with Michael Dabney at the time of
7 the phone call received by Michael from Moises Campos. Michael was driving and the phone
8 was on hands free speaker. Moises asked Michael what his call/txt about. Michael asked
9 Moises if he would consider lending \$500 on a short term basis to help Michael out as personal
10 loan. Moises stated that he couldn't do anything in the way of a loan to Michael and wished
11 him the best with finding help. That was the end of the call.”

12 In follow-up interviews, both Campos and Marcus denied that Dabney had asked
13 Campos for a loan or said anything on the call that might have been construed as asking for a
14 loan. (When informed of Dabney’s version of events, Marcus flatly told the PEC, “That did not
15 happen”). Campos confirmed that he and Dabney are not social friends, and that Dabney had
16 never asked him for a loan at any point in their working relationship.

SUMMARY OF LAW & LEGAL ANALYSIS

17
18
19
20 All statutory references and discussions of law pertain to the referenced statutes and
21 laws as they existed at the time of the violations.

22 All definitions of terms are the same as those set forth in the Government Ethics Act
23 (“GEA,” Oakland Municipal Code Chapter 2.25), either directly or as apparent from the
24 context. For terms that are not defined in GEA, the definitions set forth in the state or local
25
26
27

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

1 law that is cited as the source of the relevant provision governs its interpretation.¹

2
3 *Dabney Offered to Bribe Campos*

4
5 GEA's prohibition on bribery states that no person shall offer anything of value in
6 exchange for the performance of any official act.²

7
8 **Element 1: Offer**

9
10 "Offer" is not specifically defined under GEA, and no state or local law is cited as the
11 source of this provision in GEA. Therefore we must look to the context of the law, the
12 interpretation of similar laws, common-sense understanding, and the PEC's prior
13 interpretation and practice for guidance.

14 California's bribery statutes are substantially similar to GEA's bribery prohibition, so
15 the interpretation of those statutes can be used as persuasive authority here. It is a well-
16 established principle under those laws that a bribery offer need not be overt or forceful, and
17 can even be implied. "The offer or solicitation of a bribe need not be stated in express
18 language as such; it is sufficient that the words used carried the import of a bribe and were
19 evidently intended to bear that meaning."³ Surrounding circumstances, including
20 conversations and behavior before and after the solicitation itself, can also be used as

21
22
23
24 _____
25 ¹ OMC § 2.25.030(A).

26 ² OMC § 2.25.070(A).

27 ³ *People v. Vollmann*, 73 Cal. App. 2d 769, 786, citing 11 C.J.S. 843.

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

1 circumstantial evidence of solicitation to the extent that they may shed light on the meaning
2 or intent behind the solicitation.⁴

3 For instance, a court affirmed a defendant’s bribery conviction where he told a taxicab
4 inspector “I realize that I forgot to get you a gift” and slipped \$500 into the inspector’s pocket
5 after his taxicabs failed the inspection.⁵ Similarly, another court concluded that a public
6 official’s offer to sell “grossly overpriced land” to a developer who was seeing to remove a
7 different parcel from an agricultural preserve was implicitly a bribe.⁶

8 The only prior PEC case involving the offer of a bribe (as opposed to solicitation or
9 acceptance) is # 18-03, *In the Matter of Dorian Gray*. In that case, the PEC found that
10 respondent Dorian Gray offered a bribe by telling a City Councilmember that Gray had an
11 envelope containing \$10,000 with the Councilmember’s name on it during a conversation
12 about Gray’s client, who had a pending application for a cannabis permit from the City. The
13 Councilmember declined the bribe. As in Dabney’s case, Gray’s offer was implicit: Gray never
14 explicitly told the Councilmember that the \$10,000 was in exchange for any specific help they
15 might give toward obtaining the permit, but the overall circumstances reasonably led to such
16 a conclusion.

17 Here, both Campos and his co-worker Marcus recalled that Dabney had said that he
18 had cash and that it was specifically “for” Campos (or to “pay” Campos). Both further stated
19 that there would be no legitimate reason for someone to pay cash to an inspector. At the time
20 of making this statement, Dabney did not have an active permit application pending with the
21 City – his 2020 permit application was on hold pending proof of worker’s compensation

22
23
24 ⁴ *Id.* at 786-87.

25 ⁵ *People v. Lasher*, No. H035478, 2011 WL 5040613, at *2, *4 (Cal. Ct. App. Oct. 24, 2011).

26 ⁶ *People v. Diedrich*, 643 P.2d 971, 975 (Cal. 1982).

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

1 act need not be specified in order for a bribe to be made: “[B]ribery does not require that a
2 specific official action be pending when the bribe is given, or that there be proof that the bribe
3 was intended to influence any particular such act. Rather, it is sufficient that the evidence
4 reflect that there existed subjects of potential action by the recipient, and that the bribe was
5 given or received with the intent that some such action be influenced.”⁸ For instance, in a
6 bribery case involving a developer who paid money to a legislator after a vote on the
7 developer’s project had already taken place, the court concluded that additional related
8 matters “could” have come before the legislator for purposes of establishing a bribe,
9 including zoning approvals and allocation of tax money for building roads.⁹

10 Furthermore, it is also established under the law of criminal bribery that “no ‘meeting
11 of the minds’ is required to establish an agreement to take a bribe. It is not necessary that
12 there be an understanding, in the sense of an agreement, with the person unlawfully
13 approached but merely an understanding on the part of the bribe seeker himself that his
14 official action shall be influenced.”¹⁰ For instance, a defendant was properly found guilty of
15 bribing a witness to not testify even though the witness “never intended” to follow through
16 with their agreement not to show up.¹¹

17 In the present case, therefore, it is irrelevant whether Campos intended to perform
18 any official act in exchange for Dabney’s bribe. Instead, it is only relevant whether Dabney
19 offered the bribe with the intent to influence Campos’ performance of any official act that
20 Campos could have undertaken.

23 ⁸ *People v. Gaio*, 81 Cal. App. 4th 919, 929 (2000).

24 ⁹ *Diedrich*, 643 P.2d at 977.

25 ¹⁰ *Vollmann*, 73 Cal. App. 2d at 788 (internal quotes and citations omitted).

26 ¹¹ *People v. Pic’l*, 646 P.2d 847, 850 (Cal. 1982).

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

1 approved.¹⁶ And because both the nature of their relationship and the surrounding
2 circumstances do not reasonably give rise to an inference that Dabney wanted to give Campos
3 money for any other reason (e.g. a gift, or repaying a loan), it is reasonable to assume that the
4 offer of money was being made to induce Campos to perform (or not perform) some official
5 act. Therefore, this element is satisfied.

Dabney Lied To PEC Investigators

9 GEA states that a person shall not knowingly and intentionally furnish false or
10 fraudulent evidence or information to the Public Ethics Commission, or knowingly and
11 intentionally misrepresent any material fact, or conceal any evidence or information relevant
12 to an investigation by the Commission of an alleged violation of the Government Ethics Act.¹⁷

**Element 1: Furnishing False Evidence or Information, Misrepresentation of Material
15 Fact, or Concealment of Relevant Evidence or Information**

17 Dabney lied to the PEC when, during an interview with a PEC investigator, he denied
18 offering money to Campos and instead claimed that he had asked Campos to lend him
19 (Dabney) \$500. This statement was untrue.

20 By denying that he offered Campos money and saying that he asked Campos for a loan
21 when he did not do so, Dabney furnished false information, misrepresented a material fact,
22 and/or concealed relevant evidence or information. Accordingly, this element is met.

24 ¹⁶ See *Diedrich*, 643 P.2d at 977 (holding that the mere possibility of a matter coming before an official was
25 sufficient to sustain a bribery conviction).

26 ¹⁷ OMC § 2.25.080(C)(7)(a).

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

Element 2: Knowingly and intentionally

“[K]nowingly and intentionally” is not specifically defined under GEA. However, California law defines knowingly as “a knowledge that the facts exist which bring the act or omission within the provisions of [a] code. It does not require any knowledge of the unlawfulness of such act or omission.”¹⁸ “Intentionally” is similarly understood to mean that a person intended to do the act proscribed by the law, in the sense of doing that act “wilfully.”¹⁹ As such, GEA’s intent requirement is substantially similar to that of the law criminalizing perjury, which is violated when a person “wilfully states as true any material matter which he or she knows to be false.”²⁰

This element accordingly requires that a person intend to provide the PEC with false evidence or information (including an oral statement given during an interview) while knowing that the evidence or information was false.²¹

Here, Dabney’s first-person knowledge of the relevant conversation and the circumstances of his interview reasonably support the conclusion that he gave false information to the PEC knowingly and intentionally. Dabney knew exactly what he said during his conversation with Campos since he was the one who spoke those words. His interview with the PEC took place approximately a month and a half after that conversation. Accordingly, it is reasonable to believe that Dabney had a good memory of what he said, and that he knew he did not ask Campos for a personal loan.

¹⁸ Cal. Penal Code § 7(5).

¹⁹ *People v. Lewis*, 15 Cal. Rptr. 3d 891, 901 (Cal. Ct. App. 2004).

²⁰ Cal. Penal Code § 118(a).

²¹ See *People v. Story*, 853, 216 Cal. Rptr. 158, 160 (Cal. Ct. App. 1985).

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

VIOLATIONS:

MICHAEL DABNEY

Respondent, Michael Dabney, violated the following Oakland Municipal Code(s):

Count 1: Bribery

On August 18, 2023, Dabney offered a thing of value (money) to City inspector Moises Campos in exchange for the performance of an official act.

In this way, Respondent violated OMC § 2.25.070(A).

Count 2: Lying to/Misleading the PEC

On or around October 5, 2023, in the course of a PEC investigation into whether Dabney offered to bribe City inspector Moises Campos, Dabney stated to PEC investigators that he had not offered money to Campos and instead stated that he had asked Campos for a loan. This was an untrue statement, which Dabney offered to the PEC with knowledge of its falsehood.

In this way, Respondent violated OMC section 3.12.250.

RECOMMENDATION

Based on the foregoing, PEC staff recommends that the Commission:

1. Find that there is probable cause to believe that Respondent Michael Dabney committed the violations described in Counts 1-2; and

Item 9 - Probable Cause Report - PEC 23-28
Investigation Summary (Probable Cause Report)
In the Matter of Michael Dabney (PEC # 23-28)

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

2. Order that this matter be scheduled for an administrative hearing before a single Commissioner.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 20-41.2

14 CALIFORNIANS FOR INDEPENDENT
15 WORK, SPONSORED BY LYFT, INC.;
16 LYFT, INC.

) **STIPULATION, DECISION AND
ORDER**

17 Respondents.
18
19

20 **STIPULATION**

21
22 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
23 Respondents CALIFORNIANS FOR INDEPENDENT WORK, SPONSORED BY LYFT, INC.;
24 and LYFT, INC., agree as follows:

- 25
26 1. This Stipulation will be submitted for consideration by the City of Oakland Public Ethics
27 Commission (Commission) at its next regularly scheduled meeting;

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

- 1 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
2 the final resolution to this matter without the necessity of holding an administrative
3 hearing to determine the liability of, or penalties and/or other remedies to be imposed
4 upon, Respondents;
- 5 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
6 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
7 Procedures, and all other sources of procedural rights applicable to this PEC enforcement
8 action. These procedural rights include, but are not limited to, the right to personally
9 appear at an administrative hearing held in this matter, to be represented by an attorney
10 at their own expense, to confront all witnesses testifying at the hearing, to subpoena
11 witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 12 4. Respondents represent that they have accurately furnished to the Commission all
13 discoverable information and documents that are relevant to the Commission's
14 determination of a fair and comprehensive resolution to this matter;
- 15 5. Upon approval of this Stipulation and full performance of the terms outlined in this
16 Stipulation, the Commission will take no future action against Respondents, including
17 any officer, director, employee, or agent of Respondents, regarding the activities
18 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
19 complete resolution of all claims by the Commission against Respondents, including any
20 officer, director, employee, or agent of Respondents, related to such activities and any
21 associated alleged violations;
- 22 6. If Respondents fail to comply with the terms of this Stipulation, then the Commission
23 may reopen this matter and prosecute Respondents to the full extent permitted by law,
24 except that the Statute of Limitations shall be waived for any alleged violations that were
25 not discoverable by the Commission due to a non-compliance with Section 4 of this
26 Stipulation;
- 27 7. This Stipulation is not binding on any other law enforcement or regulatory agency.
28 However, upon approval of this Stipulation and full performance of the terms outlined in

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

1 this Stipulation, neither the Commission nor its staff shall refer the matter to any other
2 government agency with regard to this matter, or any other matter related to it, as pertains
3 to any alleged violation by Respondents;

4 8. Respondents admit no violation of, nor any liability under, the provision(s) of the Oakland
5 Municipal Code specified in Exhibit #1 to this Stipulation, nor any other provision(s) of
6 the Oakland Municipal Code. Respondents nevertheless seek to resolve this matter in a
7 responsible manner that acknowledges the Commission's role in ensuring the entire
8 regulated community understands the importance of due diligence when making
9 campaign contributions;

10 9. The Commission will impose upon Respondents the remedies specified in Exhibit #1,
11 as they pertain to each of the named Respondents;

12 10. Respondents will pay the amount specified in Exhibit #1 to this Stipulation to the City of
13 Oakland general fund via wire transfer upon execution of this Stipulation;

14 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
15 void, and within fifteen business days after the Commission meeting at which the
16 Stipulation is rejected, any payments tendered by Respondents in connection with this
17 Stipulation will be reimbursed to them;

18 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
19 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
20 and neither any member of the Commission, nor the Executive Director or any member
21 of PEC staff, shall be disqualified from that hearing because of prior consideration of this
22 Stipulation;

23 13. This Stipulation may not be amended orally. Any amendment or modification to this
24 Stipulation must be in writing duly executed by all parties and approved by the
25 Commission at a regular or special meeting;

26 14. This Stipulation shall be construed under, and interpreted in accordance with, the laws of
27 the State of California and the City of Oakland. If any provision of the Stipulation is found
28 to be unenforceable, the remaining provisions shall remain valid and enforceable; and

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

1 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to
2 have the same effect as though all parties had signed the same document. Verified
3 electronic signatures shall have the same effect as wet signatures.
4

5 So agreed:

6
7
8 _____
9 Simon Russell, Chief of Enforcement
10 City of Oakland Public Ethics Commission, Petitioner

_____ Dated

11
12 _____
13 Jordan Markwith, Principal Officer, on behalf of
14 Californians For Independent Work, Sponsored by Lyft,
15 Inc., Respondent

_____ Dated

16
17 _____
18 Barrett Atwood, Director, Securities, Ethics &
19 Compliance, on behalf of Lyft, Inc., Respondent

_____ Dated

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of CALIFORNIANS FOR INDEPENDENT WORK, SPONSORED BY LYFT, INC.; LYFT, INC.”; PEC Case No. 20-41.2, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

CONTENTS

1

2

3 INTRODUCTION AND FACTUAL SUMMARY..... 2

4 **SUMMARY OF LAW & LEGAL ANALYSIS..... 3**

5 *Oakland’s Ban on Contributions by City Contractors at Certain Times..... 4*

6 **COUNTS: CALIFORNIANS FOR INDEPENDENT WORK, SPONSORED BY LYFT, INC.; LYFT, INC.**

7 6

8

9 **Count 1: Contribution from a City Contractor to a Candidate-Controlled Committee7**

10 **AVAILABLE REMEDIES 7**

11 *The PEC’s Guidelines.....7*

12 *Similar Cases in the Past 9*

13

14 **ANALYSIS AND RECOMMENDATION11**

15 **RECOMMENDATION..... 13**

16 **STATEMENT REAFFIRMING LYFT’S COMMITMENT TO ETHICS IN PUBLIC CONTRACTING.... 13**

17 **SUMMARY OF LYFT’S BEST PRACTICES FOR COMPLIANCE IN POLITICAL GIVING14**

18

19

20

21

22

23

24

25

26

27

28

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

INTRODUCTION AND FACTUAL SUMMARY

This case concerns a campaign contribution made by Californians for Independent Work, Sponsored by Lyft, Inc. (“CIW”), a California general purpose committee (FPPC ID # 1425090) in September 2020 to an Oakland political committee called the Committee for an Affordable East Bay (FPPC ID # 1428904; “PAC”). The contribution of \$100,000 was made on or around September 21, 2020, at the time, Lyft, Inc. (“Lyft”) was discussing a right of first offer clause in a contract that required City Council approval.

At the time CIW made the contribution to the PAC, Lyft was under contract with the Metropolitan Transportation Commission to provide bike-sharing services in five cities, including Oakland, and had recently proposed terms under a right of first offer clause that required City Council approval. The Council rejected the proposal in its meeting of November 10, 2020. City contractors are prohibited from making campaign contributions to candidate-controlled committees at certain times, as set forth in more detail below.

The City of Oakland Public Ethics Commission (“PEC”) contends that the PAC was actually a “candidate-controlled” committee of an elected official whom we shall refer to here as “Candidate A.”¹ Neither Lyft nor CIW take a position regarding the PEC’s allegation that the PAC was candidate-controlled. The parties to this Stipulation, however, acknowledge and agree that the PAC was not registered as candidate-controlled at the time CIW made its contribution or at any time thereafter. The parties also acknowledge and agree that Respondents engaged in a good faith process, prior to making the contribution, to obtain the PAC’s registration forms which declared that it was a non-candidate-controlled committee, as well as other materials expressly stating the PAC was not candidate-controlled.

¹ PEC staff is withholding Candidate A’s identity at this time due to other pending enforcement matters. For purposes of this settlement, Respondents take no position on the factual and legal questions of whether Candidate A controlled the PAC. It is the PEC’s position that Candidate A did control the PAC.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 Specifically, prior to every political contribution made by Lyft and/or CIW, whether at
2 the state or local level, Respondents, with the assistance of outside counsel experienced in
3 campaign finance law, undertake a due diligence process to ensure the proposed contribution
4 complies with all applicable laws and regulations. CIW's contribution to the PAC was no
5 exception—the pre-approval process included a review of the PAC's Statement of
6 Organization (FPPC Form 410), which affirmed under penalty of perjury that the PAC was not
7 candidate-controlled. In addition, the pre-approval process also involved a review of
8 supplemental documents provided by the PAC to CIW, including a document titled "PAC
9 Information for Donors" that expressly stated the PAC was not candidate-controlled.
10 Although Candidate A personally solicited the \$100,000 contribution from Respondents, at no
11 time did Candidate A inform Respondents that the PAC was candidate-controlled.

12 PEC staff and Respondents have agreed to settle this matter without an administrative
13 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
14 analysis to the PEC for its approval. Together, PEC staff and Respondents recommend
15 approval of their agreement, including a settlement payment totaling \$50,000 (Fifty
16 Thousand Dollars) and certain other terms, as described in more detail below.

SUMMARY OF LAW & LEGAL ANALYSIS

17
18
19
20 All statutory references and discussions of law pertain to the referenced statutes and
21 laws as they existed at the time of the facts of this case.

22 All definitions of terms are the same as those set forth in the California Political Reform
23 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
24 is specifically defined in Oakland's Campaign Reform Act (Oakland Municipal Code Chapter
25 3.12) or the contrary is stated or clearly appears from the context.²

26 ² OMC § 3.12.040.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 Provisions of the California Political Reform Act relating to local elections, including
2 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
3 (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.³
4

5 *Oakland's Ban on Contributions by City Contractors at Certain Times*

6
7 City contractors are prohibited from making a contribution, in any amount, to a
8 candidate-controlled committee during what is informally known as the blackout period.⁴

9 Relevant here, OCRA's "city contractor" prohibition applies to an individual or entity
10 who contracts or proposes to contract with or who amends or proposes to amend such a
11 contract with the City for the rendition of services, for the furnishing of any material, supplies,
12 commodities or equipment to the City, or for purchasing or leasing any land or building from
13 the City, whenever the value of such transaction would require approval by the City Council.⁵
14 "Services" means and includes labor, professional services, consulting services, or a
15 combination of services and materials, supplies, commodities and equipment which shall
16 include public works projects.⁶

17 If the alleged contractor is a business entity, the restriction applies to all of the entity's
18 principals, including, but not limited to, the entity's board chair, president, chief executive
19 officer (CEO), and any individual who serves in the functional equivalent of one or more of
20 those positions.⁷
21

22 ³ OMC § 3.12.240(d).

23 ⁴ OMC § 3.12.140(A).

24 ⁵ OMC § 3.12.140(A).

25 ⁶ OMC § 3.12.140(D).

26 ⁷ OMC § 3.12.140(C).

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 The blackout period is any time between commencement of negotiations and one
2 hundred eighty (180) days after the completion or the termination of negotiations for a
3 covered contract.⁸

4 5 **Element 1: Candidate-Controlled Committee**

6
7 The first required element of the contractor contribution ban is to show that the
8 receiving committee was candidate-controlled.

9 Here, the PEC asserts that the PAC was a candidate-controlled committee. For
10 purposes of this settlement agreement, Respondents can neither confirm nor deny that the
11 PAC was a candidate-controlled committee. The PAC was not registered as candidate-
12 controlled at the time CIW made its contribution or at any time thereafter. PEC intends to
13 pursue a case against Candidate A and others responsible for the PAC to show that it was in
14 fact candidate-controlled. Respondents here, however, engaged in a good faith process, prior
15 to making the contribution, to obtain the PAC's registration as a non-candidate-controlled
16 committee as well as other materials expressly stating the PAC was not candidate-controlled,
17 and relied upon those materials when deciding to make their contribution to the PAC.

18 19 **Element 2: City Contractor**

20
21 The second required element of the contractor contribution ban is to show that the
22 donor in question qualified as a "contractor."

23 Here, CIW made a \$100,000 contribution to the PAC on September 21, 2020. At the time
24 CIW made its contribution, Lyft had submitted proposed terms for operating additional
25 equipment types under its public bike-sharing contract, at the request of the Metropolitan

26 ⁸ OMC § 3.12.140(A).

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 Transportation Commission, which held the master Program Agreement involving bike-
2 sharing in five cities, including Oakland. That contract specifically concerned the equipment
3 Lyft would operate in conjunction with the bike-share program. The City Council voted on the
4 matter at its meeting of November 10, 2020 (the Council rejected Lyft's proposed terms). As
5 such, Lyft qualified as a contractor subject to the City's contractor contribution ban.

6 7 **Element 3: Blackout period**

8
9 The third and final required element of the contractor contribution ban is to show that
10 the contributions in question were made during the blackout period, which is in effect at any
11 time between the commencement of negotiations and one hundred eighty (180) days after
12 the completion or the termination of negotiations for a covered contract.

13 As stated above, CIW made its contribution on or about September 21, 2020, and the
14 City Council voted on the proposed contract amendment at its meeting of November 10, 2020
15 (the Council rejected Lyft's proposed terms). As such, Lyft was engaged in contract
16 negotiations with the City at the time CIW made its contribution to the PAC. Its contribution
17 therefore fell within the blackout period.

18 19 **COUNTS:**

20 **CALIFORNIANS FOR INDEPENDENT WORK, SPONSORED BY LYFT, INC.; LYFT, INC.**

21
22 Respondents, Californians For Independent Work, Sponsored By Lyft, Inc. (a
23 controlled committee of a City contractor); and Lyft, Inc. (a City contractor and the sponsor
24 of Californians for Independent Work, who also caused, aided and/or abetted the
25 contribution at issue); have reached a proposed settlement with the PEC regarding activity
26 that implicates the following Oakland Municipal Code(s):
27
28

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

Count 1: Contribution from a City Contractor to a Candidate-Controlled Committee

On or around September, 22, 2020, Respondents Californians for Independent Work, Sponsored by Lyft, Inc. (“CIW”), and Lyft Inc., made a contribution in the amount of \$100,000 to a committee (Committee For An Affordable East Bay Supporting Derreck Johnson and Opposing Rebecca Kaplan for Oakland City Council At-Large 2020 (the “PAC”)) that the PEC maintains was candidate-controlled.

As a City contractor, Lyft was prohibited from making contributions to a candidate-controlled committee, per the terms of OMC section 3.12.140(A). The PAC was not registered as candidate-controlled at the time CIW made its contribution or at any time thereafter. PEC intends to pursue a case against Candidate A and others responsible for the PAC to show that it was in fact candidate-controlled. Respondents here, however, engaged in a good faith process, prior to making the contribution, to obtain the PAC’s registration as a non-candidate-controlled committee as well as other materials expressly stating the PAC was not candidate-controlled, and relied upon those materials when deciding to make their contribution to the PAC. Without taking a position on the question of whether the PAC was candidate-controlled, Respondents are prepared to reach a settlement agreement with the PEC on this count.

AVAILABLE REMEDIES

The PEC’s Guidelines

Oakland’s Campaign Reform Act and the PEC’s guidelines authorize the Commission to impose the following base-level and maximum remedies for the following types of activity:

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

Activity	Counts	Base-Level Per Count	Statutory Limit Per Count
Contractor Contribution Prohibition	1	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary settlement payments, the Commission may issue warnings or require other remedial measures.⁹

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

1. The seriousness of the activity, including, but not limited to, the extent of any public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the activity was deliberate, negligent, or inadvertent;
4. Whether the activity 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 any alleged 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.

⁹ OMC § 3.12.270(C).

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

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

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

Similar Cases in the Past

When agreeing to a settlement in a given case, the PEC endeavors to be consistent with its precedent.

The following past cases are similar in some respects to the one here, but none of these cases are perfectly analogous to the case at hand:

In the Matter of Cypress Security, LLC (PEC # 14-26).

In this case, Respondent was a security company that had a contentious contract coming before the City Council worth \$2 million annually. Respondent gave \$1,000 to a ballot measure committee controlled by a Councilmember (who was also running for Mayor at the time). Before making the contribution, the respondent informed the committee that they were a City contractor but the committee’s officer assured Respondent “with 100% certainty” (the officer’s words) that contribution was legal because he had personally registered the committee as a county rather than a city committee.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 The PEC imposed a lesser penalty of \$600, reasoning that the respondent had lacked
2 any intent to deceive in light of the faulty assurance they had sought and received from the
3 committee. The respondent had also fully cooperated with the PEC's investigation.

4
5 *In the Matter of Lane Partners and Andrew Haydel (PEC # 19-24).*

6
7 In this case, Respondent was a real estate developer seeking a contract to acquire land
8 owned by the City. The contract was large enough that it required a City Council vote. The
9 respondent contributed \$1,000 to a Councilmember's legal defense fund following the Council
10 vote on the contract. Before making the contribution, the contractor consulted their attorney
11 and was erroneously informed that the contractor ban did not apply to legal defense funds.
12 When a news report came out about the contribution, the contractor self-reported the
13 violation to the PEC.

14 The PEC imposed the maximum fine of \$5,000 despite the fact that the respondent
15 had relied upon incorrect legal advice when committing the violation. The PEC reasoned that
16 the respondent was a sophisticated party, and the fact that the contribution was made about
17 two or three months after the relevant Council vote was a serious aggravating factor. In the
18 case at issue here, however, it is important to note that Respondents were not incorrectly
19 advised by counsel. To the contrary, Respondents, after a good faith investigative process,
20 relied on publicly available official documents, including one filed under penalty of perjury,
21 expressly stating that the PAC was not candidate controlled.

22
23 *In the Matter of PSAI Realty Partners CAC, et al. (PEC # 14-25)*

24
25 In this case, respondents were four business entities all controlled by the same person.
26 Each entity gave \$700 each (the contribution limit at the time) to a candidate's committee.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, *et al.*

PEC 20-41.2

1 Because the companies were all controlled by one person, they needed to be aggregated as
2 one single contribution of \$2,800, which was \$2,100 over the legal limit. When making the
3 contributions, the respondent erroneously told the committee that the four companies were
4 not controlled by the same person. Respondent was not a City contractor, so the violation
5 here was the over-the-limit amount (\$2,100), and the committee was charged along with the
6 contributor.

7 The PEC imposed a fine of \$2,100 on the committee and \$1,800 on the contributor. The
8 PEC reasoned that the committee should have to forfeit the over-the-limit amount, but should
9 not face any additional penalty in light of the erroneous information it had been provided by
10 the contributor. As for the contributor, the PEC imposed a lesser penalty in light of the
11 respondent's cooperation and the fact that they were unaware of the aggregation rule at the
12 time they made the contributions.

ANALYSIS AND RECOMMENDATION

13
14
15
16 The circumstances of the Respondents' conduct establish mitigating factors that
17 should be considered:

18 Respondents' contribution was not made with the intention to conceal, deceive, or
19 mislead. When performing their due diligence prior to making the contribution, Respondents
20 obtained and relied upon the PAC's publicly-available Statement of Organization indicating
21 that the PAC was not candidate-controlled (completed and signed by the PAC under penalty
22 of perjury, and therefore assumed to be accurate) and a document provided by the PAC to
23 Respondents expressly stating the PAC was not candidate-controlled. The Statement of
24 Organization did not identify the PAC as a candidate-controlled committee, nor was Lyft or
25 CIW ever otherwise informed that Candidate A (or any other candidate) controlled it.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, *et al.*

PEC 20-41.2

1 Respondents recognize the City of Oakland’s interest in enforcing its ban on
2 contributions from City contractors. Respondents cooperated fully with the PEC’s
3 investigation. Respondents are also cooperating with the PEC in not only settling this matter,
4 but in drafting and releasing a statement reaffirming Lyft’s commitment to ethics in public
5 contracting and a statement of best practices for similarly-situated contributors in the
6 regulated community to reference when pre-clearing proposed campaign contributions.

7 For its part, PEC staff believes that a settlement payment in the amount of \$50,000 is
8 appropriate in light of the facts of this case and the purposes of the law. This is not an
9 insignificant payment even for a party such as Lyft. Although it could not have been known at
10 the time the contribution was made, the size of CIW’s contribution was significant because it
11 was over half the amount of money ultimately raised by the PAC during 2020. But PEC staff
12 also believes it would be unfair to demand a higher settlement payment from Respondents in
13 light of the fact that, when performing their pre-contribution due diligence, they conducted
14 due diligence pursuant to their internal process and industry-standard best practices,
15 consulted expert legal counsel before clearing the contribution, and relied upon the
16 information reported and provided by the PAC. PEC retains its ability under this settlement to
17 pursue its claims against Candidate A and others responsible for the PAC who may have
18 caused, aided or abetted the contribution.

19 The situation here is somewhat similar to the facts in PEC # 14-26, when we required a
20 lesser payment by a contractor who was incorrectly told by a committee officer that they
21 were “100% certain” a contractor contribution was legal based upon the officer’s personal
22 knowledge of the situation. In that case, the PEC gave the contractor a reduced penalty below
23 the baseline. This case is also distinguishable from PEC # 19-24 because in that case, the
24 contractor had all of the information necessary to follow the law but relied upon faulty legal
25 advice; whereas here, the contractor arrived at what appeared to be the correct legal
26 conclusion, but based upon what the PEC believes is faulty information provided by the PAC.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 And, as in case # 14-25, the PEC is still able to pursue enforcement against other respondents
2 who operated the PAC.

RECOMMENDATION

3
4
5
6 Based on the foregoing, PEC staff and Respondents recommend that the Commission
7 approve their stipulated agreement, consisting of the following:

8 As to Respondents CALIFORNIANS FOR INDEPENDENT WORK, SPONSORED BY LYFT,
9 INC.; and LYFT, INC., a settlement payment in the amount of \$50,000; and the public release
10 of the following statements:

STATEMENT REAFFIRMING LYFT'S COMMITMENT TO ETHICS IN PUBLIC CONTRACTING

11
12
13
14 Lyft is committed to ensuring the highest standards of integrity and ethical conduct in
15 all aspects of our operations. This is especially true when Lyft partners with municipalities and
16 other governmental entities through the public contracting process. We take our ethical
17 responsibilities in the public contracting process very seriously and understand the
18 importance of maintaining trust in the public contracting system, especially when making
19 political contributions.

20 With this commitment to integrity as our guide, we acknowledge the concerns raised
21 by the Oakland Public Ethics Commission in PEC case no. 20-41.2, and the need for
22 accountability. That is why we have fully cooperated with the Commission since the start of
23 this investigation. While Lyft, its sponsored California political committee (Californians for
24 Independent Work ("CIW")), and its officers or employees did not violate the law and admit
25 no liability, Lyft acknowledges the highly sensitive nature of contributions that might
26
27
28

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 implicate the City’s contractor ban and the importance of avoiding even the appearance of
2 any impropriety.

3 All contributions made by CIW are pre-cleared by outside counsel experienced in
4 campaign finance law. CIW’s contribution to Committee for an Affordable East Bay (“CAEB”)
5 was no exception—the pre-approval process included a review of CAEB’s Statement of
6 Organization, which affirmed under penalty of perjury that CAEB was not candidate
7 controlled, and a review of supplemental documents provided by CAEB that explicitly stated
8 the committee was not candidate controlled. Despite this thorough process, we recognize
9 that, as a public contractor, we are subject to public scrutiny on political giving; accordingly,
10 any discussion regarding CAEB should have been precise to avoid even the appearance of any
11 wrongdoing on the part of CIW or its sponsor.

12 As a company whose relationships with the public sector are important to our
13 business, we recognize the privilege and responsibility that come with participating in the
14 public contracting process. Because of this, we are reaffirming our commitment to
15 transparency, fairness, and honesty in all our dealings, including our sustained compliance
16 with all applicable rules surrounding our political giving.

17 18 **SUMMARY OF LYFT’S BEST PRACTICES FOR COMPLIANCE IN POLITICAL GIVING**

- 19
- 20 1. After obtaining initial internal approvals, a member of the Lyft policy team sends
21 outside counsel a request for clearance of the proposed contribution. This request
22 must include details regarding the intended recipient and the amount of the
23 proposed contribution. The requestor must also include any supplemental
24 materials, such as committee fact sheets, solicitation forms, invoices, flyers,
25 remittance forms, and any relevant correspondence with the representatives of
26 the recipient committee.
- 27
28

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, *et al.*

PEC 20-41.2

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

2. Outside counsel pulls the recipient committee’s Statement of Organization (FPPC Form 410) to understand the committee’s legal classification, principal officers, and jurisdiction. Outside counsel also reviews all supplemental materials provided by the requestor.
3. Outside counsel reviews the relevant limits that apply to the recipient committee and runs a report detailing Lyft’s prior contributions to the committee, if any. From this information, outside counsel determines whether the proposed contribution is within legal limits.
4. Outside counsel notes Lyft’s reporting obligations in connection with the proposed contribution, taking into account late reporting periods and whether local reporting requirements apply.
5. Outside counsel checks the relevant jurisdiction’s law for “pay-to-play” rules and, if necessary, consults with Lyft whether it is a prospective or current contractor in the jurisdiction.
6. Outside counsel summarizes these conditions, noting any special considerations and, if legally permissible, approves the contribution for processing.
7. Once internal approval at Lyft is obtained, its committee cuts the contribution check and transmits it to the recipient.

Item 10 - Proposed Settlement Agreement (PEC 20-41.2)

EXHIBIT #1

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc, et al.

PEC 20-41.2

1 8. Outside counsel notes the date of the contribution and ensures the contribution is
2 reported on the applicable campaign report(s).

3
4 This settlement shall fully resolve this matter as regards the PEC and Respondents here.
5 The Commission will take no future action against Respondents, including any officer,
6 director, employee, or agent of Respondents, regarding the activities described herein, and
7 this Stipulation shall constitute the complete resolution of all claims by the Commission
8 against Respondents, including any officer, director, employee, or agent of Respondents,
9 related to such activities and any associated alleged violations.



Item 11 - Proposed Settlement Agreement (PEC 24-04)

ENFORCEMENT UNIT
 1 FRANK H. OGAWA PLAZA, #104
 OAKLAND, CA 94612
 (510) 238-3593
 TDD (510) 238-3254

PUBLIC ETHICS COMMISSION STREAMLINED STIPULATION (GIFT LIMIT)

PEC NO.: 24-04

RESPONDENT NAME AND POSITION: Michelle Phillips (Inspector General, Office of the Inspector General)

DESCRIPTION OF VIOLATION: Receiving a gift over the legal limit, in violation of Oakland Government Ethics Act section 2.25.060(C):

Description of Gift	Source of Gift	Date Gift Received	Value of Gift	Value Over The \$250 Limit
Dinner and Social Justice Discussion	Campaign Zero	01/10/2023	\$300	\$50

OF PEC ENFORCEMENT CONTACTS PRIOR TO DISGORGEMENT: 1

POSSIBLE CONFLICTS OF INTEREST FLAGGED: None

RESOLUTION: \$50 disgorgement and diversion training

With regard to the above, the Public Ethics Commission and Respondent hereby agree to the following:

STIPULATION

1. This streamlined stipulation (“agreement”) is being entered into by Respondent and the Public Ethics Commission (“Commission” or “PEC”) pursuant to the streamlined penalty program under Section VI(H) of the PEC’s Complaint Procedures.
2. The Commission shall vote upon whether to accept this agreement at its next regularly scheduled meeting.
3. This agreement shall become effective upon execution by both the Respondent and the Commission Chair.

Item 11 - Proposed Settlement Agreement (PEC 24-04)

Streamlined Stipulation – Gift Limit
PEC # 24-04 (M. Phillips)

4. This Stipulation resolves all factual and legal issues raised in this matter and represents the final resolution to this matter without the necessity of holding an administrative hearing to determine the liability of Respondent.
5. Respondent knowingly and voluntarily waives all procedural rights under the Oakland City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint Procedures, and all other sources of procedural rights applicable to this PEC enforcement action. These procedural rights include, but are not limited to, the right to personally appear at an administrative hearing held in this matter, to be represented by an attorney at their own expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed.
6. Respondent represents that they have accurately furnished to the Commission all discoverable information and documents sought by the Commission that are relevant and necessary to the Commission's determination of a fair and comprehensive resolution to this matter.
7. Upon approval of this agreement and full performance of the terms outlined herein, the Commission will take no future action against Respondent regarding the violation(s) of law described in this agreement, and this agreement shall constitute the complete resolution of all claims by the Commission against Respondent related to such violation(s).
8. If Respondent fails to comply with the terms of this agreement, then the Commission may reopen this matter and prosecute Respondent to the full extent permitted by law, except that the Statute of Limitations shall be waived for any violations that were not discoverable by the Commission due to non-compliance with any of the terms of this agreement.
9. This agreement is not binding on any other law enforcement or regulatory 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 this matter, or any other matter related to it.
10. It is further stipulated and agreed that Respondent violated the Oakland Government Ethics Act as described in this agreement.
11. Respondent is eligible for and this matter may be resolved by diversion or other streamlined resolution pursuant to the Commission's Complaint Procedures and Penalty Guidelines.

Item 11 - Proposed Settlement Agreement (PEC 24-04)

Streamlined Stipulation – Gift Limit
PEC # 24-04 (M. Phillips)

12. **The term of this agreement shall be for forty-five (45) calendar days, beginning on the date this agreement is executed by both parties and terminating forty-five (45) calendar days thereafter, or until the parties have satisfied all of the requirements of this agreement, whichever is earlier.**
13. **During the term of this agreement, Respondent shall do the following:**
 - a. **Provide cash, a check, or a cashier's check in the amount of \$50 to the PEC payable to "City of Oakland"; and**
 - b. **Attend and successfully complete the following training: "City of Oakland Gift Rules" (available online via NeoGov); and**
 - c. **Ensure the submission of the corresponding completion certificate to the PEC (preferred method is via email to ethicscommission@oaklandca.gov).**
14. **Respondent acknowledges that a failure to timely complete this requirement may be grounds for the unilateral extension or termination of this agreement by the Commission.**
15. Following completion of Respondent's obligation(s) under this agreement as described above, the Commission shall do the following:
 - a. Close PEC case # 24-04 with no further action.
16. Any subsequent complaint received or initiated by the PEC during the term of this agreement that alleges Respondent violated a provision of any other law under the PEC's jurisdiction, regardless of whether that matter is related or unrelated to the facts stipulated to in this agreement, is a basis for the unilateral extension or termination of this agreement by the PEC.
17. In the event the PEC has a reason to believe that there is a basis to extend or terminate the agreement, PEC staff shall make reasonable efforts to provide the Respondent with an opportunity to be heard through written submission concerning the alleged non-compliance. Thereafter, PEC staff shall determine whether to unilaterally terminate or extend this agreement.
18. During the term of this agreement, Respondent shall notify the PEC, in writing, of any change of e-mail address, mailing address, or telephone change within 10 business days of the change. Should PEC staff be unable to contact Respondent due to the latter's failure to

Item 11 - Proposed Settlement Agreement (PEC 24-04)

Streamlined Stipulation – Gift Limit
PEC # 24-04 (M. Phillips)

comply with the terms of this Section, or if Respondent should otherwise fail to respond within a reasonable time to PEC staff’s attempts to contact Respondent using the contact information which the PEC has on record, PEC staff shall be deemed to have made “reasonable efforts” to contact Respondent pursuant to the terms of this agreement.

19. In the event that the Respondent fails to comply with the terms of this agreement, they agree that all of the facts stated herein shall be deemed true in any subsequent evidentiary hearing.
20. The parties acknowledge that this agreement, Respondent’s compliance with this agreement, and the disposition of this matter upon completion or termination of the agreement, are matters of public record. Respondent further acknowledges that the Complainant (if any) will be made aware that this matter was resolved through this agreement and may be provided with a copy of this agreement upon request.
21. The parties hereto may sign different copies of this agreement, which will be deemed to have the same effect as though all parties had signed the same document. Verified electronic signatures shall have the same effect as wet signatures.

SO AGREED:

Date

Ryan Micik, Chair, on behalf of the Public
Ethics Commission

Date

Michelle Phillips, Respondent

Item 12 - Closure Recommendation - PEC 23-38



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 29, 2024
RE: Investigation Summary (Closure Recommendation) in PEC # 23-38, *In the Matter of Jesse Boudart*

CONTENTS

INTRODUCTION 2

SUMMARY OF FACTS 2

 General Background on Jesse Boudart, OakDOT and the Institute of Transportation Engineers.....2

 Boudart Sends ITE Election-Related Emails in October 2023 and November 2023 4

SUMMARY OF LAW & LEGAL ANALYSIS..... 5

 Boudart Did Not Misuse City Resources..... 6

 Boudart Did Not Misuse His City Position..... 9

RECOMMENDATION.....11

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

INTRODUCTION

1
2
3 This case involves allegations that Jesse Boudart, a City employee working with the
4 Department of Transportation (OakDOT), violated one or more laws under the PEC's
5 jurisdiction when he used his City email address to send emails to other City email accounts
6 regarding his candidacy in a private board election for the Institute of Transportation
7 Engineers (ITE).

8 The investigation showed that Boudart did send the emails in question, but that ITE
9 materials are frequently used by the Department in the course of its work, and ITE events are
10 covered by professional development funds. Boudart's supervisors also indicated approval of
11 his use of City email for purposes of an ITE board election and indicated that he might be
12 allowed to use paid City time for board meetings, given how related ITE activity is to OakDOT
13 work. As such, this alleged violation falls within a gray line for misuse of City resources and
14 position. Given his supervisors' apparent blessing, we are recommending that the PEC staff
15 defer to the judgment of Boudart's supervisors and recommend to the Commission that they
16 (1) find that no violation occurred, and (2) issue an advisory letter recommending that
17 Boudart's supervisors pre-approve any use of City resources for ITE-related election or board
18 activity.

SUMMARY OF FACTS

General Background on Jesse Boudart, OakDOT and the Institute of Transportation Engineers

24 Jesse Boudart is currently a Transportation Engineer with the City of Oakland's
25 Department of Transportation (OakDOT).

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 The Institute of Transportation Engineers (ITE) is a nongovernmental professional
2 association. There are several examples available online of City of Oakland materials
3 referencing or utilizing ITE materials and standards, as well as at least one instance of ITE
4 and the City collaborating on a transportation-related workshop.

5 City of Oakland Professional Development funds may be used to cover ITE-related
6 expenses, such as membership dues for ITE. In addition, Ade Oluwasogo, Boudart’s
7 Supervisor, informed the PEC that the City regularly provides financial support for OakDOT
8 employees’ membership in organizations such as ITE. Boudart’s Fiscal Year 2023 Professional
9 Development Allowance Form shows Boudart was reimbursed by the City in October 2023
10 for the cost of his membership in ITE.

11 Oluwasogo (Boudart’s supervisor) also informed the PEC that City employees may
12 attend ITE events on City time. When asked specifically if employees could use paid time to
13 attend ITE board meetings (as opposed to just regular ITE events), Oluwasogo said that
14 would “most likely” be approved, but would still require a “request for authorization.”

15 Specifically:

16
17 **PEC:** ...[W]ould a city employee be able to use city compensated time for a
18 board meeting of [ITE]? So like, if Boudart was secretary, could he
19 attend an ITE board meeting? So not an event or function, but a board
20 meeting on city compensated time?

21 **Oluwasogo:** I will say yes, that you will still have to request for authorization and
22 approval.

23 **PEC:** And do you think it would likely be approved?

24 **Oluwasogo:** Most likely.
25
26
27

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 *Boudart Sends ITE Election-Related Emails in October 2023 and November 2023*

2
3 Boudart first send an ITE board-related email from his City email address at 10:35 AM
4 on Monday, October 23, 2023. The recipients were a combination of City of Oakland
5 colleagues and other transportation professionals in the San Francisco Bay Are. It read in
6 relevant part:

7
8 Hello Fellow Transport Professionals,

9 I'm excited to announce that I'm running for Secretary for San Francisco Bay's
10 Institute of Transportation Engineers. My platform is simple, let's reboot this
11 section's activity to pre-pandemic levels. :)

12 There are many transportation professionals in the SF Bay Area performing awesome
13 projects, and we should hear about them to learn and also inspire us to improve our
14 region. I'd work toward connecting people together through various events we'd
15 organize.

16 Hoping to receive your vote of confidence! If you are an ITE Member, elections open
17 November 1st.

18
19 Boudart received the following email from then-OakDOT Director Fred Kelley in
20 response to that email:

21
22 Excellent Jesse

23 Good luck in advance. Is it possible to make all staff aware of these meetings in
24 advance ?

25 Thanks

26 Fred

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 Boudart sent a second email from his City email address at 9:00 AM on Thursday,
2 November 9, 2023. Again, he sent it to a combination of City of Oakland colleagues and
3 other transportation professionals in the Bay Area. It read in relevant part:

4 Fellow Transport Professionals, the time to vote in the ITE election is now!

5 Again, I'm running for the San Francisco Bay Area chapter Secretary, and would
6 cherish your vote of support.

7 My platform is simple, let's reboot this chapter's activity to pre-pandemic levels :)

8 There are many transportation professionals in the SF Bay Area performing awesome
9 projects, and we should hear about them to learn and also inspire us to improve our
10 region. I'd work toward connecting people together through various events we'd
11 organize.

12 Thank you and get out there and vote!

13 Elections close November 30th.

14
15 **SUMMARY OF LAW & LEGAL ANALYSIS**

16
17 Following its investigation, PEC staff analyzed the evidence gathered to determine
18 whether any violation of the following law(s) had occurred:

- 19
20
 - Misuse of City Resources (OMC § 2.25.060(A)(1); or
 - Misuse of City Position (OMC § 2.25.060(A)(2)).
- 21
22

23 We have determined that no violation of either law occurred. Our analysis is described
24 below.

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

27

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 All definitions of terms are the same as those set forth in the Government Ethics Act
2 (“GEA,” Oakland Municipal Code Chapter 2.25), either directly or as apparent from the
3 context. For terms that are not defined in GEA, the definitions set forth in the state or local
4 law that is cited as the source of the relevant provision governs its interpretation.¹

Boudart Did Not Misuse City Resources

8 Under GEA, a Public Servant may not use or permit others to use public resources for
9 a campaign activity or for personal or non-City purposes not authorized by law.²

Element 1: Public Servant

13 GEA defines “public servant” to include any full-time or part-time employee of the
14 City.³ Boudart is an employee of the City of Oakland.

Element 2: Use of Public Resources

18 GEA defines “public resources” to include “any property or asset owned by the City,
19 including but not limited to... equipment... computers... and City-compensated time.”⁴

22 ¹ OMC § 2.25.030(A).

23 ² OMC § 2.25.060(A)(1).

24 ³ OMC § 2.25.030(D)(3).

25 ⁴ OMC § 2.25.060(A)(1)(a)(iii).

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 The PEC has previously found that the use of a City email account falls within the scope
2 of this law.⁵ Here, Boudart both sent his emails from a City account, and also sent the emails
3 to certain City email accounts. Boudart’s emails were sent at 10:35 AM and 9:00 AM
4 respectively, which is within normal working hours and presumably was on Boudart’s City-
5 compensated time. As such, this element is satisfied.

6
7 **Element 3: Campaign activity or personal or non-City purposes not authorized by law**

8
9 GEA defines “campaign activity” as any activity constituting a contribution as defined
10 in California Government Code Section 82015 or an expenditure as defined in California
11 Government Code Section 82025.⁶ However, those state law provisions only apply to
12 candidates running for “state, regional, county, municipal, district or judicial office.”⁷ These
13 are limited to public offices for which contributions and expenditures are raised and reported
14 under the PRA – not a private professional association board. Therefore, Boudart’s emails
15 were not sent for a campaign purpose as defined under GEA.

16
17 _____
18 ⁵ PEC # 16-14 (Count 46), *In the Matter of Thomas Espinosa*. See also PEC # 18-45 (Count 1), *In the Matter of Justin*
19 *Berton*, in which the use of a City social media account and associated “followers” list was found to violate the
20 Misuse of City Resources law, which is similar to the use of a City email account and recipient list including City
21 employees.

22 ⁶ OMC § 2.25.060(A)(1)(a)(ii).

23 ⁷ Cal. Govt Code §§ 82015 and 82025 state that they refer only to payments for “political purposes,” which is
24 defined under § 82025 as pertaining to campaigns for “elective office” (82015 does not provide a definition of
25 “political purpose” but 82025 does, and we can assume that the meaning would be similar for both based on
26 the common application of these laws). Cal. Govt. Code § 82023, defining “elective office,” does not offer a
27 precise definition of the term “office” but based on how this law is situated within the overall context of the
28 Political Reform Act (PRA), it is reasonable to interpret the term “office” to apply only to offices for which
candidates are required to file campaign statements under the PRA listing their contributions and expenditures
as defined under §§ 82015 and 82025.

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 Alternatively, GEA defines “personal purpose” as any activity for personal enjoyment,
2 private gain or advantage, or an outside endeavor not related to City business.⁸ Here,
3 Boudart’s department has found that ITE dues are closely related enough to their employees’
4 duties to be reimbursable under the Professional Development clause of the employees’
5 MOU. Boudart himself has applied for this reimbursement in the past. In addition, Boudart’s
6 supervisor stated that he would “most likely” approve any request Boudart might make to
7 use City-compensated time to attend ITE board meetings. And even the Director of OakDOT
8 responded to Boudart’s first email in this case with a statement indicating general approval
9 and asking whether it would be possible to “make all staff aware of these meetings in
10 advance,” presumably referring to Boudart’s hopeful attendance at ITE board meetings. This
11 approving attitude is likely due to OakDOT’s use of ITE materials in the past in the course of
12 its own work.

13 As such, while Boudart’s use of his email account and City time were not expressly
14 authorized by his Department, it seems likely that his ITE board candidacy would be
15 considered by his supervisors to be closely related to his City duties and therefore not a
16 “personal” use of City resources. While admittedly a gray line, Enforcement staff believes that
17 we should defer here to the knowledgeable opinion of Boudart’s supervisors, which does not
18 appear unreasonable under the facts. The purpose of the misuse of City resources law is to
19 discourage misuse for frivolous or profit-seeking purposes, not purposes that seem to be
20 appreciated by supervisors and arguably might be in furtherance of the City’s interests in a
21 well-educated and engaged staff. The PEC is generally reluctant to substitute its own
22 judgment for that of specialized City staff regarding the substantive propriety of employees’
23 actions, when those actions are of a technical nature requiring specialized knowledge and
24 discretion. Therefore, this element is not satisfied.

25
26 ⁸ OMC § 2.25.060(A)(1)(a)(i).

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

Boudart Did Not Misuse His City Position

No public servant may use their position, or the power or authority of their 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, to a candidate, or to any other person.⁹

Element 2: “Public servant”

It has already been established that Boudart is a public servant.

Element 2: “Use of position, power, or authority”

This element is not further defined in the law.¹⁰ Therefore we must rely upon context, past PEC practice, and a commonsense, reasonable understanding of the term.

The PEC has little precedent for prosecuting similar cases. A comparison might be made to a case (PEC # 20-04, *In the Matter of Manuel Altamirano*) involving a City parking technician who used his non-public access to City offices and phone lines to contact two colleagues for purposes of offering a bribe. The PEC’s theory in that case was that by virtue of the official’s City position, he enjoyed access to his colleagues in a manner that non-officials did not; and that he used that privileged access for improper purposes. While not explicitly

⁹ OMC § 2.25.060(A)(2).

¹⁰ The definition of “use” found in OMC § 2.25.060(A)(1)(a)(iv) applies only to a use of “public resources.” The phrase “public resources” does not appear in OMC §(A)(2) (the misuse of position provision), therefore the definition of “use” in OMC § 2.25.060(A)(1)(a)(iv) does not apply to it.

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 stated in that case, it might also be argued that the respondent only knew which particular
2 employees to target based upon his specialized knowledge of the department that he had
3 obtained by virtue of his City employment. The PEC found probable cause of a violation, and
4 the matter is currently set for a hearing.¹¹

5 Boudart’s case is somewhat similar in that he used his access to his own and
6 colleagues’ email addresses to contact people for purposes of getting potential votes in the
7 ITE election. While City email addresses are not difficult for members of the public to deduce
8 (generally being the employee’s first initial plus their last name, followed by
9 @oaklandca.gov), Boudart did seem to have curated his recipient list based upon his
10 knowledge of individual employee’s duties and perhaps familiarity with or even membership
11 in ITE. This is not information generally known to the public, and would have been obtained
12 by Boudart in the course of City duties. This element is therefore satisfied.

13
14 **Element 3: “Induce or coerce”**

15
16 This element is not further defined under GEA. Taking a broad application of the word
17 “induce,” it is clear that Boudart’s actions were an inducement in the commonsense meaning
18 of the term, in that he was attempting to persuade his colleagues to vote for him in the ITE
19 election. Therefore this element is satisfied.

20
21 **Element 4: “Provide a private advantage, benefit, or economic gain to a public**
22 **servant or any other person.”**

23
24
25
26 ¹¹ PEC # 20-04a (In the Matter of Manuel Altamirano), Count 3.

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

1 This element is not further defined under GEA. But we have demonstrated above that
2 when applied to the misuse of City resources law, Boudart’s actions appear to have been more
3 for a public rather than a private purpose. While the definition of “private” for purposes of
4 the misuse of City position law is not necessarily coterminous with that of the misuse of City
5 resources law, there does not seem to be a logical or policy reason to make a distinction in
6 this particular case. Boudart’s supervisors either expressly (Oluwasogo) or implicitly (Kelley)
7 approved of Boudart’s actions, and the PEC is reluctant to impose its own judgment over that
8 of the relevant Department when analyzing a potential misuse of City position, unless there is
9 no rational basis for the Department’s conclusion. The evidence of OakDOT’s past use of ITE
10 materials and allocation of professional development funds for ITE activities lends a rational
11 basis to the Department’s blessing of Boudart’s actions in this case. Therefore, Boudart’s
12 actions were for a public rather than a private end, and this element is not satisfied.

13
14 **Element 5: “Intent”**

15
16 This law requires a specific intent to induce or coerce someone in order to confer a
17 private benefit, gain or economic advantage. Here, Boudart’s actions were for a public
18 purpose, therefore he cannot have had the intent to use his position for a private purpose.
19 This element is not satisfied.

20
21 **RECOMMENDATION**

22
23 Based on the foregoing, PEC staff recommends that the Commission:

- 24
25 1. Find that Respondent JESSE BOUDART did not violate any of the laws enforced by the
26 PEC; and

Item 12 - Closure Recommendation - PEC 23-38
Investigation Summary (Closure Recommendation)
In the Matter of Jesse Boudart (PEC # 23-38)

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

2. Issue an advisory letter to Respondent JESSE BOUDART that he may want to directly obtain his supervisors' approval before using any City resources in furtherance of ITE board activities.

Item 13 - Form 700 Enforcement Update and Closure Recommendation



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 29, 2024
RE: Update on Form 700 Enforcement Efforts (PEC ## 23-16, 24-05)

Every year, many City officials need to file what is called a “Form 700.” On this form, they report any financial or business interests that might affect their impartiality when performing their City duties. Among the things that need to be reported are outside sources of income, stock and real estate holdings, community property, and gifts from persons other than family and friends.¹ Though not every City official needs to file a Form 700, a broad range of officials fall within the annual filing requirement, from Councilmembers and Commissioners to administrative and frontline staff.²

Form 700s are filed with the City Clerk’s office. The list of persons required to file a Form 700 is generated through data provided by Human Resources, which in turn relies upon timely and accurate hiring and leave data from individual departments and commissions. The Public Ethics Commission (PEC) and the state Fair Political Practices Commission (FPPC) enforce the filing requirement, usually after receiving notices from the City Clerk or complaints from the public that a particular official has missed the filing deadline.

A grand jury report recently found that many Oakland officials were not filing their required Form 700s.³ In response, the PEC initiated a pilot program last year to (1) obtain comprehensive data from the City Clerk on which required filers had not filed the Form 700 due that year (called the “2022 annual” because it covered officials’ finances from 1/1/22 – 12/31/22) and (2) bring enforcement actions on any elected official, commissioner, or senior-

¹ This is a simplified description of what is required to be reported. For details, see the California Government Code sections 87200-87210 and the accompanying regulations.

² The complete list of City positions required to file a Form 700 can be found in the City’s Conflict of Interest Code, OMC Chapter 3.16.

³ “2021-2022 Alameda County Grand Jury Final Report,” section titled “Oakland Fails to Enforce Financial Disclosure Rules to Protect the Public,” pp. 33-46.

Item 13 Form 700 Enforcement Update and Closure Recommendation

Update on Form 700 Enforcement Efforts (PEC # 23-16, 24-05)

May 29, 2024

level department staff who had not filed. The idea behind focusing on a subset of officials last year was to allow the PEC to build the internal processes to do a more comprehensive, City-wide enforcement program this year.

In accordance with that plan, the PEC has initiated its City-wide monitoring and enforcement program for compliance with this year's Form 700 filing requirement (called the "2023 annual" because it covers officials' finances from 1/1/23 – 12/31/23). That form was due on April 2, and anyone who missed the deadline is subject to penalties ranging from diversion training to gradually-increasing fines of up to \$5,000.

This report provides an update on both last year's pilot program and this year's ongoing, City-wide Form 700 enforcement program. The idea behind these programs is not only to foster a greater culture of compliance with the Form 700 filing requirement, but also to identify the particular weak points in the City's data collection, notification and enforcement practices regarding Form 700s filers.

Ongoing Results of the "Pilot" Program for Senior-Level Filers of the 2022 Annual Form 700

PEC staff initially identified eight senior-level officials who had not filed their 2022 Annual Form 700, according to the City' data.

However, three of these officials turned out to be Commissioners with the Oakland Housing Authority (OHA). OHA is a semi-autonomous body that does fall within the City's Form 700 filing requirements, but also acts as its own filing officer for Form 700s rather than filing with the City Clerk. The PEC learned that OHA was not notifying the City Clerk when their Commissioners had filed, resulting in those officials turning up as "false positives" on the City's non-filer data. In addition, OHA does not make its Commissioners' Form 700s available online, so there is no way to independently verify whether OHA Commissioners had met their filing requirement.⁴

In addition, PEC staff learned that two of the other senior-level officials on the non-filer list had either been on long-term leave or actually resigned their position earlier in the year (2023).

⁴ PEC staff also learned that there is a similar issue with the Oakland Port Authority Board of Commissioners, which also acts as its own filing officer. However, we flagged this issue before opening any Form 700 non-filer cases regarding Port Commissioners.

Item 13 Form 700 Enforcement Update and Closure Recommendation

Update on Form 700 Enforcement Efforts (PEC # 23-16, 24-05)

May 29, 2024

PEC staff is therefore recommending that the Commission vote to close the following 2022 Annual Form 700 non-filer cases with a finding that no violation occurred (we have omitted the officials' names for their privacy):

2022 Annual Form 700 Non-Filer Cases Recommended For Closure			
Case #	City Position	Date Filed	Notes
23-16.1	Assistant Chief, Fire Department	(not filed)	Has been on long-term leave or modified duty since Q1 2022
23-16.2	Commissioner, Cannabis Regulatory Commission	(not filed)	Stopped attendings meetings in Q1 2023 due to caretaker responsibilities; officially resigned 2024
23-16.5	Commissioner, Oakland Housing Authority	3/31/2023	Timely filed with OHA but not reported to City Clerk, so they were a "false positive" on the non-filer list
23-16.6	Commissioner, Oakland Housing Authority	3/31/2023	Timely filed with OHA but not reported to City Clerk, so they were a "false positive" on the non-filer list
23-16.7	Commissioner, Oakland Housing Authority	3/31/2023	Timely filed with OHA but not reported to City Clerk, so they were a "false positive" on the non-filer list

Of the remaining three cases from the "pilot" program, two are still under investigation. The remaining respondent entered an agreement to resolve their case via diversion.

Simultaneous enforcement of these matters could also be handled by the FPPC upon referral from the City Clerk's office. The FPPC informed the PEC that no Form 700 enforcement referrals were received from the City of Oakland in 2023 (covering 2022 Annual non-filers).

Ongoing Results of the Citywide Enforcement of 2023 Annual Form 700 Non-Filers

The initial list of 2023 Annual Form 700 non-filers (as of April 12, 2024) provided to the PEC included 512 names. Of those, PEC staff determined that 416 were likely no longer with the City anymore, and therefore did not need to file. We provided this information to the City Clerk.

Of the remaining names, we sent notifications and gave them a short grace period to file without opening an enforcement action. We also kept track of filers who responded and told us that they had been on leave or otherwise had some other serious extenuating circumstance. A number of filers also told us that they had filed paper copies of their Form

Item 13 Form 700 Enforcement Update and Closure Recommendation

Update on Form 700 Enforcement Efforts (PEC # 23-16, 24-05)

May 29, 2024

700 with the City Clerk (the default is to e-file), but that these had not been registered on the system yet. PEC staff asked the City Clerk to verify whether these paper filers had indeed filed; as of the writing of this report, the City Clerk has not provided this information to us.

After the short grace period was over, we opened 59 cases against alleged non-filers. Of those, the following people subsequently filed and entered “streamlined” settlement agreements. Pursuant to recent amendments to the Commission’s Complaint Procedures, the Executive Director has the authority to resolve these minor violations on their own authority, without a Commission vote, so long as they meet the specific requirements laid out in our Complaint Procedures (Section VI(D), (H)) and Penalty Guidelines:

Form 700 (2023 Annual) – Late Filing Violations ⁵ Streamlined Settlement Agreements				
Respondent	City Position	Days Late	Resolution	Case #
Castillo, Janny	Commissioner, Oakland Housing Authority	16	Diversion (training)	24-05.8
Harrison, Joey	Commissioner, Commission on Homelessness	20	Diversion (training)	24-05.18
Hicks, Tia	Member, Affordable Housing & Infrastructure Bond Public Oversight Committee)	21	Diversion (training)	24-05.23
Mayes, William	Commissioner, Oakland Housing Authority	24	Diversion (training)	24-05.38
Ortiz, Xochitl	Housing Development Coordinator, Housing & Community Development	26	Diversion (training)	24-05.49
Plair Cobb, Gay	Member, Police Commission Selection Panel	21	Diversion (training)	24-05.10
Su, Jinnhua	Real Estate Agent, Real Estate Asset Management	22	Diversion (training)	24-05.56

A number of other respondents have also filed their Form 700 since being contacted by Enforcement but have not yet entered settlements regarding their penalty. We will update the Commission on those cases as they are resolved.

A number of the cases we opened ended up concerning people who turned out to have been either (1) on long-term leave, (2) had resigned their position without this being noted in the City’s data used to compile the non-filer list, or (3) had transitioned to a new position with a

⁵ Government Ethics Act section 2.24.040(B).

Item 13 Form 700 Enforcement Update and Closure Recommendation

Update on Form 700 Enforcement Efforts (PEC # 23-16, 24-05)

May 29, 2024

different filing officer (not the City Clerk). We are recommending that these cases be closed with no further action (we are omitting the respondents' names for their privacy):

2023 Annual Form 700 Non-Filer Cases Recommended For Closure			
Case #	City Position	Date Filed	Notes
24-05.2	Captain, Fire Department	(not filed)	Has been on long-term leave or modified duty since Q1 2023
24-05.7	Captain, Fire Department	(not filed)	Has been on long-term leave since 2022
24-05.9	Fire Investigator, Fire Department	(not filed)	Has been on long-term leave since 2022
24-05.15	Captain, Fire Department	(not filed)	Has been on long-term leave since January 2024; we have requested that he file when he returns to service
24-05.17	Captain, Fire Department	(not filed)	Has been on long-term leave since 2023
24-05.20	Captain, Fire Department	(not filed)	Has been on long-term leave since 2023
24-05.25	Commissioner, Police Commission	(not filed)	Resigned in October 2023
24-05.48	Commissioner (former), Commission on Persons with Disabilities	(not filed)	Left the Commission in 2023; filed a Leaving Office 700 on 4/24/2024 (upon PEC request)
24-05.53	Captain, Fire Department	April 29, 2024	Was on leave on due date; filed the same day they returned
24-05.64	Member, Community Policing Advisory Board	(not filed)	Erroneously listed on Netfile as a member of the Community Policing Advisory Board. They were formerly a member of that board and apparently the system was never updated to show that they had left.

Simultaneous enforcement of these matters could also be handled by the FPPC upon referral from the City Clerk's office. We have not been notified of any such referrals being made.

Item 13 Form 700 Enforcement Update and Closure Recommendation

Update on Form 700 Enforcement Efforts (PEC # 23-16, 24-05)

May 29, 2024

Due to the unreliability of the non-filer data for 2022 Annual filers, it is very difficult for the PEC to calculate a year-on-trend re: whether the rate of filing has increased with the 2023 Annual filers. Anecdotally, Enforcement staff was pleasantly surprised by the relatively low number of 2023 Annual non-filer cases that we had to open. We attribute this to the greater prominence this issue has received since we initiated last year's pilot program, including our reminders to City departments and Commissions to verify the integrity of the City's non-filer data and ensure that their officials had filed by the deadline. The City Clerk's office has also been reminding departments and commissions of the filing requirement.

Recommendation

Enforcement staff recommends that the Commission vote to close the following cases with a finding of no violation, for the reasons described above:

- 23-16.1
- 23-16.2
- 23-16.5
- 23-16.6
- 23-16.7
- 24-05.2
- 24-05.7
- 24-05.9
- 24-05.15
- 24-05.17
- 24-05.20
- 24-05.25
- 24-05.48
- 24-05.53
- 24-05.64

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 30, 2024
RE: Incorporating “Ability to Pay” as a factor for determining appropriate case resolutions under the PEC’s Penalty Guidelines

The purpose of this report is to propose an amendment to our Penalty Guidelines that expressly includes a respondent’s “ability to pay” as one of the factors for determining an appropriate fine amount in a given case. It also provides Enforcement staff’s thoughts on how to apply this factor in cases involving low- and moderate-income respondents, as well as to higher-income respondents (including PACs and business entities) potentially facing large fines.

Background and Brief Summary of Current Procedures

If the PEC determines that a violation of our laws has occurred, we normally impose a monetary fine. The PEC has written Penalty Guidelines which we must follow when determining the size of a fine in a particular case. The idea is to have consistent standards for resolving cases, in order to avoid unduly harsh or favorable treatment of particular respondents. It also helps to facilitate settlements of cases without a hearing, because PEC staff and respondents can use the Penalty Guidelines to calculate a fair outcome that is likely to be accepted by the Commission.¹

In practice, the Penalty Guidelines are applied in the following way. Regardless of whether a case is being resolved by settlement or a full hearing, the commission is typically presented with a recommended penalty by Enforcement staff. We reach this recommendation by following a three-step process.

First, we look to the section of the Penalty Guidelines titled “Mainline Penalty” to learn the “baseline” penalty for a given violation, as well as the possible maximum above which we

¹ All case settlements require Commission approval, except for very low-level violations resolved under our “streamlined” resolution program. Note that the Penalty Guidelines apply regardless of whether the other party is agreeing to settle the matter or if the Commission is determining a penalty after a full hearing.

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay”
Incorporating “Ability to Pay” as a factor for determining appropriate fines under the PEC’s Penalty Guidelines
 May 30, 2024

cannot go (“Statutory Limit Per Violation”).² “Baseline” is another way of saying “starting point”; it’s what the penalty would be if we were not to consider anything else about the case. Below is a reproduction of this section of the Penalty Guidelines:

Violation	Base-Level Per Violation	Statutory Limit Per Violation
Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.)	\$1,000.	\$5,000 or three times the amount not timely reported, whichever is greater.
Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Revolving Door Provisions. (GEA § 2.25.050.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of City Resources. (GEA § 2.25.060A1.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of Position or Authority (GEA § 2.25.060A2.)	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.
Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Gift Restrictions. (GEA § 2.25.060C.)	\$1,000 plus the unlawful amount.	\$5,000 or three times the unlawful amount, whichever is greater.
Contracting Prohibition. (GEA § 2.25.060D.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Bribery/Payment for Position. (GEA § 2.25.070A-B.)	\$5,000, or three times the unlawful amount, whichever is greater	\$5,000 or three times the unlawful amount, whichever is greater.
Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.

² Note that this is *per violation*. If someone has committed multiple violations, then the penalties are aggregated. For example, someone who receives an unlawful gift is facing a baseline \$1,000 fine or maximum \$5,000 fine (assuming this is greater than the value of the gift). Someone who receives two unlawful gifts is facing a baseline fine of \$2,000 and a maximum fine of \$10,000; and so on.

Of course, this does not factor in the “three times the unlawful amount” provision. If the unlawful gift were worth \$4,000, then the baseline fine would still be \$1,000 but the maximum fine would be \$12,000 (because 3 x \$4,000 = \$12,000). If they received two unlawful gifts worth \$4,000 and \$3,000 respectively, then the baseline fine would be \$2,000 and the maximum fine would be \$21,000 (because 3 x (\$4,000 + \$3,000) = \$21,000); and so on.

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay”
Incorporating “Ability to Pay” as a factor for determining appropriate fines under the PEC’s Penalty Guidelines
 May 30, 2024

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

Second, we look to the section of the Penalty Guidelines titled “Specific Factors to Consider in Determining a Penalty” to determine how far above or below the baseline we should go, given the facts of the particular case at hand. Currently, our Penalty Guidelines list the following eight factors that we should take into consideration (though the Guidelines also state that this list is not meant to be exclusive, meaning that we can look to other factors as well):

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay”

Incorporating “Ability to Pay” as a factor for determining appropriate fines under the PEC’s Penalty Guidelines
May 30, 2024

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.

Finally, Enforcement staff looks to previous PEC cases with similar facts and/or legal issues, to make sure that the recommended penalty is in line with how the penalties were determined in those cases. We refer to these as “comparable cases” or “comps.”³

By this three-step process, Enforcement staff arrives at a recommended penalty. It is then up to the Commission to approve or reject the recommendation based on the same criteria. For settlements, the Commission can send the parties back to negotiations with guidance on what it feels would be a more appropriate penalty. For cases resolved via a hearing, the Commission will directly impose the penalty it thinks is warranted, after hearing recommendations from the parties and the hearing officer.

Proposal to Include “Ability to Pay” as a Factor for Determining a Penalty

Staff is proposing to amend the Penalty Guidelines to expressly include a respondent’s ability to pay as a factor for determining an appropriate fine. Specifically, we propose the following amendment:

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

³ The PEC keeps a list of its resolved cases online at <https://www.oaklandca.gov/resources/public-ethics-commission-enforcement-actions>.

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay”

Incorporating “Ability to Pay” as a factor for determining appropriate fines under the PEC’s Penalty Guidelines
May 30, 2024

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;
9. **The respondent’s ability to pay the contemplated penalty without suffering undue financial hardship. This factor shall not apply to the portion of a penalty that constitutes a repayment or disgorgement of the unlawful amount, except in cases of extreme financial hardship.**

The purposes of the proposed amendment are the following:

- To clarify that a respondent’s “ability to pay” is a valid consideration under our Penalty Guidelines and should be given appropriate weight, along with the other factors that are specifically listed.
- To minimize the possibility that a straightforward application of our Penalty Guidelines may result in a fine that imposes a disproportionate hardship on a particular respondent, e.g. a low-income respondent whose personal finances may be seriously impacted by a contemplated fine, or a business entity or political organization whose ordinary operations may be severely impacted after accounting for a contemplated fine.
- By including a reference to “undue” financial hardship, we intend to underscore that the purpose is not to avoid all possible hardship or annoyance to a respondent, but only financial hardship that poses a serious risk to their personal finances or a severe impact on their ability to carry on ordinary campaign or business operations.

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay”
Incorporating “Ability to Pay” as a factor for determining appropriate fines under the PEC’s Penalty Guidelines
May 30, 2024

- To clarify that respondents cannot obtain the benefit of unlawful funds and then claim financial hardship when required to repay or disgorge those funds, except in extreme circumstances.
- To help ensure that the respondent will actually pay any fine imposed, and minimize the amount of City resources that might be spent pursuing a fine through the collections process.

Determining what is an undue financial hardship will depend upon each respondent’s individual circumstances. PEC staff would require respondents claiming a financial hardship to provide some proof of income, for example a copy of their most recent tax return or campaign bank statement.

It is not our intention to allow this proposal to undermine the PEC’s deterrent function via the imposition of fines. Our proposal is only to include “ability to pay” as one factor among many to be considered when determining an appropriate fine amount. In cases involving particularly serious violations (e.g., those done deliberately, by “sophisticated” parties with experience of the law, and/or involving relatively large amounts of unlawful funds), our interest in deterring future violations and conveying the seriousness of the violation(s) would still warrant imposition of a large fine, though perhaps lowered somewhat to avoid undue hardship to the respondent.

The question of what constitutes “undue hardship” to a PAC or business entity which has a substantial amount of money (or ability to raise a substantial amount of money) is a more complicated one than in the case of a low-income respondent. Generally, PEC staff would give less weight to this factor when dealing with respondents of this sort. Nevertheless, if a PAC or business entity were facing a large enough fine that might cripple their operations going forward, we might use this factor to arrive at a fine amount that represents a reasonable proportion of their demonstrated income or fundraising over the past few years, without imposing a long-term obstacle to their future operations.

Finally, some respondents (usually elected officials or candidates) are able to raise money to help pay PEC fines by opening what is called a “legal defense fund” (LDF). An LDF is essentially a PAC, though its funds can only be used for purposes related to the controlling official’s legal expenses or penalties. There is also no contribution limit on funds received by an LDF.⁴

⁴ State law allows cities to impose a contribution limit on LDFs controlled by local officials or candidates (2 Cal. Code of Regulations section 18530.45). Oakland does not currently impose a contribution limit on LDFs (OMC section 3.12.170(B)).

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay”

Incorporating “Ability to Pay” as a factor for determining appropriate fines under the PEC’s Penalty Guidelines
May 30, 2024

In theory, the ability to open an LDF offsets any claims of financial hardship that a respondent might make (at least one who is in a position to raise funds from third parties). In practice, however, there are policy drawbacks to relying on LDFs to cover large fines that the PEC might impose. If the PEC’s purpose in enforcing its ethics, lobbying and campaign finances laws is to reduce the actuality or appearance of corruption or undue influence over candidates and elected officials (who tend to be the type of respondents who open LDFs), then incentivizing these respondents to open a LDF and solicit large contributions to cover their personal financial liability may undermine this policy purpose. In addition, the use of an LDF means that it is the third parties and not the respondent who are bearing the financial burden of the penalty, which can diminish its deterrent effect on the respondent.

It should be noted that the PEC does allow respondents to enter a payment plan rather than paying the entire amount of their fine at-once. This should be taken into consideration when determining a reasonable application of the proposed “ability to pay” factor in a given case.

Approaches by Other California Commissions

Of the other ethics commissions in California that carry out substantial enforcement functions (San Francisco, Los Angeles, San Diego, and the state Fair Political Practices Commission), only San Francisco expressly includes “ability to pay” a factor in determining a penalty under its regulations:

“The respondent’s ability to pay will be considered a mitigating factor if the respondent provides documentation to the Director of Enforcement of such inability, which must include three years’ worth of income tax returns and six months’ worth of bank records or accounting statements, at a minimum.”⁵

Staff at the San Francisco Ethics Commission informed PEC staff that there is not yet a standardized approach to applying this factor; instead they arrive at a “common sense determination” in consultation with the respondent.

Recommendation

In light of the above background, Enforcement recommends that the Commission vote to approve our proposed amendment to the Penalty Guidelines (see Attachment 1).

When discussing and voting on this proposal, Commissioners are encouraged to give any guidance that they feel would be helpful in clarifying their legislative intent and to act as a

⁵ San Francisco Ethics Commission Enforcement Regulations section 9(D)(7).

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay”
Incorporating “Ability to Pay” as a factor for determining appropriate fines under the PEC’s Penalty Guidelines
May 30, 2024

guide for Enforcement staff in applying the amendment, should the Commission choose to adopt it.

Public Ethics Commission

ENFORCEMENT PENALTY GUIDELINES

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

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

Guiding Principles for Enforcement

The overarching goal of the PEC’s enforcement activity is to obtain compliance with rules under its responsibility, and provide timely, fair and consistent enforcement that is proportional to the seriousness of the violation. The following principles guide the PEC’s compliance activities as part of an effective enforcement program:

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

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

Public Ethics Commission

Effective January 7, 2024

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

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

Specific Factors to Consider in Determining a Penalty

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

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC’s enforcement activity in a timely manner;
8. The relative experience of the respondent;
9. The respondent’s ability to pay the contemplated penalty without suffering undue financial hardship. This factor shall not apply to the portion of a penalty that constitutes a repayment or disgorgement of the unlawful amount, except in cases of extreme financial hardship.

~~8.—~~

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

Public Ethics Commission

Effective January 7, 2024

such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC’s power to bring an enforcement action or impose a penalty.

Penalty Options Based on Levels

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

1. **Warning Letter:** A warning letter is an enforcement option for any minor violations without any aggravating circumstances. It is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of a potential or proven low-level violation. This allows for respondents to be educated about the rules and provides the PEC with a historical list of prior violations for future consideration in enforcement cases. A warning letter may be used to address a violation where the evidence demonstrates that a monetary penalty is not justified, or in the interest of justice. A warning letter will not be available where the respondent has had a prior violation of the same or similar type.
2. **Streamline Stipulation:** The streamlined stipulation program takes common low-level violations, such as the non-filing of a campaign statement, and provides a scaled-down stipulation document and set penalties. These more common cases can be quickly handled with a penalty commensurate to the violation, which helps preserve staff time to focus on more serious cases. The streamlined stipulation program is an option (but is not required) to resolve the following types of low-level violations without any serious aggravating circumstances:
 - a. Form 700 Non-Filer (GEA § 2.25.040), where the form in question is no more than six months late;
 - b. Form 700 Non-Reporter (GEA § 2.25.040), where the unreported interest does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the Respondent’s exercise of their official duties;
 - c. Misuse of City Resources (GEA § 2.25.060(A)(1)), where the total value of misused City resources is \$100 or less and does not involve campaign activity;
 - d. Gift Restrictions (GEA § 2.25.060(C)), where the aggregate amount of the gift(s) from a single source is no more than \$250 over the legal limit, the source of the gift(s) was not a restricted source or a lobbyist, and the gift does not give rise to a reasonable likelihood or appearance of a conflict of interest or undue influence over the Respondent’s exercise of their official duties;

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

Public Ethics Commission

Effective January 7, 2024

- e. Contribution Limits (OCRA §§ 3.12.050 - 3.12.080), where the total amount of the aggregate contributions from a single source in excess of the contribution limit is \$250 or less;
- f. Contractor Contribution Prohibition (OCRA § 3.12.140), where the total amount of the aggregate contributions from a single prohibited source or its principals is \$250 or less;
- g. Form 301 Non-Filer (OCRA § 3.12.190), where the form in question is no more than ninety (90) calendar days late;
- h. Campaign Statement/Report Non-Filer and Non-Reporter (OCRA § 3.12.240), where:
 - i. for a pre-election report, the report is no more than thirty (30) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made;
 - ii. for a semiannual report, the report is no more than one-hundred and eighty (180) calendar days late and the unreported activity does not exceed \$5,000 in either contributions raised or expenditures made;
 - iii. for a late contribution or late independent expenditure report, the report is no more than seven (7) calendar days late, the unreported activity does not exceed \$10,000 in either contributions raised or expenditures made, and the report is filed before the date of the election;
- i. Lobbyist Registration Non-Filer (LRA § 3.20.040.), where the registration form is no more than one-hundred and eighty (180) days late, and the total compensation received for previously-unreported lobbying does not exceed \$2,000 in a single quarter or, in the case of a salaried lobbyist, the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000;
- j. Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110.), where the report in question is no more than ninety (90) days late. and the total compensation received for unreported lobbying activity is \$2,000 or less or, in the case of a salaried lobbyist, where the total pro rata share of their salary attributable to lobbying activity over the unreported period does not exceed \$2,000.

For purposes of streamlined settlements, the term “non-filer” includes late filers.

The streamlined stipulation program takes into account that the articulated evidence demonstrates a greater degree of public harm than a case that qualifies for a warning letter and is therefore worthy of a penalty. Streamlined stipulations will not be available where the respondent has had a prior violation of the same or similar type resolved by way of Commission action in the previous six years, except as to treasurers in OCRA cases where the violation was primarily due to the actions of others. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations have been standardized and shortened to promote efficiency.

The penalty tiers applying to streamlined stipulations set forth below shall be applied on a per-violation basis and are contingent upon the following conditions:

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

Public Ethics Commission

Effective January 7, 2024

- the respondent has taken corrective action as requested by Commission staff, such as filing the form or amendment that forms the basis of the violation, or returning or disgorging a prohibited contribution or gift;
- the respondent has agreed to the terms of the streamlined stipulation; and
- the respondent has paid all late filing fees.

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

Public Ethics Commission

Effective January 7, 2024

Violation	Compliance prior to or in response to first PEC enforcement contact	Compliance in response to second PEC enforcement contact	Compliance prior to publication of PEC investigation report
<u>Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>
<u>Gift Restrictions (GEA § 2.25.060C)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>
<u>Form 301 Non-Filer (CRA § 3.12.190)</u>	<u>Diversion, plus 2% of contributions received over limit prior to filing form</u>	<u>\$400, plus 2% of contributions received over limit prior to filing form</u>	<u>\$800 plus 2% of contributions received over limit prior to filing form</u>
<u>Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340)</u>	<u>Diversion, plus 1% of all financial activity not timely reported</u>	<u>\$400, plus 1% of all financial activity not timely reported</u>	<u>\$800, plus 1% of all financial activity not timely reported</u>
<u>Misuse of City Resources. (GEA § 2.25.060A1.)</u>	<u>Diversion, plus the unlawful amount</u>	<u>\$400, plus the unlawful amount</u>	<u>\$800, plus the unlawful amount</u>
<u>Contribution Limits (CRA §§ 3.12.050 - 3.12.080.)</u>	<u>Diversion, plus 1% of the total amount received over the limit</u>	<u>\$400, plus 1% of the total amount received over the limit</u>	<u>\$800, plus 1% of the total amount received over the limit</u>
<u>Contractor Contribution Prohibition. (CRA § 3.12.140.)</u>	<u>Diversion, plus 1% of the total amount of the prohibited contribution</u>	<u>\$400, plus 1% of the total amount of the prohibited contribution</u>	<u>\$800, plus 1% of the total amount of the prohibited contribution</u>
<u>Lobbyist Registration Non-Filer. (LRA § 3.20.040.)</u>	<u>Diversion, plus \$200</u>	<u>\$400</u>	<u>\$800</u>
<u>Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)</u>	<u>Diversion</u>	<u>\$400</u>	<u>\$800</u>

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

Public Ethics Commission

Effective January 7, 2024

As used in the table above, the term “contact” means any method of communication reasonably calculated to ensure notice based upon Commission staff’s due diligence in obtaining the respondent’s contact information. The contact may be made verbally or in writing. In the case of verbal contacts, Commission staff shall keep a record of all verbal contacts. In the case of a written contact, the contact may be made electronically and/or physically, and need not be personally served on the respondent. Contact is presumed to be effective if it is sent via email to the City email address of a current City employee or official, or in the case of an open campaign committee or registered lobbyist, to the most recent email address provided by that committee or lobbyist to the PEC.

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

Violation	Base-Level Per Violation	Statutory Limit Per Violation
Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.)	\$1,000.	\$5,000 or three times the amount not timely reported, whichever is greater.
Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Revolving Door Provisions. (GEA § 2.25.050.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of City Resources. (GEA § 2.25.060A1.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of Position or Authority (GEA § 2.25.060A2.)	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.
Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Gift Restrictions. (GEA § 2.25.060C.)	\$1,000 plus the unlawful amount.	\$5,000 or three times the unlawful amount, whichever is greater.
Contracting Prohibition. (GEA § 2.25.060D.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Bribery/Payment for Position. (GEA § 2.25.070A-B.)	\$5,000, or three times the unlawful amount, whichever is greater	\$5,000 or three times the unlawful amount, whichever is greater.
Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)	\$1,000.	\$5,000 or three times the unlawful amount, whichever is greater.

Item 14 - Proposed Amendment to PEC Penalty Guidelines re: “Ability to Pay.”

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

Application of this Guideline

While most enforcement matters will likely fall within the penalty structure outlined in this guideline, this document was created merely to assist the PEC in determining an appropriate penalty in certain types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty that deviates from this guideline or from the PEC’s past practice. Additionally, this guideline is not a comprehensive list of violations for which the PEC has jurisdiction to investigate and impose a penalty, and exclusion of a type of violation from this guideline does not in any way limit the PEC or its staff from investigating and imposing a fine or penalty on any person who commits such a violation.

Item 15A - Outreach Subcommittee

PEC OUTREACH EVENTS 2024

Outreach Events Calendar

2024 Attended Events

Event	Date	Commissioner(s) Attended
District 3 Town Hall @ Children’s Fairyland	March 16, 2024	Chair Micik

Suggested Free Outreach Events

Event	Frequency
Oakland Roots & Soul Games	Seasonal (Summer/Fall)
Merchants Associations events - Rockridge, Temescal, Laurel, Jack London	Seasonal
Rotary Club (and other such clubs) meetings	Monthly
High School Government Classes	Variable
Office Hours for Council Members, School Board, City Auditor & Police Inspector General	Variable
National Night Out	Annual, First Tuesday in August
Oakland Love Life Celebration	Annual
Farmers Markets	Weekly
League of Women Voters Meeting	Monthly
Mills College Public Policy Graduate Students Meetings	
Goldman School Public Policy - Info Forums	Quarterly
Open Oakland - Open Data Day	Annual
Night Out for Safety and Liberation	Annual
Acts Full Gospel Church	Weekly
Allen Temple Baptist Church	Weekly

Staff Suggested Paid Outreach Events

Event	Date	Cost
Friday Nights at the Oakland Museum	Returns April 2024	TBD
Art and Soul Festival	September 2024	\$350
Oaktoberfest	October 2024	\$270

Item 15B - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill, Karun Tilak

April 18, 2024 Minutes

Attendees – Members: Commissioners Micik, Hill, Tilak

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Ballot Measure Proposal:** Commissioners discussed how to narrow the PEC's ballot measure proposal to improve the chances of it being placed on the ballot and be approved by the voters.

Item 15B - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill, Karun Tilak

April 24, 2024 Minutes

Attendees – Members: Commissioners Micik, Hill, Tilak

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Ballot Measure Proposal:** Commissioners discussed how to narrow the PEC's ballot measure proposal to improve the chances of it being placed on the ballot and be approved by the voters and discussed next steps for advocating for the proposal before the City Council.

Item 15B - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill, Karun Tilak

May 9, 2024 Minutes

Attendees – Members: Commissioners Micik, Hill (Absent: Tilak)

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Ballot Measure Proposal:** Commissioners discussed how to narrow the PEC's ballot measure proposal to improve the chances of it being placed on the ballot and be approved by the voters and discussed next steps for advocating for the proposal before the City Council.

Item 15B - Charter Review Subcommittee

Minutes

Charter Review Ad Hoc Subcommittee

(ad hoc, created December 13, 2023)

Members: Ryan Micik (Chair), Charlotte Hill, Karun Tilak

May 24, 2024 Minutes

Attendees – Members: Commissioners Micik, Hill, Tilak

Attendees – Staff: Director Nicolas Heidorn

Discussion

1. **Ballot Measure Amendments:** Commissioners discussed potential amendments to the Commission's Ballot Measure proposal.