

# ATTACHMENT A – BREAKDOWN OF PROPOSED CHANGES

## Substantive Changes

Recommendation /Section Affected	Proposal	Rationale
<p><b>A. PEC Purpose</b> C. Sec. 603(a), (b)</p>	<ul style="list-style-type: none"> <li>▪ Add to the PEC’s Charter-listed purposes promoting more inclusive, representative, and accountable democracy in Oakland.</li> <li>▪ Add to the PEC’s Charter-listed responsibilities administering the Democracy Dollars Program.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Currently, the City Charter lists the PEC’s role as (1) enforcement of laws to “assure fairness, openness, honesty and integrity in City government,” (2) education on such laws, and (3) “impartial and effective administration” of its programs. This reflects the PEC’s role as a watchdog agency, but not its role in promoting better democracy.</li> <li>▪ In 2022, voters passed Measure W establishing the Democracy Dollars Program, administered by the PEC, with the goal of promoting broader and more inclusive participation in Oakland democracy. This recommendation aligns the Charter with the PEC’s expanded mission.</li> </ul>
<p><b>B. Commissioner Qualifications</b> C.603(d)</p>	<ul style="list-style-type: none"> <li>▪ Prohibit a person from being appointed to the Commission if, in the two years prior to the start of their term, the person was:                             <ul style="list-style-type: none"> <li>- a City/OUSD elected official, or the immediate family of an elected official;</li> <li>- an employee of a City/OUSD elected official;</li> <li>- a candidate for City/OUSD office;</li> <li>- a paid staffer or consultant to a City/OUSD campaign;</li> <li>- an officer/employee of a political party;</li> <li>- someone who has contributed more than two times the City contribution limits to: candidates for a City or OUSD office, a committee controlled by a City/OUSD elected official, or to a committee making independent expenditures in City/OUSD campaigns.</li> <li>- A registered City lobbyist</li> </ul> </li> <li>▪ Clarify that a person registered to vote in City or OUSD elections is eligible to be appointed.</li> </ul> <p><i>* These prohibitions would be applied prospectively only.</i></p>	<ul style="list-style-type: none"> <li>▪ Currently, to be appointed to the Commission, an applicant must be registered to vote in Oakland elections and must have attended at least one PEC meeting. Mayor, City Attorney, and City Auditor appointees must have a specified professional background and cannot have been paid during the past two years for work by a committee controlled by the appointing official. The rules permit the appointment of a recent candidate for office, the spouse of an elected official, or major political donors, which might undermine public confidence in the fairness of the Commission.</li> <li>▪ This recommendation adds restrictions, modelled off of best practices in other jurisdictions and other Oakland independent agencies, to prevent the appointment of a Commissioner who may appear strongly biased in favor or against of a candidate, incumbent, or political faction.</li> <li>▪ <b>Similar to:</b> Oakland Redistricting Commission, San Diego, Sacramento</li> </ul>

<p><b>C. During Service Restrictions</b> C.603(e)</p>	<ul style="list-style-type: none"> <li>▪ Prohibit Commissioners, while on the Commission, from serving as an officer or employee of a political party.</li> <li>▪ Clarify that Commissioners, while on the Commission, cannot contribute to an OUSD campaign.</li> <li>▪ Prohibit Commissioners, while on the Commission, from being a paid staffer or paid consultant to a City or OUSD elected official or receive gifts from the same officials.</li> <li>* <i>These prohibitions would be applied prospectively only.</i></li> <li>▪ Permit Commissioners to advocate in support or opposition to ballot measures affecting the PEC.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Currently PEC Commissioners cannot be involved in City politics during their term and cannot, during their term and for one year after, be employed by the City or register as or employ a lobbyist.</li> <li>▪ This recommendation adds a prohibition on Commissioners working for or receiving gifts from the elected officials they regulate, similar to the existing restriction on working for the City or lobbyists, and the appointment of party officials/staff. This recommendation is to make sure Commissioners are, and are perceived to be, fair and impartial when adjudicating cases.</li> <li>▪ Currently, to avoid the risk or appearance of bias, PEC commissioners cannot advocate on any ballot measure, as the PEC may have to adjudicate a complaint against a campaign for/against a ballot measure campaign. However, this risk does not exist for ballot measures affecting the PEC, because the PEC's practice is already to refer complaints against such campaign committees to other agencies. This recommendation would therefore allow Commissioners, who are uniquely knowledgeable on PEC-related laws, to share that perspective with the public in this very limited circumstance.</li> <li>▪ <b>Similar to:</b> Oakland Redistricting Commission, FPPC, Los Angeles, San Diego, Sacramento</li> </ul>
<p><b>D. Commissioner Removal</b> C.603(d)(5)&amp;(6)</p>	<ul style="list-style-type: none"> <li>▪ Permit the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause.</li> <li>▪ Delete the requirement that any Commissioner absent from the City for more than 30 days is automatically removed from office.</li> <li>▪ Provide that any Commissioner who misses 3 consecutive regular meetings is automatically removed from office unless the absence is excused by the Chair.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Currently a Commissioner may only be removed for cause by their appointing authority with Council approval. This may create the risk or misperception that a Commissioner is beholden to their appointing official, rather than being an impartial adjudicator. The lack of a supermajority vote for removal also risks making removal seem political.</li> <li>▪ This recommendation permits the Council, which does not have an appointment to the PEC, and the Commission, to remove a member for cause by supermajority vote. This recommendation is to help ensure Ethics Commissioners are, and are perceived to be, fair and impartial.</li> <li>▪ This recommendation provides a streamlined process for removing regularly absent Commissioners, instead of a formal removal vote, and eliminates an unduly strict removal requirement for a 30-day absence from the City.</li> </ul>

<p><b>E. Extended Vacancy</b> C.603(d)(5)</p>	<ul style="list-style-type: none"> <li>▪ Provide that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy transfers to the PEC.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The PEC can only function with a quorum of its members. Extended vacancies may impact the Commission’s ability to adjudicate cases or adopt policies.</li> <li>▪ Currently, Citywide officials have only 90 days to fill a PEC vacancy, which could be a short time for a newly elected official, but the remedy for failing to do so – that the Council may appoint a replacement – is rarely exercised. This recommendation ensures PEC vacancies are filled in a reasonable timeframe by providing officials 120 days to fill a vacancy while transferring the power to the PEC to fill a vacancy thereafter.</li> </ul>
<p><b>F. Staffing</b> C.603(g)(2)&amp;(3)</p>	<ul style="list-style-type: none"> <li>▪ Increase the PEC’s minimum Enforcement staffing by 1 investigator in FY 2025-2026 and 1 additional non-administrative enforcement position in FY 2027-28.</li> <li>▪ Update the Charter to reflect the PEC’s current staffing levels.</li> <li>▪ Prohibit a reduction in the PEC’s minimum staffing requirement that is proportionally higher than a general reduction in City staff in a fiscal year or two-year budget cycle.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Currently, the Charter provides the PEC with a minimum of 10 staff positions, 7 of which are specific positions. PEC staffing may only be reduced if the City is facing an extreme fiscal necessity and as part of a general reduction, however, the reduction to PEC staffing may be disproportionate to the cut taken by other Departments.</li> <li>▪ Currently, the Charter mandates that the PEC have 2 Enforcement staff, a staffing ratio that has not been updated in a decade. The PEC’s caseload now vastly outpaces the PEC’s staff capacity, which has forced around 60% of the PEC’s cases to be placed on hold.</li> <li>▪ Minimum staffing is an important aspect of the PEC’s independence. The PEC cannot serve as a watchdog agency if it is not adequately staffed. Best practice for watchdog agencies is to insulate their staffing from the political process, to ensure staffing does not fall beyond certain minimums required for its effective operation and to avoid the risk or appearance that political pressure is being exerted on the watchdog agency through the budget process.</li> <li>▪ This recommendation gradually increases the PEC’s enforcement staffing minimums by two positions over three fiscal years. The PEC estimates that two additional investigators is the minimum staffing increase it requires to keep pace with its caseload.</li> <li>▪ This recommendation also provides that any cuts to the PEC’s minimum staffing levels should be in proportion to cuts taken by other departments, to avoid significant disruptions to the Commission’s ability to function and to minimize the risk or appearance that the PEC</li> </ul>

		is being uniquely targeted. The recommendation also provides some greater job position flexibility in selecting job classifications to meet staffing needs.
<b>G. Legal Capacity</b> C.603(b)(3),(g)(5),(i); OMC 2.24.050, 2.24.060	<ul style="list-style-type: none"> <li>▪ Provide that the Enforcement Chief may be an attorney.</li> <li>▪ Authorize the PEC to hire legal staff, including outside counsel in its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual or perceived conflict in the City Attorney representing the Commission.</li> <li>▪ Codify in the Charter that the City Attorney provides legal advice and assistance to the Commission.</li> <li>▪ Require a reasonable budget for hiring outside counsel, investigators, or holding administrative hearings.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Currently the City Attorney is the designated legal counsel for the Commission, except in cases of a legal conflict, in which case the City Attorney selects outside counsel for the Commission. Despite being a quasi-judicial agency, the Commission does not have any authorized legal positions and cannot on its own retain outside counsel.</li> <li>▪ This recommendation enables the PEC to have more in-house expertise in the laws it enforces and eliminates the potential for real and perceived conflicts of interests resulting from the fact that the City Attorney, all candidates for City Attorney, and the entire staff in the City Attorney’s office are regulated by the Commission. The recommendation follows best practices recommended by good government nonprofits and used by other ethics commissions. While important for independence, in most matters, the PEC would continue to rely on the services of the City Attorney’s Office.</li> <li>▪ <b>Similar to:</b> FPPC, Los Angeles, San Francisco, San Diego, Sacramento</li> </ul>
<b>H. PEC Legislative Proposals</b> [New sub-section]	<ul style="list-style-type: none"> <li>▪ Require the Council to consider PEC legislative proposals within 180 days.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Currently, the Commission may recommend policy changes to laws it enforces to the City Council, but there is no requirement that these proposals be considered. In other jurisdictions, Ethics Commission recommendations for good government reforms have languished for years or never been taken up.</li> <li>▪ This recommendation ensures that good governance proposals are considered by the full Council.</li> </ul>
<b>I. Salary Setting</b> C.603(c)	<ul style="list-style-type: none"> <li>▪ Change the frequency that the PEC must adjust the City Attorney and City Auditor’s salaries from annually to every two years</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fully reassessing the City Attorney/City Auditor’s salary every year requires a significant expenditure of staff time, although in many years the adjustment may be modest. This recommendation aligns the City Attorney/City Auditor salary adjustment schedule with the same two-year cycle used for the City Council, which is more administrable.</li> </ul>
<b>J. Lobbyist Gifts</b> OMC 3.20.180	<ul style="list-style-type: none"> <li>▪ Prohibit lobbyist gifts to elected officials, candidates, and their immediate family, subject to certain existing exceptions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current rules for lobbyist gift-giving are confusing – such gifts may be subject to a \$240 or \$50 limit, depending on the context.</li> <li>▪ Lobbyist gifts to the lawmakers they are lobbying may create a heightened risk or appearance of corruption.</li> </ul>

		<ul style="list-style-type: none"> <li>▪ This recommendation is intended to increase public confidence in governance and aligns Oakland with best practices in other jurisdictions, like San Francisco and Los Angeles, that prohibit such gifts. This recommendation also provides a clearer and more administrable rule for lobbyists and officials.</li> <li>▪ This recommendation complements the preceding proposals and helps shape a cohesive message that these proposed reforms serve an anti-corruption interest.</li> <li>▪ <b>Similar to:</b> San Francisco, Los Angeles</li> </ul>
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### Primarily Clarifying Changes

Recommendation /Sections	Proposal	Rationale
<b>K1. Holdover Term</b> C.603(d)(3)	<ul style="list-style-type: none"> <li>▪ Clarify that a Commissioner may continue to serve on the PEC after the expiration of their term until a replacement is appointed, but limit the holdover term to a maximum of 1 year.</li> </ul>	<ul style="list-style-type: none"> <li>▪ This clarifies existing practice: The City’s existing practice is to allow members of boards and commissions to serve in a holdover capacity until a replacement is appointed, which helps to ensure a smooth transition between commissioners. For clarity, this recommendation codifies that practice as to the PEC, but also limits the holdover term to one year.</li> </ul>
<b>K2. Vote Threshold</b> C.603(d)(4)	<ul style="list-style-type: none"> <li>▪ Clarify that the Commission may take action by a majority of those present at a meeting, except where a different vote threshold is required by the Charter or voter-approved law.</li> </ul>	<ul style="list-style-type: none"> <li>▪ This clarifies existing practice: The Charter specifies that, for certain actions the PEC takes, a specified vote threshold is required. For example, the PEC may only impose administrative penalties with the affirmative vote of 4 Commissioners. Where no vote threshold is specified, the PEC’s Operational Procedures provides that a majority vote of those present suffices. For consistency, this recommendation codifies that requirement in the Charter.</li> </ul>
<b>K3. Records Confidentiality</b> C.603(f)(3)	<ul style="list-style-type: none"> <li>▪ (1) Clarify that confidentiality of Enforcement records applies to matters in both the “Preliminary Review” and “Investigation” stage.</li> <li>▪ (2) Clarify the point in time when Enforcement files become disclosable public records.</li> </ul>	<ul style="list-style-type: none"> <li>▪ (1) This codifies PEC confidentiality requirements under state law and harmonizes them with the terminology used in the PEC’s Complaint Procedures as to “preliminary review” and “investigation.”</li> <li>▪ (2) This codifies the PEC’s current practice and harmonizes with state law (Enforcement files are not disclosed until either Enforcement findings are made public, or the Statute of Limitations passes)</li> </ul>

	<ul style="list-style-type: none"> <li>▪ (3) Clarify that disclosing evidence to other enforcement agencies, or when charging/prosecuting/resolving a case, does not constitute a waiver of confidentiality.</li> </ul>	<ul style="list-style-type: none"> <li>▪ (3) This codifies the PEC’s current practice and harmonizes with state law, which allows for disclosure of evidence in furtherance of the enforcement process.</li> </ul>
<b>K4. Amendments to PEC Governance</b> C. 603(h); OMC 2.24.110	<ul style="list-style-type: none"> <li>▪ Clarify that Council amendments to the laws the PEC administers and the PEC’s procedures in Chapter 2.24 of the Municipal Code also require notice and comment to the Commission prior to being amended</li> </ul>	<ul style="list-style-type: none"> <li>▪ This clarifies when the PEC must be consulted before a law affecting the PEC is amended or adopted: Under the City Charter, before the Council may amend laws the PEC <i>enforces</i>, the proposed amendment must be submitted to the PEC for notice and comment. This recommendation clarifies that this provision includes laws the PEC <i>administers</i>.</li> </ul>