



AGENDA REPORT

TO: City Council

FROM: Nicolas Heidorn
Executive Director
Public Ethics Commission

SUBJECT: Proposed Ballot Measure to
Modernize and Strengthen Ethics
Oversight in the City of Oakland

DATE: May 16, 2024

RECOMMENDATION

Public Ethics Commission (PEC) Staff Recommends That The City Council adopt the following resolution:

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, 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 HIRE OUTSIDE LEGAL COUNSEL IN ADDITION TO USING THE CITY ATTORNEY TO RENDER LEGAL ADVICE AND SERVICES TO THE COMMISSION RELATING TO LAWS THE COMMISSION ADMINISTERS OR ENFORCES;**
- (7) EXPAND THE TYPES OF LAWS THAT THE CITY COUNCIL MUST FORWARD TO THE COMMISSION TO REVIEW;**

(8) REQUIRE THE CITY COUNCIL TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;

(9) AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY ON A BI-ANNUAL BASIS; AND

(10) AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE OF ANY AMOUNT THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY; 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

EXECUTIVE SUMMARY

The Public Ethics Commission (Commission or PEC) recommends the adoption of this Resolution to place a Charter Amendment and Ordinance Amendment measure on the November 5, 2024, General Election ballot to strengthen City ethics laws by safeguarding the Commission's independence from outside influence, modernizing its governance and procedures, and enhancing its staffing and administrative capacity to meet current responsibilities.

Measure CC (2014) was a landmark measure which established the modern PEC, including its minimum staffing and general procedures. However, there have been no significant revisions to the PEC's governance structure since the adoption of that measure ten years ago. This measure is intended to update the Commission's charge and governance to incorporate best practices proven to be effective in other jurisdictions and to align the Commission's structure and staffing to better accomplish its core responsibilities.

Significant elements of this proposal include:

- **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 faction.
- **During 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.
- **Commissioner Vacancy Appointment:** Providing 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 to ensure extended vacancies do not impact Commission operation.
- **Staffing:** Increasing Enforcement's minimum staffing by 1 Investigator in FY 2025-26 and 1 additional FTE in FY 2027-28 to address the Commission's critical case backlog. Providing that, in times of extreme fiscal necessity, Commission staff may be reduced up to the same proportion as any Citywide reduction in staffing.
- **Legal Capacity:** Providing that the Enforcement Chief may be an attorney and authorizing the Commission to hire or contract for legal staff to assist with the enforcement of laws under the Commission's jurisdiction.
- **Salary-Setting:** 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, consistent with best practices in other jurisdictions.

These policies are described in greater detail in the memo below. Attachment A also includes a summarized breakdown of the policy changes being advanced in this proposal and the rationale for the proposal.

Collectively, the Commission believes these reforms will modernize the PEC and help re-establish Oakland as a leader in ethical and accountable government. This good government measure will enhance Oaklanders' trust in government by strengthening the City's anti-corruption rules, establish the PEC more firmly as a vigorous, independent entity free of political influence, and move Oakland toward the more inclusive democracy that voters demanded with the passage of Measure W (2022).

BACKGROUND / LEGISLATIVE HISTORY

In 2014, the City Council unanimously proposed, and the voters overwhelmingly (73.9% in favor) adopted, Measure CC, which added Section 603 to the City Charter. For the first time, Measure CC guaranteed minimum staffing for the Commission and adopted other reforms to significantly strengthen the Commission's independence. Measure CC also incorporated several ethics commission best practices to ensure the Commission would be a fair, effective, and impartial watchdog over, and enforcer of, Oakland's ethics, campaign finance, lobbying, and transparency laws. In significant part due to the success of those reforms, the PEC's workload and assigned responsibilities have expanded significantly in the decade since Measure CC's passage. However, there have been only minor amendments to Section 603 since then; 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 for ensuring ethics commission independence.

At its August 25, 2023 retreat, the PEC set a goal of reviewing the City Charter provisions establishing the Commission as one of its 2023-2024 priorities. The Commission formed a Charter Review Subcommittee, which met multiple times to develop reform proposals. In addition to examining each provision of City Charter Section 603, the Subcommittee also looked at the organizational structure and procedures of:

- Other City of Oakland independent commissions created after the PEC, including the City's Independent Redistricting Commission;
- The State Fair Political Practices Commission (FPPC);
- Other California local ethics commissions, and especially Oakland's closest peer commissions in Los Angeles, San Francisco, and San Diego;
- Select non-California local ethics commissions; and
- Best practices for ethics commissions as identified by good government organizations such as the Campaign Legal Center or City Ethics.

The Subcommittee submitted a proposal to modernize the Commission in three ways: by strengthening PEC staffing and administrative capacity to meet growing Commission needs; by strengthening PEC independence, to promote the integrity of the PEC's work and public trust in the body; and to align the Charter with the PEC's new mission of building a more inclusive democracy. The Commission considered the Subcommittee's proposals on March 13, 2024, and on April 10, 2024, when it endorsed a set of proposed Charter and Municipal Code amendments and authorized the Executive Director, working with the Commission Chair, to request Council support to place a package including some of these proposals on the November 2024 ballot for voter consideration. This proposal includes a subset of those proposals adopted by the Commission at its April meeting.

ANALYSIS AND POLICY ALTERNATIVES

This proposal includes several policy recommendations intended to strengthen the Commission's staff capacity, independence, and ability to fulfill its core mission:

A. Align the Charter with the Ethics Commission's New Role of Promoting a More Inclusive Democracy

To better align the Charter with the PEC's expanded mission under Measure W (2022), this proposal would specify that one of the Ethics Commission's roles is to promote more inclusive, representative, and accountable democracy in Oakland.

The PEC has traditionally been primarily an enforcement and government watchdog agency, which is presently reflected in the City Charter. The Charter defines the PEC's primary roles as being the (1) "enforcement of laws, ... intended to assure fairness, openness, honesty and integrity in City government," (2) education on such laws, and (3) "impartial and effective administration" of its programs. The Charter further enumerates a number of specific duties of the Commission, including different laws the Commission enforces.

With the passage of Measure W, the Commission's role expanded to administering the Democracy Dollars public financing program, which is set to launch in 2026. Under this Program, modeled off a similar program in Seattle, eligible Oakland residents will receive four \$25 vouchers

which they may contribute to a participating City or Oakland Unified School District (OUSD) candidate. The City Council proposed the Program as part of a larger commitment to increasing equity in the City's political process. A [study](#) by the PEC found that "Oakland's existing campaign finance system gives donors from outside of Oakland and Oakland residents in wealthier, whiter neighborhoods disproportionate influence in choosing elected officials and potentially shaping policy outcomes over everyone else." The Commission recommended the voucher approach to public financing because it "shows the most promise for bringing equity to the campaign finance process since it equips all voters and other eligible residents with campaign 'cash' to contribute to campaigns, thereby incentivizing candidates to engage across demographics regardless of wealth and history of prior engagement." Oakland voters approved Measure W with 73.9% of the vote.

This proposal would align the Commission's mission statement in the Charter to reflect the this expanded mission.

B. Strengthen Commissioner Qualifications to Promote Commission Independence

To avoid the appointment of a Commissioner who may appear beholden to, or biased in favor of or against, a candidate, incumbent, or political faction, this proposal would tighten the eligibility requirements for who can serve on the Commission.

The impartiality, and perceived impartiality, of Ethics Commissioners strengthens public confidence in the Commission's work. Commissioners serve in a quasi-judicial role where they adjudicate whether or not incumbents, candidates, and City officials have violated City ethics or campaign finance laws, among other laws. Commissioners also have the sensitive responsibility of administering the Democracy Dollars Program beginning in 2026, which for some candidates could be their largest sources of funding for running for City office. The selection of a Commissioner who appears to be strongly biased in favor of an official, candidate, or political faction could undermine public trust in the Commission, its adjudications, and its implementation of critical programs like Democracy Dollars.

In structuring an ethics commission, the [Campaign Legal Center](#), a good government nonprofit, advises putting up minimum qualification guardrails to protect against the appearance of bias so that it is "clear to the public that the ethics commission serves the public interest and not the interests of those groups subject to the commission's oversight." [City Ethics](#), a nonprofit that advocates for local ethics reform best practices, similarly advises prohibiting the appointment of commissioners who were recently "party officials, recent government officials, individuals who have done substantial work in local political campaigns, large contributors, or political advisers." In its [Model Code](#), City Ethics recommends excluding from appointment anyone who has engaged in these activities in the prior three years. This would not exclude from appointment people who have political or lobbying expertise in their past, which can be valuable to have on an ethics commission, but does require there be some distance between when a person last engaged in Commission-regulated activities and their appointment.

Under current law, the only universal requirement to serve on the Oakland Public Ethics Commission is that a person be a registered voter and that they have attended one prior meeting of the Commission. For appointees of the Mayor, City Attorney, and City Auditor only, appointees also cannot have been paid during the past two years for work by a committee controlled by the

appointing official. Consistent with best practice, this proposal would broaden that requirement to prohibit *any* Commissioner from having been a campaign employee of any candidate running for City or OUSD office in the prior two years. The proposal would similarly prohibit the appointment of someone who, in the two years prior to their appointment, was: a City or OUSD elected official, or the staff or immediate family of an elected official; a candidate for City or OUSD office; a registered City lobbyist; the officer or employee of a political party; or someone who has contributed in the aggregate more than two times the City contribution limits (\$1,200 in 2024) to candidates for a City or OUSD office or to a campaign committee making independent expenditures in City or OUSD campaigns.

This change would update the Commission's qualifications to align with best practices recommended by good government organizations and commonly used in more modern independent commissions. While Oakland's current Ethics Commissioner qualifications are fairly similar to those of other older ethics commissions, like Los Angeles and San Francisco, the trend among more recently established ethics commissions is to include stronger requirements up front to prevent recent political actors from being appointed to the Commission. For example, Sacramento's Ethics Commission, which was established in 2017, prohibits major campaign donors, recent lobbyists (in the prior two years), and recent officeholders and candidates for office (prior four years) from being appointed to the Commission.

Oakland has already adopted a similar model with respect to its more-recently established Independent Redistricting Commission, which also excludes from appointment applicants who were recently lobbyists, candidates, or a consultant to a City political campaign. This proposal establishes similar, but less strict, restrictions as the City's Redistricting Commission, in recognition of the fact that the PEC must recruit civically active residents to serve on the Commission on a nearly annual basis, as compared with the Redistricting Commission which only recruits applicants once every ten years.

C. Adopt Common Sense Commissioner During-Service Restrictions to Avoid Conflicts of Interest

To further promote Commissioner impartiality and independence, the proposal would also tighten some of the restrictions on Commissioner activities while serving on the Commission. The PEC already imposes a number of common-sense restrictions on Commissioners while serving on the Commission, including that they cannot run for office in a jurisdiction that intersects with Oakland, participate in or contribute to municipal campaigns, lobby, or be City employees. Because the Commission regulates campaigns, lobbyists, and City officials and employees, these restrictions help to prevent Commissioners from having a conflict of interest or the appearance of one. In the campaign context in particular, these restrictions also reinforce Commissioners' impartiality by avoiding a situation where a Commissioner's campaign activity may make it appear that they are biased for or against a candidate or ballot measure.

This proposal makes modest extensions to these rules, modeled on restrictions in other jurisdictions, by: prohibiting commissioners from being officers or staff of a political party (which may suggest bias against other partisans) during their tenure; clarifying that the restriction against Commissioners contributing to "municipal" campaigns during their tenure also applies to OUSD campaigns; and prohibiting Commissioners from being employed by or receiving gifts from a City or OUSD elected official during their tenure. In addition to aligning with best practices found in

other jurisdictions, this requirement would more closely align to the types of during-service restrictions that apply to Oakland Independent Redistricting Commissioners.

Other Jurisdictions — During & Post-Service Restrictions

Jurisdiction	During Service Only	During & Post-Service
Oakland	Cannot: - Seek election to public office in a jurisdiction intersecting with Oakland - Participate in or contribute to an Oakland municipal campaign - Endorse or work on behalf of candidate/measure in Oakland election	<i>During & 1 year post, cannot:</i> - Be employed or contract with the City - Be a registered lobbyist or employed by/receive gifts from a registered lobbyist
Oakland Redistricting Commission	[See next column]	<i>During & 10 years post:</i> hold elective office for City <i>During & 4 years post:</i> - hold appointive City or OUSD office - serve as paid staff/consultant to Councilmember or OUSD member - Receive a no bid City contract - Register as a City lobbyist
FPPC	Cannot: - Hold or seek election to public office - Serve as an officer of any political party or partisan organization - Participate in or contribute to a campaign - Employ or be employed as a lobbyist - Receive a gift over \$10/month	None specified
Los Angeles	- Hold public office - Participate or contribute to a City or School Board campaign - Participate or contribute to a councilmember or school board member running for another office - Employ or be employed as a lobbyist	- Cannot run for City or School Board office unless it is 2 years past the end of their term
San Diego	Cannot: - make a financial contribution to City candidate - participate in a campaign supporting or opposing a candidate for City office - participate in a campaign supporting or opposing a City ballot measure (<i>except</i> one affecting the Commission) - become a candidate for elective office - become a City lobbyist	- For 12 months, can't be a candidate for elective governmental office
San Francisco	Cannot: - Hold any other City or County office or be an officer of a political party - Be a registered lobbyist, campaign consultant, or receive gifts/compensation from same - Hold employment with the City - Participate in any campaign supporting or opposing a candidate for City office, a City ballot measure, or a City officer running for any office	None
Sacramento		<i>During & 1 year post, cannot:</i> - Be appointed to a City Commission - Be paid staff/consultant to City elected official - Receive a no bid City contract - Register as a City lobbyist. <i>During & 4 years post, cannot:</i> - Hold City elected office

One area where the proposal would *relax* restrictions is by permitting Commissioners to advocate for or against ballot measures affecting the PEC, which mirrors the rule for San Diego's Ethics Commission. This would permit Commissioners, who are particularly knowledgeable about the Commission's structure and laws, to share this perspective with the public. Commissioners are generally prohibited from advocating for or against measures because the Commission may have to adjudicate whether a ballot measure committee has violated the City's campaign finance laws; however, for measures affecting the PEC, the Commission's practice is already to refer such complaints to other agencies, like another local ethics commission, to avoid the appearance of bias.

D. Adopt a More Reasonable Automatic Removal Policy and Permit the Council and Commission to Remove Commissioners for Cause and by Supermajority Vote

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. This recommendation would instead permit 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.

The Charter also provides that a Commissioner is automatically removed from office if they are absent from the City of Oakland for more than 30 days, without permission of the Commission. This penalty is excessive: since the Commission typically only meets monthly, a 30-day absence would mean missing just one meeting. Moreover, it risks inadvertently removing a Commissioner who takes an extended vacation without first seeking permission. This proposal would instead provide for automatic removal of a Commissioner who misses three consecutive regular Commission meetings without permission from the Chair.

E. Reform the Vacancy-Filling Procedures to Avoid Long Vacancies that May Impede the Commission's Effectiveness

In recent years, the Commission has gone for extended periods of time with Commissioner vacancies. Under this proposal, if a Commission vacancy has not been filled within 120 days by an appointing Citywide official, the responsibility for filling the vacancy would transfer to the PEC.

The Commission has seven members – three appointed by the Mayor, City Attorney, and City Auditor, and the remaining four selected by the Commission – and needs a quorum of four members to hold a meeting. Extended vacancies impact the Commission's ability to adjudicate cases or adopt policies, some of which are time-sensitive. Presently, the PEC has one seat that has been vacant for over 16 months, which contributed to the Commission having to cancel a meeting last year for lack of a quorum. Ethics commissions in other jurisdictions have faced more serious challenges. Last year, the Los Angeles Ethics Commission was legally unable to meet for months because the number of appointed commissioners fell below quorum.

Even when the Commission is able to meet, vacancies can make taking action more difficult. Under the Charter, certain Commission actions require 4 or 5 votes, like adjudicating cases. For example, if the Commission has two vacancies, the vote threshold to adjudicate a case requires

a 4/5 vote, and therefore far greater unanimity amongst Commissioners to take action than the 4/7 vote required when there are no vacancies.

Oakland's Charter attempts to prevent long vacancies by authorizing the City Council to fill a PEC seat appointed by a Citywide official that has been vacant for more than 90 days; however, for the Council to exercise this option it would in effect be "taking" an appointment away from a Citywide elected official, which is politically sensitive, and would likely only be done if the Council and Citywide official were at odds. Under this proposal, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy would transfer to the Commission, which would hold an open application process and fill the seat. This proposal provides more time for Citywide officials to fill vacancies but also a more definite deadline for doing so.

F. Gradually Increase Minimum Enforcement Staffing to Address a Severe Case Backlog and Require that Cuts to Commission Staffing Be Proportionate to Citywide Staffing Cuts

To ensure the Commission has sufficient staffing to fulfill its enforcement and watchdog role, this proposal would amend the Charter to increase the Commission's minimum enforcement staffing from two positions to four phased-in over a period of three years to minimize costs.

One of the Commission's core responsibilities is to investigate and prosecute violations of Oakland's anti-corruption laws, including government ethics, campaign finance, and lobbying laws. This includes serious violations, like allegations of bribery or conflicts of interest, that can also impose significant costs to the City if not caught or deterred. The PEC's current enforcement staffing minimum of one Enforcement Chief and one Ethics Investigator were set a decade ago, in 2014, with the passage of Measure CC. Those staffing levels were based on the Commission's caseload at the time; however, over the past ten years the PEC's caseload has greatly increased, and these staffing minimums – which have not been increased through the discretionary budget process – are no longer sufficient to meet the Commission's caseload demands. For example, the Commission processed 40 new cases between 2014-15, compared with 75 new cases between 2022-2023 – *almost double the number of cases in ten years*. Caseload now vastly exceeds staff capacity and, as of May 15, 2024, 56% of the PEC's cases (excluding routine Form 700 missed deadline cases) had to be placed on indefinite hold.

The PEC presently projects that most of its cases will take years to resolve at current staffing levels, which will impede enforcement and harm public confidence in government. Older cases are harder to prosecute, because witnesses' memories fade and documentary evidence may be misplaced or destroyed; they place the City at-risk, because unpunished violations can create the appearance that there are no consequences for future violations; and they cause allegations to linger, depriving complainants and respondents of closure.

Guaranteed minimum enforcement staffing is essential to the proper functioning of a watchdog agency and considered a best practice. A [report](#) by Robert Weshler on ethics commission best practices, published by City Ethics, explains that a guaranteed budget or staffing is important to send "a clear message to the public that the ethics program is independent." Similar findings were in Resolution CMS 85111 (Kalb), which placed Measure CC on the ballot establishing the Commission's current minimum staffing, noting in the preamble that an "adequately funded watchdog agency is critical to increasing the public's trust in governance."

This proposal would bring the Commission's staffing closer in line with its peer jurisdictions. Oakland has a current staff to caseload ratio of one dedicated enforcement staffer per 42 cases,¹ compared with San Francisco's much lower ratio of one staffer per 14 cases. The PEC's Enforcement Program estimates that a bare minimum of two additional investigators are required to keep up with the PEC's current caseload, although the PEC's actual full staffing needs are higher. This proposal would increase the Commission's minimum enforcement staffing by one investigator position effective July 1, 2025, and an additional enforcement position – which might include an investigator, auditor, or staff attorney (to assist with prosecutions), depending on Commission needs – effective July 1, 2027. Once phased-in over three years, this would bring the Commission's ratio down to 22 cases per dedicated staffer, assuming current caseload numbers hold.

Under current law, the Commission's minimum staffing ratios, which apply to both its enforcement and non-enforcement staff, may be suspended for a fiscal year or two-year budget cycle if the Council declares that the City is facing an extreme fiscal necessity. This proposal would modify that requirement to specify that any reduction in Commission staffing may not exceed the overall reduction in staffing for all City employees paid out of the General Purpose Fund. This change would still permit the Commission's staff to be cut, but at most in the same proportion as Citywide staffing cuts. This change is important to ensure both the functionality and independence of the Commission. Without protection, ethics commissions may be threatened or targeted for defunding through the budget process for investigating or making a decision contrary to the interests of an officeholder, which has occurred in other jurisdictions.²

G. Strengthen the Commission's Legal Capacity to Enforce and Administer Ethics Laws

This proposal would permit the Commission to hire legal staff, including outside counsel at its discretion, to provide legal services relating to the laws the PEC administers or enforces, or when the PEC determines there is an actual conflict in the City Attorney representing the Commission.

The PEC administers and enforces a sometimes complex body of law, especially when applied to nuanced fact patterns. For reasons of capacity and independence, the Commission should have the authority to employ in-house attorneys or to contract for specialized legal expertise to interpret, apply, and enforce these laws, which may include appearing in court on the Commission's behalf when necessary (e.g., for an injunction or to enforce a subpoena). The need for in-house legal expertise is especially true of the Enforcement Chief, who is the chief prosecutor for the Commission, and needs a firm understanding of the laws the Commission enforces as well as a general legal grounding in administrative law and substantive due process. Moreover, because the Commission regulates the City Attorney's Office, the Commission should not be solely reliant on that office for legal advice or services, which may create the appearance of a conflict; this is especially true in Oakland, where the City Attorney is also an elected official who must campaign for office.

Many other established ethics commissions in California either have attorneys on staff or the ability to hire outside counsel, which is generally considered to be a best or essential practice for

¹ The number excludes Form 700 missed deadline cases, which are handled in bulk and do not require significant individual investigation.

² See David Zahniser, "Ethics Commission staff were told to soften their advice on gifts, whistleblower says," *Los Angeles Times* (Feb 25, 2021) (According to a whistleblower, "a member of the [Los Angeles] City Council had 'threatened to cut the Ethics Commission's budget if they did not give more permissive advice' on certain gift rules.").

ethics commissions. For example, the FPPC and Los Angeles Ethics Commissions are expressly authorized to employ attorneys, whereas San Diego and Sacramento require that their commissions hire outside counsel to avoid the appearance that these boards are relying on the city attorney. “A commission should have its own independent experts, including investigators, auditors, general counsel, and trainers,” explains the Campaign Legal Center. “By relying on these independent experts, a commission can not only obtain independent advice and analysis of facts and law in specific cases, but also avoid the appearance that it depends on an elected official or appointee of an elected official, such as a secretary of state or city attorney.”

Under this proposal, the PEC would not exclusively rely on its own or outside counsel and would in fact continue to use the City Attorney for legal advice and services in most instances, especially for all issues outside of the Commission’s subject matter expertise. In rare cases where the City Attorney may be legally conflicted out of providing legal advice or services to the Commission, the Commission should select its outside counsel, to avoid any appearance that the Attorney may be selecting a counsel sympathetic to their interests. The proposal would also provide the Commission with a reasonable budget for holding administrative hearings in complex matters and hiring outside counsel to provide legal advice.

Other Jurisdictions – Legal Capacity

Jurisdiction	Role of City Attorney	Commission Legal Staff Positions?	Commission Can Hire Outside Counsel?
Oakland	- City Attorney appoints one Commissioner - City Attorney is Commission’s counsel - PEC consults with City Attorney on oral advice and written opinions	None	City Attorney may retain outside counsel for Commission if there is a conflict
FPPC	Commission may request legal advice from the Attorney General	May employ legal counsel	Yes - can contract for services that can’t be performed by staff
Los Angeles	City Attorney provides legal services to commission	May employ or contract for staff counsel to give advice to the commission and to act on matters involving the City Attorney	Yes, see previous column
San Diego	City Attorney nominates appointees	Must retain own legal counsel outside of City Attorney	Yes - must retain own legal counsel outside City Attorney (also has attorneys on staff)
San Francisco	- City Attorney is legal advisor to Commission - Commission reports findings to City Attorney when appropriate - Commission transmits some advisory opinions to Attorney	Commission can employ individuals who have graduated from a law school to assist with advice and opinions	None Provided
Sacramento	- City Attorney assists Commission with its investigatory procedures - Commission advises City Attorney on law firms to use to investigate sexual misconduct	None	Yes - required for all investigations

H. Ensure Commission Legislative Proposals are Considered by the Council

An important responsibility of local ethics commissions is to periodically review and recommend improvements to the laws the commission enforces or administers to promote more honest and

accountable government. This helps to ensure that ethics and campaign laws stay up-to-date with best practices in the field and other local jurisdictions, or to meet specific needs in that local jurisdiction. However, because ethics laws often restrict the actions of those in power, there may be pressure to not provide a hearing for such proposals. For example, in Los Angeles, City Council leadership declined for years to hold a hearing on proposals by its ethics commission to overhaul the City's lobbying laws.³

This proposal would require that Commission legislative proposals on the laws it enforces or administers be considered by the full City Council within 180 days. It is modeled after a similar charter amendment proposal recently endorsed by the Los Angeles City Council for the November 2024 ballot.

I. For Administrative Efficiency and Equity, Align the Timing of City Attorney and City Auditor Salary-Setting with that of the Council and Mayor

For administrative efficiency and equity with other offices, this proposal would change the frequency with which the Commission adjusts the City Attorney and City Auditor's salary from annually to every two years, which is the same frequency for adjusting the City Council and Mayor's salary.

Fully reassessing the City Attorney and City Auditor's salary every year requires a significant expenditure of staff time, including updating the salary schedules for over a dozen comparable jurisdictions, although in many years the adjustment is likely to be modest and similar to changes in inflation. Salary adjustments can also be politically contentious, which can also take up significant staff and Commissioner bandwidth. Presently, the Commission sets the Council's salary, and another proposed ballot measure before the City Council may move the responsibility for setting the Mayor's salary to the Commission as well. Aligning all these salary adjustments to occur at the same time would provide more efficiency of operation for Commission staff.

J. Prohibit Lobbyist Gifts to Prevent the Risk or Appearance of Pay-To-Play

Oakland currently permits lobbyists to give up to \$240/year to an elected official, candidate, or their immediate family. However, because the purpose of a lobbyist is to influence government action, lobbyist gifts to elected officials are at heightened risk of being or being seen as transactional, which can undermine public confidence in government. This proposed measure would prohibit registered lobbyists from giving gifts to elected officials, candidates, and their immediate family, subject to some existing exceptions.⁴

Many of Oakland's peer jurisdictions regulate lobbyist gifts far more strictly to avoid corruption or its appearance. Los Angeles and San Francisco prohibit lobbyist gifts entirely to elected officials, while the State and San Diego permit gifts of only \$10/month. A \$10/month limit permits lobbyists to take officials out for an occasional coffee but precludes larger one-time gifts, as Oakland's limits allow. Because even the routine treating of elected officials with small perks can undermine public confidence in government and, because \$10 is below the state gift reporting threshold making enforcement more difficult, the Commission recommends a ban instead. Bob Stern, one of the original architects of the State Political Reform Act, which created the \$10/month lobbyist gift

³ Los Angeles Times, L.A. is finally cracking down on stealth lobbying (Feb. 14, 2023).

⁴ Existing exceptions include campaign contributions, tickets to fundraising events, food and lodging provided at a lobbyist's home, informational material, and services rendered or bargained for. OMC 3.20.180(B).

limit, has since argued that it would have been better and more administrable to just ban lobbyist gifts entirely.⁵

Other Jurisdictions – Lobbyist Gift Regulation

Jurisdiction	Max Lobbyist Gifts to Elected Officials
Oakland	\$240/year
FPPC	\$10/month
Los Angeles	Prohibited
San Diego	\$10/month
San Francisco	Prohibited

Oakland's current lobbying gift rules can also vary based on the context, opening the door to potential inadvertent violations by lobbyists and elected officials. Generally, Oakland public servants are prohibited from receiving gifts of more than \$250 per year, unless certain exceptions under the Political Reform Act apply. (OMC 2.25.060(C)(2).) Lobbyists, however, are instead subject to a \$240 per year limit, which is just \$10 lower than the standard limit. (OMC 3.20.180(A).) But, if the lobbyist "knowingly attempted to influence the Public Servant in any legislative or administrative action" in the prior 12 months, the limit as to that Public Servant is instead \$50. (OMC 2.25.060(C)(3).) These three different standards can create regulatory traps that a simpler complete ban would avoid.

K. Other Clarifying Changes

The proposal also includes a number of changes that clarify potentially ambiguous sections of the Charter to generally align them with the Commission's existing practice or Operations Policies, including:

- **Holdover Term:** Clarify that a Commissioner whose term has expired may continue to serve until a replacement is appointed, up to one year.
- **Vote Threshold:** Clarify that the Commission acts by a majority vote of those present, except as otherwise provided.
- **Records Confidentiality:** Clarify the point in time that Enforcement files become disclosable public records.
- **Amendments to PEC Governance:** Clarify that Council amendments to the sections of the OMC that the PEC administers, including Chapter 2.24, require notice and comment to the Commission prior to enactment, as is the case with amendments to the laws the PEC enforces.

Additional detail on these clarifications is included in the policy breakdown in Attachment A.

⁵ Bob Stern, Presentation on the Origins and History of the Political Reform Act of 1974, [Fair Political Practices Commission, June 17, 2021](#). Regarding the creation of the Political Reform Act, Stern said, "we were not perfect. We wrote some provisions I would change today. First, I would change the \$10 lobbyist gift limit. It should have said 'no gifts at all.' But, we were concerned that a cup of coffee provided by a lobbyist to a public official would be a violation. So, we put in a monetary amount. ... It would have been much easier, however, just to ban the gifts, since we soon found out that lobbyists were providing gifts up to the limit or even combining the \$10 limit with other lobbyists."

FISCAL IMPACT

If this proposal is approved by the voters, the Commission estimates the annual fiscal impact in FY 2025-2027 to be \$282,395, mostly to hire an additional Investigator. In FY 2027-2029, the annual fiscal impact would increase by an additional \$182,112 to \$327,055 to hire an additional enforcement staff position (depending on the job classification).

The proposal would also limit the City's discretion to reduce the Commission's minimum staffing requirement when an extreme fiscal necessity has been declared so that any reductions in Commission staffing could not exceed the overall reduction in staffing for all City employees paid out of the General Purpose Fund for that fiscal year or two-year budget cycle.

In greater detail:

Effective July 1, 2025, the City would provide the Commission with an additional Investigator. The current one-year salary and benefits cost of an Investigator, budgeted at the highest salary step, is \$232,395.

Effective July 1, 2025, the City would also provide the Commission with a reasonable budget to contract for legal services, contract for investigatory services, and for holding administrative hearings. The most significant legal expense the Commission would anticipate is if the Commission had to contract for an Administrative Law Judge (ALJ). The last time the Commission contracted for an ALJ was in 2018, for a maximum contract amount of \$24,000. The Commission estimates that a budget of \$100,000 over a two-year budget period (\$50,000 annualized) would be sufficient for the Commission to cover the administrative costs of using an ALJ for one or two matters and for the Commission to seek one or two legal opinions from an outside counsel.

Effective July 1, 2027, the City would provide the Commission with one additional full-time equivalent non-administrative enforcement staff position, which may include an investigator, staff attorney, auditor, or other appropriate position to be determined as necessary by the Commission. The exact cost of this position would depend on the job classification that is hired but would likely be budgeted between \$181,112 and \$327,055. This range is derived from the current one-year salary (at the highest salary step) and benefits cost of a Performance Auditor at \$182,112; a Senior Performance Auditor at \$232,395; an Investigator at \$232,395; a Deputy City Attorney I at \$244,032; and a Deputy City Attorney II at \$327,055.

Other provisions would limit the City's discretion to reduce Commission staffing but do not impose new costs. Under current law, the minimum staffing requirements for the Commission may be suspended or reduced when the City is facing an extreme fiscal necessity. This was declared in the current budget cycle and 3 PEC positions were frozen. This proposal updates the City Charter's minimum staffing requirement to add an Administrative Analyst I position, which reflects the Commission's current budgeted and filled staff positions, so that this position could only be eliminated with the declaration of an extreme fiscal necessity. In addition, the proposal would prevent the Commission's minimum staffing requirement from being reduced in the future by more than the overall reduction in staffing for all City employees paid out of the General Purpose Fund for that fiscal year or two-year budget cycle. For example, if the City's workforce paid out of the General Purpose Fund were reduced by 20%, then the Commission's minimum staffing

requirement (currently, 10 charter-mandated positions) could be reduced by no more than that same proportion (currently, 2 employees).⁶

The Commission has requested that the Budget Office also provide a fiscal impact analysis of this proposal.

PUBLIC OUTREACH / INTEREST

On August 25, 2023, March 13, 2024, and April 10, 2024, the PEC considered different Charter and/or Municipal Code amendments that it might recommend that Council place on the November 2024 ballot. These meetings were publicly noticed and afforded an opportunity for input from the community. In addition, the Commission shared its full set of adopted proposals with the Bay Area Political Equality Collaborative (BayPEC), the sponsoring organizations that supported Measure W (2022), for their input.

COORDINATION

Staff worked with the Office of the City Attorney for the drafting of the Resolution.

SUSTAINABLE OPPORTUNITIES

Economic: A strengthened PEC that ensures compliance with lobbying, government ethics, campaign finance, and transparency laws may increase trust in government, which can promote a healthier business climate, and may deter or catch fraud or misuse of government funds.

Environmental: No environmental opportunities have been identified.

Race & Equity: Social equity depends on a political system that ensures a fair and equal opportunity for all individuals and interest groups to participate meaningfully in the City's elective and governmental process. Strengthening the staffing and administrative capacity of the PEC will improve the Commission's ability to implement the Democracy Dollars Program, one of the City's most important investments to create a political system and culture where all residents feel they have a voice in the political process. A PEC with appropriate resources, independence, and authority to provide adequate education and to properly enforce the laws under its jurisdiction also helps to ensure that all participants know the rules and are fairly held accountable if they choose not to follow them.

ACTION REQUESTED OF THE CITY COUNCIL

PEC staff recommends that the City Council adopt the proposed resolution.

For questions regarding this report, please contact NICOLAS HEIDORN, EXECUTIVE DIRECTOR, PUBLIC ETHICS COMMISSION, at 510-604-1002.

Respectfully submitted,

⁶ If the minimum staffing increases of this proposal are approved, PEC minimum staffing would increase to 13 staff by FY 2027-29.

Nicolas Heidorn

NICOLAS HEIDORN
Executive Director
Public Ethics Commission