



**ALAMEDA COUNTY'S
MENTAL HEALTH SYSTEM**

**OAKLAND'S USE OF
FORM 700**

**ELECTION INTEGRITY
IN ALAMEDA COUNTY**

**PROBATE
CONSERVATORSHIPS**

SANTA RITA JAIL

**CAMP SWEENEY
INSPECTION**

**FREMONT JAIL
INSPECTION**

**INDEPENDENT
OVERSIGHT OF BART**

**FIRE INSPECTIONS
IN OAKLAND**

**OAKLAND'S PLANNING &
BUILDING DEPARTMENT**

STUDENT HOMELESSNESS

**2021-2022
Alameda County Grand Jury
Final Report**

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2021-2022 Alameda County Grand Jury Final Report



Rene C. Davidson Courthouse and Lakeside Building/Grand Jury, Oakland

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 Photos on pgs. 7, 12 & 148 courtesy of grand jury staff.
 All jail photos taken by the Grand Jury.*

INVESTIGATION

The Grand Jury heard testimony from several city of Oakland officials, department heads, and the PEC. The Grand Jury reviewed extensive documents regarding the Form 700 process. The investigation involved substantial research and surveys of relevant state and city ethics rules. The Grand Jury used these sources of information to develop facts, findings, and recommendations.

Public Ethics Commission

The Oakland PEC is an independent commission charged with ensuring fairness, openness, honesty, and integrity in city government. The PEC's objective is to ensure that public officials and government decision-making processes operate fairly and in an unbiased manner, to support transparency in Oakland government, and to promote public trust.

The PEC has primary responsibility and power to investigate and enforce violations under the Act. Local law requires that the PEC oversee compliance with the Form 700 filing requirement and enforce the law as it relates to the content reported on the Form as well as conduct related

The City Clerk's office has responsibility for the Form 700 Filing Officer function while the PEC has responsibility for the Form 700 enforcement and training responsibilities. The Grand Jury learned that the City Clerk's office and the PEC rarely collaborate.

to any conflicts of interest. The PEC may order administrative fines, non-payment of which is a debt to the city. Oakland may file a civil action or pursue any other legal remedy to collect these debts, including costs and attorney's fees. The PEC urges designated filers to comply with ethics rules to "avoid potential criminal, civil or administrative penalties (fines and jail time)."

The PEC conducts investigations, holds public hearings, issues subpoenas, and imposes fines and penalties. The Commission also educates, advises, and issues formal opinions to increase public awareness of the city's ethics laws. And it investigates allegations of ethics violation in city government and enforces the ethics laws through administrative prosecution or civil litigation.

The separation of Form 700 responsibilities between the City Clerk's office filing duties and the PEC enforcement and training duties makes the PEC compliance responsibility more challenging. The City Clerk's office has responsibility for the Form 700 Filing Officer function while the PEC has responsibility for the Form 700 enforcement and training responsibilities.

The Grand Jury learned that the City Clerk's office and the PEC rarely collaborate. The City Clerk's office was unaware that the PEC has statutory responsibility for enforcement of the Form 700 filings. In fact, the City Clerk's office wrote to the PEC asking it to cease advising designated-

filers about Form 700 filing, alleging that the PEC was “confusing” communications from the City Clerk’s office.

The Filing Officer in the City Clerk’s office does not refer late or non-filing persons to the PEC and, in violation of the law, has not referred those persons to the FPPC since 2016. Consequently, the PEC typically identifies Form 700 ethics violations as part of a broader investigation of other allegations of ethics violations by city officials, employees, or contractors hired by the city. Because the Filing Officer does not refer non-filers to the FPPC or the PEC, Oakland does not have a means of fully enforcing its Conflict of Interest Code.

In addition to the absence of collaboration, there is a lack of timely or prompt responses by the City Clerk’s office. The PEC has encountered delays of weeks and, in some cases, months by the City Clerk’s office in response to PEC requests for Form 700s from the City Clerk’s office for investigative or compliance checking purposes.

The PEC offers annual ethics training for the city managers, new employees, and consultants. PEC staff provided training in 2021 to 781 participants, including elected officials and their staff, and new employees. Last year 129 persons attended trainings for Form 700 filers through the city’s online learning management system and four live trainings conducted by the PEC staff via Zoom. City staff supervisors (100 in total) received additional ethics training. The PEC has a YouTube channel with ethics training, including Form 700 and conflicts of interest.

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A Filing Officer has the responsibility to collect, review, and provide public access to ethics-related data. Since 2016, the PEC has had responsibility for the Filing Officer function for campaign finance. In 2018, the PEC also assumed responsibility for the lobbyist Filing Officer function. However, responsibility for the Form 700 Filing Officer function remains with the City Clerk’s office. The PEC has requested that the City Clerk’s office transfer the Form 700 filing function to the PEC and has sought such a transfer in its budget application, to no avail. Such a shift would allow the PEC to fully implement its mission to ensure compliance with Form 700 filing requirements. As the PEC stated in its recently published 2021 Annual Report, the Form 700 filings “are of high interest to the PEC in ensuring compliance with ethics laws that require reporting of personal financial information.”

The PEC has six full-time staffers. The fiscal year (FY) 2020-2021 approved PEC budget included a one-time augmentation of \$100,000 for election-related services in lieu of the additional two positions requested for investigations and policy functions. The PEC was able to hire a temporary

part-time investigator for seven months. However, the PEC was not able to hire a full-time investigator after the City Administrator announced in December 2021 a \$62 million shortfall as well as a hiring freezes on vacant positions and a moratorium on temporary employees among other budgetary constraints. The PEC FY 2021-2022 budget of \$1,411,407 included one additional full-time administrative support person for the PEC starting in July 2022.

City and county departments have used grant funding to provide resources for critical staffing needs. The Oakland Fire Department, the County Public Defender, and Legal Services for Seniors, a contractor providing probate conservatorship representation, are examples. This method of funding may be a viable funding source available to the agency providing Form 700 services in Oakland. This possibility would require funding of a grant writer position.

Oakland's City Charter requires that the City Council appropriately fund the PEC to fulfill its functions and duties. PEC staffing, established by the 2014 Charter amendment, was based on 2013 case levels.

Oakland's City Charter requires that the City Council appropriately fund the PEC to fulfill its functions and duties. PEC staffing, established by the 2014 Charter amendment, was based on 2013 case levels. Over the years, the number of public calls to the PEC for advice and assistance regarding ethics, including financial conflicts of interest, has increased dramatically, requiring more staff resources to meet the demand for assistance. Public calls to the PEC for assistance quadrupled from 96 calls in 2016 to 460 calls in 2020. The PEC had a caseload of 74 open cases of alleged ethics violations by the end of 2020, initiated 60 new complaints, and 38 investigations into ethics violations by city officials,

employees, and contractors. In spite of the pandemic and the staff working at home, in 2021 the PEC responded to 260 requests for assistance, almost half of which concerned conflicts of interest rules. By year end 2021, the PEC had 44 open investigations.

City Clerk

The Oakland City Clerk's office manages the City Council's agenda materials, and oversees the city's elections, political filings, administration of records, management services, and the Form 700 process. The City Clerk's office maintains records for five separate departments, each of which has grown in the past seven years.

The City Clerk's office is chronically understaffed. Based on current staffing, the City Clerk's office is not able to fulfill the duties regarding Form 700. One person performs the Form 700 Filing Officer duties on a part-time basis, 35-50% of work hours, depending on whether a time-consuming election conducted by the City Clerk's office is occurring at the same time as Form 700 filings are due. Occasionally the City Clerk, who assumed that position in March 2021 and

who manages four other areas of record-keeping while supervising 10 employees, assists the Filing Officer with Form 700 duties.

For the past three years, the Assistant City Clerk position has been filled by inexperienced persons for short periods, but the position has been largely unfilled since 2017. The city's list of candidates for the Assistant City Clerk position is three years old and stale because most persons on that list are no longer interested or available for the job. The City Clerk's office has encountered a delay in getting a replacement list of candidates from the city's Human Resources department. A hiring freeze was announced in Oakland government late last year. The City Clerk office's budget for FY 2021-2022 is \$378,828 and for FY 2022-23 is \$334,847. The two proposed hires for FY 2022-2023 are an Administrative Analyst to respond to increased demands for public records information and a Management Assistant to fill the sole fiscal position in the office. The federal relief funds used to cushion the impact of reduced city funds during the pandemic is due to expire next year. The City Clerk's office is also funded by \$260,000 in miscellaneous grants.

The City Clerk's office is chronically understaffed. Based on current staffing the City Clerk's office is not able to fulfill the duties regarding Form 700.

The chronic short staffing means the one part-time person performing City Clerk office's Form 700 duties has been stretched thin. Because the City Clerk's office has been short-staffed for years, the present Filing Officer has significant responsibilities other than those related to Form 700. These additional duties include the responsibilities of the acting management assistant, assistance with elections, residency verification, sole responsibility for the front desk, domestic partnerships, payroll, passports, accounts receivable, mail, answering emails, recruitment duties, and preparing intake/separation paperwork regarding the City Clerk's office for the city.

The City Clerk's office is responsible for ensuring that the NetFile account, which serves as the automatic filing system for Form 700 and for the campaign filing system in Oakland, is paid on time. Payments of the Netfile account by the City Clerk's office was two quarters in arrears as of July 2017, a quarter in arrears as of December 2018 and again as of February 2019, two quarters in arrears as of January 2020, two quarters in arrears as of July 2021, and three quarters in arrears as of November 2021. NetFile recently proposed billing annually to limit the time "chasing payments."

The City Clerk office's training to city employees regarding Form 700 consists of a brief statement at annual trainings conducted by the city's payroll/employee relations units identifying designated filer's obligations and suggests filers contact the City Clerk with questions. This limited training does not reach the persons required to participate in the Form 700 process.

Form 700 Process

Most persons required to file a Form 700 do so electronically using NetFile. Other filers, primarily but not exclusively seniors and disabled persons, do so by mail or in person at the City Clerk's office. The City Clerk Filing Officer receives the original Form 700s from designated filers who do not file electronically.

For in-person filings, the City Clerk's Filing Officer reviews the Form 700s to ensure that they are complete and then sorts the forms into piles for notices regarding follow-up amendments if the forms are incomplete or for scanning into the city's system, which requires additional handling.

Since 2016, the City Clerk Filing Officer has not reported annually to the FPPC apparent violations of the law including material inaccuracies or omissions, or failure to file the Form 700 after receiving delinquency notices from the Filing Officer.

The FPPC requires that the City Clerk Filing Officer review 20% of all on-time statements filed, half of which are selected on a random basis. The limited review is to determine whether the summary page is complete, the required schedules are attached, and the information is legible. The forms are not reviewed for accuracy of the information provided by the filer. In addition, the FPPC requires that the City Clerk Filing Officer review all the late-filed Form 700s to confirm the Form 700 summary page is accurate and complete, that all applicable schedules are attached and include all required descriptive information for each financial interest. However, the Grand Jury has learned that the City Clerk Filing Officer does not review all the late-filed Form 700s. Since 2016, the City Clerk Filing Officer has not reported annually to the FPPC apparent violations of the law including material inaccuracies or omissions, or failure to file the Form 700 after receiving delinquency notices from the Filing Officer.

The Conflict of Interest Code and the Form 700 are fundamental tools in ensuring that officials act in the public's best interest and not their own. It is critical that the Conflict of Interest Code reflects the current structure of each agency and that the city of Oakland correctly identifies all officials and employees who should file a Form 700. According to the FPPC, "it is essential and legally required that an agency's conflict of interest code remain current and accurate...Each agency must review its Conflict of Interest Code at least every other year." According to FPPC rules, Oakland is required to review its Conflict of Interest Code at least every even-numbered year.

With regard to the mandated review of Oakland's Conflict of Interest Code, the FPPC requires that the city review whether there have been any substantial changes in an organizational structure, whether positions have been eliminated or renamed since the current Conflict of Interest Code was adopted, whether any new positions have been added, and whether there have

been any substantial changes in duties or responsibilities for any position. Any affirmative findings by a city review may mean that the Conflict of Interest Code would need to be amended.

The City Clerk's office did not produce to the Grand Jury any documents regarding its Conflict of Interest Code for the past four years. The Filing Officer does not maintain the documents necessary to conduct the review stated in the preceding paragraph. Notices to file the Form 700 could not be sent to an updated list of persons and designated positions added or removed since the last completed review of the Conflict of Interest Code. If no updated Conflict of Interest Code exists, the list of positions will be incomplete; as such it could exclude filings of decision-makers who make financial decisions throughout the city as well as include persons who are no longer designated filers.

Once the City Clerk's office completes its review of the Conflict of Interest Code and it is approved by the City Administrator, the Filing Officer must communicate with all agencies to confirm which employees and contractors are currently in designated positions. The Filing Officer then gives notice of filing dates for Form 700s to all designated filers. The notice includes information about the filer's disclosure categories along with the form or link to a website to complete the form. To satisfy this duty, the Filing Officer must have an accurate list of employees' and consultants' job status and current and accurate contact information for all designated filers. The primary method of issuing notice to filers by the Filing Officer is automatic emails to persons already registered with NetFile. For persons who are not already registered with NetFile or who have a status change that requires them to file a Form 700, the City Clerk's office is required to send a letter or make a phone call to them.

Accurate and timely city records regarding Form 700s are a key part of ensuring that the public has a useful tool for monitoring government and saving funds from misappropriation.

The FPPC requires that the Form 700 Filing Officer use a Form 804 and Form 805 to track changes in positions of designated filers and disclosure requirements in the Conflict of Interest Code. City departments are required to send Forms 804 and 805 to the Form 700 Filing Officer. The Form 804 includes all of the information for a new Form 700 designated employee position and the Form 805 records information from consultants who are designated filers. The Filing Officer is required to keep these forms for tracking purposes and for use in reviewing filers for the Conflict of Interest list of designated positions and disclosures.

The regulations require that when a person is hired for a position not yet covered under a current Conflict of Interest Code, the person file a Form 700 if the person serves in a position that makes or participates in making governmental decisions, using the broadest disclosure category until the Conflict of Interest Code is amended to include this position.

With few exceptions, the Filing Officer did not receive these forms from city departments and did not enforce the requirements for these forms. This gap in the information flow directly impacts the process of amending Oakland's Conflict of Interest Code listing of designated filer positions and disclosure requirements for these positions. The City Clerk's Filing Officer is required to review and consider the information on Forms 804 and 805 when the Filing Officer is reviewing Conflict of Interest Code designations for possible amendments of the Conflict of Interest Code. Without these forms, the Filing Officer cannot review the information on them that is required as part of the state-mandated process of updating and amending the Conflict of Interest Code. Keeping current and accurate records of who is required to file a Form 700 is critical for the public to trust that decisions are not made by persons who financially benefit from those decisions.

While NetFile records who has filed a Form 700 electronically, it does not have a record of who should file. The City Clerk's office acknowledges it cannot determine which persons file late and which are non-filers. Since 2016, the Filing Officer has not referred non-filers to the FPPC as required by law because the Filing Officer is unable to determine the number of non-filers each year. If the Filing Officer had this required information, followed up with the city departments to confirm changes, and referred persons who failed to file a Form 700 to the FPPC, the city would move toward compliance with its statutory duties.

Oakland has a duty to ensure that Form 700 statements are complete, to send requests to designated filers for amendments, to assess or waive late fees, and to refer non-filers to the FPPC. Accurate and timely city records regarding Form 700s are a key part of ensuring that the public has a useful tool for monitoring government and saving funds from misappropriation.

The City Clerk's Filing Officer is required to keep originals of Form 700 statements for seven years, maintain a tracking log, and make the forms available on request. Instead, the Filing Officer uses a spreadsheet to keep track of Form 700s. The spreadsheet cannot be compared with the original Form 700 statements to ensure accuracy.

For Form 700 filers who use NetFile, the Filing Officer is responsible for keeping all filer information current, including information about assuming and leaving office and when Form 700s are due. The Filing Officer must receive from city departments changes in the employment status of mandated designated filers shortly after the change happens because these persons must file a Form 700 within 30 days of a status change. Information about departing, promoted, or new employees is required for the Filing Officer to trigger notices to all designated filers. However, the Filing Officer frequently receives this information from city departments after the Form 700 filing deadline has passed.

Oakland Code of Regulations section 18115 states that city departments are required:

- to send completed Form 700s to the Filing Officer within prescribed times and keep a copy of those statements;

- notify the Filing Officer of a vacancy in an office and any other event affecting filing obligations;
- notify the Filing Officer of the names and positions of every person whose statements must be forwarded to the Filing Officer; and
- maintain a current list of all statements forwarded to the Filing Officer.

This law is not enforced. In the current Form 700 system in Oakland, the Filing Officer must conduct considerable follow-up attempts to try to obtain this information from individual city departments, with limited success.

This system, which was intended to ensure complete information for the City Clerk's Filing Officer, must be enforced to be effective. City departments do not routinely comply with their responsibilities to provide the essential information on at least a monthly basis. The Filing Officer struggles with intermittent information from departments that an official, employee, or consultant has been hired or has left a position, only receiving infrequent information by telephone, email, or written notices from persons in the agencies. City departments also frequently provide the Filing Officer some information well past the Form 700 filing date. If the Filing Officer does not learn of a change in status as soon as the person is hired or leaves a designated filer position, the Filing Officer does not have current information for sending the required filing notices. If a designated filer leaves a city position and the filer's city email is no longer available for communication, the Filing Officer must locate the departed person by other time-consuming methods. This results in late notices, late filing, and extended follow-up.

There is no enforcement of the requirement that agencies notify the Filing Officer of personnel changes. There is no automated notification to the Filing Officer from agencies regarding either change of required filing status or hiring or separation of designated persons. Different departments may not have a designated person responsible for sending the required information to the Filing Officer, the designated person may fail to send timely information to the Filing Officer, or the designated person may leave the department and is not replaced in a timely manner. The Filing Officer occasionally solicits the information from some departments. If the information provided is incorrect or incomplete, the process begins again.

The Grand Jury learned that Oakland uses a shared electronic Human Resources platform and that upon hiring or promotion, Human Resources maintains a checklist of forms and activities that must be completed by the new employee. The city does not take advantage of this shared Human Resource platform or the new employee checklist to assist with the reporting of Form 700 related information to the Filing Officer.

The Filing Officer does not maintain a database of who is required to file by title or position. The Filing Officer does not know whether a person is still an employee but is no longer in a required filer position. Because the Filing Officer does not routinely receive notices of promotion or demotion, the Filing Officer does not know how to contact those persons after discovering the

status change. When a position goes from a filer to non-filer status, the Filing Officer must pull the person's account out of the NetFile system and deactivate it. The NeFile information may be incorrect due to human error or lack of communication. Netfile does not provide information of e-files on its system to the Filing Officer; the Filing Officer must log onto NetFile and do a search to discover the information. NetFile tracks reminders it sends to filers; it does not track communications the Filing Officer makes to filers.

The Payroll Department periodically sends the Filing Officer a list of new hires and terminations (but not promotions or demotions) and the Filing Officer has to manually review the list to determine the designated filers. The new Employee Orientation Department sends a list of Form 700 filers to the City Clerk's Office, but the list is not always timely or complete.

With regard to supervision of the Form 700 process, prior to June 2021 the Filing Officer had not provided the City Clerk with periodic information regarding non-filers so that the City Clerk could share this information with the City Administrator supervising the City Clerk department.

CONCLUSION

All of the designated filers are persons in positions of power with respect to governmental decisions in Oakland. Supporting the Form 700 process by accurately reporting financial facts regarding designated filers helps protect the public from self-serving financial decisions by public officials, creates trust, and provides a factual basis for recovering misappropriated funds.

FINDINGS

Finding 9:

The Oakland City Clerk's office is not meeting the minimum requirements of the Filing Officer under the Political Reform Act. The issues of non-compliance with the rules regarding Form 700s are long-standing and structural, resulting from inadequate funding, an inefficient system of communication of critical information to the Filing Officer, and limited staffing.

Finding 10:

A transfer of the Form 700 filing duties from the Oakland City Clerk's office to the Public Ethics Commission would require hiring an additional employee; an amendment of the City Ethics Act to identify the Public Ethics Commission as the Filing Officer for Form 700s; and the transfer of the function and payment of the City's contract with the online filing provider, NetFile, from the City Clerk's office to the Public Ethics Commission.

Finding 11:

Grant funding has been used to fund staffing to support critical services in the City of Oakland.

Finding 12:

The city of Oakland's shared electronic Human Resources platform is not used in the Form 700 process but could be customized to assist in the sharing of information between departments.

Finding 13:

The city of Oakland's new employee checklist does not include Form 700 filing requirements to the employee.

Finding 14:

The Grand Jury commends the hard work of those individuals within the Oakland City Clerk's office who are responsible for the Form 700 process. The problems with the Form 700 process are the result of structural limitations, limited staffing, and inadequate interdepartmental communication.

RECOMMENDATIONS

Recommendation 15:

The city of Oakland should transfer the Form 700 Filing Officer responsibility to the Public Ethics Commission.

Recommendation 16:

The city of Oakland should hire an experienced grant writer with knowledge of state and local funding streams to secure funding for Form 700 services.

Recommendation 17:

On its shared electronic Human Resources platform, the city of Oakland should add a field to the employee information section that indicates whether the employee is a required Form 700 filer and require that the field be updated upon hiring, promotion, demotion, or separation.

Recommendation 18:

The City of Oakland should ensure that the Filing Officer is able to access a current list of Form 700 designated employees through the shared electronic Human Resources platform.

Recommendation 19:

The City of Oakland should add the notification of Form 700 status on the new employee checklist.

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Mayor, City of Oakland	Findings 10 through 14 Recommendations 15 through 19
Oakland City Council	Finding 10 Recommendation 15
City Clerk, City of Oakland	Findings 9, 10, 12, 13 & 14 Recommendations 15, 17, 18 & 19
Public Ethics Commission	Finding 10 Recommendation 15