



AGENDA REPORT

TO: Community and Economic
Development Committee

FROM: Barbara J. Parker
City Attorney

SUBJECT: OMC 1.10 – “The Civil Protection of
the People of Oakland” Ordinance

DATE: June 13, 2023

RECOMMENDATION

City Attorney Barbara J. Parker, Director Darlene Flynn, Mayor Sheng Thao, City Administrator Steven Falk, Council President Nikki Fortunato Bas, President Pro Tempore Dan Kalb, Councilmember Carroll Fife, and Councilmember Treva Reid Recommend that the City Council Adopt:

AN ORDINANCE ADDING SECTION 1.10 TO THE OAKLAND MUNICIPAL CODE, ENTITLED “THE CIVIL PROTECTION OF THE PEOPLE OF OAKLAND ORDINANCE,” TO DETAIL THE CITY ATTORNEY’S AUTHORITY TO BRING CIVIL ACTIONS TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF OAKLANDERS AND EQUITABLY ENFORCE VIOLATIONS OF CITY LAW, CONSISTENT WITH THE CHARTER

EXECUTIVE SUMMARY

The purpose of the proposed OMC 1.10 is to bring Oakland into a similar position as its peer cities in California by setting forth the Oakland City Attorney’s full authority to conduct equitable civil enforcement, including filing lawsuits, to protect the people of the City of Oakland.

For many years, the City Council and Oakland voters have, independently and together, enacted important and critical legal rights for Oakland residents and visitors. Those laws range from some of the strongest tenants’ rights laws in California (the Tenant Protection Ordinance (“TPO”, Oakland Municipal Code (“OMC”) § 8.22.600 et seq.)) to some of the best paid sick leave protections in the country (the Minimum Wage and Sick Leave Ordinance (Measure FF, OMC Chapter 5.92)). The City Attorney has used these laws to advance equity and secure justice for Oakland residents. But more can and must be done.

Unfortunately, the City of Oakland is an outlier in terms of City Attorney authority to enforce local laws. Oakland’s City Attorney only has clear authority to enforce some, but not all, Oakland laws. Other large City Attorney offices in California have clear and comprehensive authority to enforce all of their local laws, whether by utilizing the jurisdiction’s own local ordinance(s) and/or

California’s Unfair Competition Law (“UCL”).¹ Those ordinances and/or the UCL ensure that our peer cities’ local laws can be enforced and that those city attorneys have access to the remedies they need to secure complete justice for their residents. For example, the San Jose City Attorney, the San Diego City Attorney, and the Los Angeles City Attorney each can file a civil action to enforce *any* violation of their respective municipal codes, request injunctive relief (an order by the court) to stop any violation,² and recover civil penalties for the unlawful conduct. These other City Attorneys’ authority is similar to the proposed OMC 1.10, although proposed OMC 1.10 also explicitly includes equity protections in the text of the statute itself.

The proposed ordinance details the City Attorney’s authority to enforce all of Oakland’s civil laws and to seek a range of remedies for the City and for Oaklanders. The ordinance derives its authority wholly from the City Charter, the Oakland Municipal Code, and relevant state law. The ordinance complements but does not replace the City’s administrative efforts, providing a critical backstop when administrative enforcement alone cannot stop conduct harming Oakland residents or visitors. The tool of court intervention via civil enforcement may be necessary to protect Oaklanders when administrative remedies are insufficient to convince the actor to stop violating Oakland law. For example, Oakland’s Minimum Wage and Paid Sick Leave ordinance contemplates both administrative enforcement by the City’s Department of Workplace and Employment Standards and civil enforcement by the City Attorney.³ However, the tools and remedies available through the administrative enforcement process are limited, and the City has seen that they are not always sufficient to remedy violations or secure compliance with the law.

Finally, proposed OMC 1.10 explicitly requires that any actions brought by the City Attorney seek outcomes that are fair, equitable, and just. With the guidance of the Department of Race and Equity, the City Attorney completed a Racial Equity Impact Analysis (“REIA”) assessing the ways that proposed OMC 1.10 will advance equitable enforcement while limiting inequitable applications. A copy of the REIA is included as **Attachment 1**. While this report incorporates aspects of the REIA, it is not a substitute for the REIA’s content and analysis. We recommend reviewing the REIA as a companion document to this report. As the REIA details, proposed OMC 1.10 will directly improve equitable enforcement of the many progressive laws the City Council and/or Oakland voters have passed, and will assist the City Attorney in securing justice for marginalized, frontline, and fenceline Oakland residents, who are disproportionately Black, Indigenous, and other People of Color (BIPOC).

¹ Business and Professions Code § 17200 *et seq.* The Unfair Competition Law provides more expansive authority than the proposed OMC 1.10. City attorneys of cities whose populations exceed 750,000 have authority to enforce California’s Unfair Competition Law. *See also* note 26 below.

² “Injunctive relief...is a remedy which restrains a party from doing certain acts or requires a party to act in a certain way...the purpose of this form of relief is to prevent future wrong.” Legal Information Institute, Cornell Law School. https://www.law.cornell.edu/wex/injunctive_relief; *see also* *Consumers Union of United States, Inc. v. Fisher Development, Inc.* (1989) 208 Cal.App.3d 1433, 1439–1440 (“[t]he purpose of injunctive relief is to prevent continued violations of law.”)

³ *See* OMC § 5.92.050.

BACKGROUND / LEGISLATIVE HISTORY

The Existing Civil Enforcement Gap and Underenforcement of Rights

The proposed OMC 1.10 is a response to the longstanding and ongoing local, state, and national civil “enforcement gap”, a gap that multiplies and magnifies racial inequities. The civil enforcement gap is “the gap between the laws on the books and the [...] realities of many people those laws are written to serve.”⁴ Although “the laws on the books” in Oakland include protections for everything from dignified housing conditions, to fair and safe working environments, to healthy neighborhoods, the underenforcement of laws furthers racial inequities. Underenforcement of such laws “undermines the legitimacy of institutions charged with representing the will of the People... [because the] laws lack real-life effect.”⁵

The Public Rights Project,⁶ a national nonprofit organization dedicated to eliminating the gap between the values expressed in laws and the lived reality of marginalized communities, conducted a national survey of corporate abuse in 2019. The survey found that over *half* of Americans had experienced one or more incidents of “wage theft, predatory lending, predatory debt collection, unsafe housing conditions, or health problems due to pollution created by a business within the past ten years.”⁷ Underenforcement of laws, especially those designed to protect the rights of the most marginalized residents, have significant consequences for quality of life.⁸

The Oakland City Council has repeatedly recognized that civil enforcement of Oakland laws is critical to protect and advance the rights of all Oaklanders. For example, the Council specifically provided for City Attorney civil enforcement of the rights enshrined in the Tenant Protection Ordinance.⁹ Based on the City Attorney’s recommendation, the Council also recently declared racism a public health crisis and resolved that “the City shall prioritize providing adequate long-term resources to City departments whose enforcement of local, state, and federal laws protect

⁴ Jill E. Habig & Joanna Pearl, *Cities as Engines of Justice*, 45 Fordham Urb. L.J. 1159, 1165 (2019). <https://ir.lawnet.fordham.edu/ulj/vol45/iss5/1>

⁵ *Id.* at 1164; *see also* Jentry Lanza, *Agency Underenforcement as Reviewable Abdication*, Northwestern University Law Review, Vol. 112, No.5, 1171; *Roman v. Korson*, 918 F. Supp. 1108 (W.D. Mich 1995) [finding that USDA systematically failed to enforce labor housing regulations for migrant farm workers.]; Peter J. Henning, “Wells Fargo Shows Erosion of Corporate Accountability under Trump,” *New York Times*, (Aug. 14, 2017) [“in the world of corporate misconduct, it seems that there is even less need to beg forgiveness these days as the government scales back how much it will police companies that appear to have violated the law.”]

<https://www.nytimes.com/2017/08/14/business/dealbook/well-fargo-corporate-accountability-trump.html>

⁶ <https://www.publicrightspj.org/>

⁷ Public Rights Project, *Corporate Enforcement Gap Report*, (July 2019), https://drive.google.com/file/d/1TSrl-z5nyOuN_r1cX5sPXAXOO1MiIG06/view

⁸ *See, e.g.* Grace Ashford, “Leaks, Mold, and Rats: Why New York City Goes Easy on its Worst Landlords,” *New York Times*, (December 26, 2018.) <https://www.nytimes.com/2018/12/26/nyregion/nyc-housing-violations-landlords-tenants.html?action=click&module=Top%20Stories&pgtype=Homepage> [impact of underenforcement of housing code against repeat violators.]

⁹ OMC 8.22.670(A)(2); *see also* OMC 15.08.080(F) [City Attorney enforcement of health and safety standard in Oakland Building Maintenance Code.]

historically marginalized Oakland communities and play a role in improving the social determinants of health by furthering racial justice.”¹⁰

City Attorney Civil Actions Advance Equity and Close the Enforcement Gap for Oakland Residents

Overview

The ability of private – i.e., non-governmental – parties to vindicate their rights in court has steadily diminished in recent years, as legal avenues for individual or class action litigation have diminished and “left individuals who experience harm in the workplace or at the hands of an unscrupulous company without much meaningful recourse.”¹¹ Although the City Attorney does not represent individuals, the City Attorney’s Office can and does represent the City – and in doing so, the interests of the City’s residents.¹² Government enforcement does not replace enforcement efforts by civil society groups, but compliments it, and adds normative value. As one scholar of litigation has observed,

changing [from an individual to a government] plaintiff changed how the harm was understood...[they are] reframed as harms to the public, which are the result of third-party wrongdoing, and for which, accordingly, those third-party wrongdoers should bear the cost.¹³

And as a senior, low-income monolingual tenant in Oakland shared about the symbolic impact of City Attorney enforcement: “it means a lot to know that the government is fighting for us.”¹⁴ Additionally, the City Attorney’s enforcement can broadly redress violations of the City’s progressive laws, provide a deterrent effect by demonstrating that violators will be held accountable, and protect the rights of historically and/or presently marginalized residents who are disproportionally represented by Black, Indigenous and other People of Color communities in Oakland.¹⁵

Complement to Administrative Enforcement

Civil enforcement is not a substitute for administrative enforcement by City departments. Instead the proposed OMC 1.10 will provide key support parallel to or at the end of administrative efforts. Many violations of local and state law can and will be appropriately and effectively addressed

¹⁰ City of Oakland Resolution No. 89249. (June 7, 2022.) File # 22-0417.

<https://oakland.legistar.com/LegislationDetail.aspx?ID=5648415&GUID=3302DDAA-B81D-44B8-A3FC-CA542C19B1D9&Options=ID|Text|&Search=89249>

¹¹ Habig and Pearl, *Cities as Engines of Justice*, *supra* note 4 at 1164.

¹² “[C]ities have a strong basis from which to pursue affirmative litigation and are able to vindicate the public interest in a way that private plaintiffs cannot.” *Id.* at 1190.

¹³ Sarah L. Swan, *Plaintiff Cities*, 71 Vand. L. Rev. 1227, 1244 (2018).

¹⁴ See also Interview with Wei Bin Ma. (2020) <https://www.youtube.com/watch?v=hKs48sFPiRA>

¹⁵ See, e.g. Oakland Equity Indicators Report (2018) <https://www.oaklandca.gov/projects/oakland-equity-indicators>

through administrative action. However, in some circumstances, civil enforcement is the most effective and efficient way to stop severe and/or persistent ongoing harm. The proposed ordinance will create a more comprehensive set of enforcement tools and require coordination between City Administration and the City Attorney, ensuring that the most effective method of enforcement is used to equitably secure justice and better serve Oakland residents.¹⁶

Examples of City Attorney Equitable Enforcement

The proposed OMC 1.10 will advance the City Attorney’s commitment to *equitable enforcement*:

an approach to enforcing the law that foregrounds the impact of harms on [marginalized] communities...that are disadvantaged economically, socially, or politically and therefore more [often subject] to harm. Equitable enforcement means considering equity both when identifying and pursuing cases, as well as when deciding what remedies to pursue.¹⁷

A detailed discussion of equitable enforcement and analysis of the proposed ordinance is included in the REIA.¹⁸

The City Attorney has conducted extensive civil enforcement over the past five years, as highlighted by Section VI of the REIA:

- The City Attorney secured monetary awards and settlements totaling over \$48 million for the City of Oakland and its residents during that five-year period.
- The vast majority of that money (91%) came from major corporations.
- Nearly three quarters (72%) of the lawsuits were against corporate or other government actors.
- The City Attorney secured equitable relief, including injunctions, in 88% of the cases when such relief was sought at the outset.
- For the 22 City Attorney lawsuits addressing violations at specific properties in Oakland, over 80% of the properties were located within the three highest Priority Neighborhood levels as defined by the OakDOT Geographic Equity Toolbox.
- For the 16 housing lawsuits addressing violations at specific properties in Oakland, roughly 90% of the properties were located in the four neighborhood classifications reflecting the greatest risk of displacement and gentrification as defined by the OakDOT Geographic Equity Toolbox.

¹⁶ OMC § 1.10.040.

¹⁷ LiJia Gong, *Growing An Equitable Enforcement Practice: A Guide for Local Prosecutors to Fight Corporate Abuse*. Public Rights Project. (Nov. 2019). <https://drive.google.com/file/d/14g1Xv7DoBCKSIsqFcwAy1c8pHJVyCxh/view>; see also *Equitable Enforcement to Achieve Health Equity*. ChangeLab Solutions. <https://www.changelabsolutions.org/product/equitable-enforcement-achieve-health-equity> [“a process of ensuring compliance with law and policy that considers and minimizes harms to people affected by health inequities.”]

¹⁸ See **Attachment 1**.

- And all City Attorney lawsuits advanced at least one Equity Theme as defined by the 2018 Equity Indicators Report, if not more.

For this staff report, the following cases also provide a few examples of how equitable civil enforcement has been crucial to vindicating the rights of BIPOC, historically, and/or presently marginalized communities. These case studies exemplify what the City Attorney can do now with the Office’s more limited authority and illustrate the types of enforcement the City Attorney will prioritize if the Council adopts proposed OMC 1.10.

1. *Example One: People & City v. DODG Corporation, et. al.*

The City Attorney filed a tenant protection lawsuit in June 2019 against the owners of over 60 residential rental properties in Oakland for flagrantly disregarding the letter and spirit of the law concerning their tenants’ rights.¹⁹ The defendants rented units in substandard conditions, many which presented imminent fire risks and were never intended or approved for residential use, to tenants who were predominantly low-income immigrants. For example, families with young children lived in units with no smoke or carbon monoxide detectors and no emergency means of egress. The majority of the tenants lacked the resources or ability to take legal action to defend their rights.

The case went to trial in April 2021 because the City Attorney could not reach a just and equitable settlement that enforced the law and protected the people of Oakland. The City and the People won the trial, with the court finding that the defendants violated local and state laws and requiring the defendants to pay the City over \$3.9 million in civil penalties for their egregious legal violations.²⁰ Notably, the court did not limit the scope of its orders to the specific properties that were the subject of the City Attorney’s lawsuit; the court also prohibited the defendants from operating *any* of their Oakland residential properties in violation of local or state laws.²¹

The City Attorney having authority to act in this matter made a real difference. As one community-based organizational partner conveyed about the *Dodg Corp.* case:

While nonprofit agencies can try to help one tenant at a time escape from or improve slum conditions, the City of Oakland can effect sweeping change for all tenants living in a property...it is critically important to have the City of Oakland working to enforce the laws in place to protect tenants...entire low-income tenant

¹⁹ *People v. DODG Corporation*, (RG19022353) Alameda County Superior Court.

²⁰ Natalie Orenstein, “Oakland landlord hit with \$3.9 million penalty for hazardous housing conditions.” *The Oaklandside* (September 13, 2021.) <https://oaklandside.org/2021/09/13/oakland-landlord-hit-with-3-9-million-penalty-for-hazardous-housing-conditions/>; Statement of Decision, *People v. DODG Corp.* (September 1, 2021.) <https://www.oaklandcityattorney.org/PDFS/Newsletter/People%20of%20the%20State%20-%20Statement%20of%20Decision.pdf>

²¹ Permanent Injunction After Trial, *People v. DODG Corp.* <https://www.oaklandcityattorney.org/PDFS/Newsletter/People%20of%20the%20State%20-%20Permanent%20Injunction%20After%20Trial.pdf>

populations can be better protected from having to endure unhealthy and unsafe living conditions when it is widely known and understood that their City is willing to advocate for them.²²

2. *Example Two: People & City v. Santos Engineering, et. al.*

In 2017, a construction and demolition debris company moved its operations to a mixed commercial-residential neighborhood in West Oakland. Because of the neighborhood's predominantly Black community and their long history of experiencing environmental racism, the company wrongly believed that it could operate with impunity there. Neighbors soon contacted the City to report dust blanketing their homes and cars; a number of neighbors even experienced difficulty breathing. Code Enforcement cited the company for violating environmental protections in the Planning Code, but the property owner and company refused to cease the violations.

In response, the City Attorney filed a lawsuit to stop the severe harm to Oakland residents.²³ With the support of dozens of community members and City employees, the City Attorney secured an injunction to stop the harm. The company ignored the injunction, however, and the City Attorney again worked in partnership with the community to hold the defendants accountable. The court found that the company committed at least 15 separate acts of contempt in violation of the court's order.

The City Attorney was able to secure a monetary settlement, a permanent injunction, and a commitment from the company to immediately leave the facility and not operate in Oakland for a decade. As one neighbor, whose home is now free from this environmental harm, underscored in testimony to the court:

for me, this lawsuit is about generations – specifically, the next generation. My kids witnessed the injustice of what [the company] was doing to their community, and they saw their parent and grandparents standing up against that wrong. [The company] could have been here for years, continuing to contaminate the neighborhood. Instead, this has sent a different message that what they were trying to do in our neighborhood won't be tolerated. The next generation now knows that message, and will take it with them in the years to come.²⁴

²² Declaration of Anne Omura In Support of Plaintiffs' Motion for Attorney's Fees. *People v. DODG Corp.*

²³ *People v. Santos Engineering et. al* Complaint (RG18889670), Alameda County Superior Court.
[https://www.oaklandcityattorney.org/PDFS/NLC/People%20v.%20Santos%20Engineering%20et%20al.%20-%20Complaint%20\(file-stamped\).pdf](https://www.oaklandcityattorney.org/PDFS/NLC/People%20v.%20Santos%20Engineering%20et%20al.%20-%20Complaint%20(file-stamped).pdf)

²⁴ Declaration of Chantal Dyer in Support of Plaintiffs' Motion for Attorney's Fees; *see also* "They Didn't Care, So We Fought!" Public Rights Project.
<https://www.youtube.com/watch?v=UHwuOfbyBfw&list=PLRnIALyHv53C2DsgetcmadbT1UGYlpeft&index=41>

Unlike Sister Cities, Oakland Does Not Have a Comprehensive Civil Enforcement Ordinance

The City of Oakland does not have a clear and comprehensive civil enforcement ordinance, in stark contrast to a number of Oakland’s peer cities and counties in California. The proposed OMC 1.10 is comparable to provisions in several other major California jurisdictions. For example, the San Jose City Attorney, the San Diego City Attorney, and the Los Angeles City Attorney all can file a civil action to enforce any violation of their respective municipal codes, secure injunctions, and recover civil penalties.²⁵ These three jurisdictions, along with others such as the City and County of San Francisco and Santa Clara County, also can use the authority granted to them under state law by California’s Unfair Competition Law (“UCL”). The UCL grants local governments of certain sizes or otherwise denoted in the statute’s text with specific, independent authority to enforce violations of almost any law, along with strong remedies such as up to \$2,500 per violation in civil penalties, comprehensive injunctive relief, and restitution to those who have been harmed.²⁶

The Oakland City Attorney does not currently have clear authority to enforce all of Oakland’s laws as our peer City Attorneys do, nor does the City Attorney have authority under the UCL because the City of Oakland does not meet the population requirement. In fact, most ordinances in the Oakland Municipal Code are not directly enforceable by the City Attorney in court. And even ordinances that provide clear City Attorney enforcement authority do not always include certain key remedies that advance justice, such as the ability to secure an injunction or restitution for individual Oaklanders who have suffered harm. Oakland is therefore an outlier compared to its peer cities and counties.

Without the full range of tools and authorities to enforce Oakland’s progressive laws, the kinds of tools and authorities that peer cities and counties already have, the City runs the risk of our laws being under-enforced, or unenforced entirely. The proposed OMC 1.10 includes three key elements to address this gap:

1. Authority: the ordinance authorizes the City Attorney to enforce all Oakland laws.
2. Remedies: the ordinance provides for a range of remedies that will empower the City Attorney to request, and after all sides have an opportunity to be heard, a court to award effective relief that furthers justice for impacted Oaklanders.
3. Equity: the ordinance includes safeguards to ensure equity in implementation.

²⁵ See San Jose Municipal Code § 1.08.015 [\$2500/violation for each day]; San Diego City Code § 12.0202(b) [\$2500/violation for each day]; Los Angeles Municipal Code § 11.00(L) [\$2500/violation for each day].

²⁶ The UCL grants enforcement authority to city attorneys of cities with a population over 750,000. (See Bus. & Prof. Code § 17204.) As of the 2020 Census, Oakland’s population was only 440,646.

Proposed OMC 1.10 is a clear, comprehensive ordinance that will empower the City Attorney to equitably enforce Oakland’s laws for our most marginalized residents, helping to close the enforcement gap.

ANALYSIS AND POLICY ALTERNATIVES

Proposed OMC 1.10 Centers Equity in Civil Enforcement Decisions and Outcomes

The proposed ordinance centers equity at the outset, requiring that “any actions brought hereunder seek outcomes that are fair, equitable, and just.”²⁷ Proposed OMC 1.10’s explicit equity requirements make it even more protective than similar civil enforcement ordinances of peer cities and counties. The proposed ordinance would make Oakland a leader in equitable enforcement of the law. For a more detailed discussion, see the REIA included as **Attachment 1**.

Proposed OMC 1.10 Sets Clear and Comprehensive Civil Enforcement Authority

The proposed ordinance sets forth clear authority to bring civil actions to protect the people of the City of Oakland. The authority falls into three general categories:

1. The ability to remedy public nuisances under Oakland law.²⁸
2. The ability to enforce *all* Oakland laws in the Oakland Municipal Code, rather than only some ordinances.²⁹
3. The ability to enforce other laws and orders when authorized or designated by the City official with such authority.³⁰

Proposed OMC 1.10 Sets Clear and Comprehensive Civil Enforcement Remedies

Clear and comprehensive remedies are essential in civil litigation to prevent ongoing harm and to deter potential violators. The proposed OMC 1.10’s remedies are discussed in depth in Section IV(C) of the REIA.³¹

Proposed OMC 1.10 Includes Data Collection, Analysis, and Reporting to Council

The proposed OMC 1.10 requires regular data collection and analysis on the population served, enforcement targets, relevant equity indicators, and outcomes. Ongoing data collection and analysis is necessary to serve two critical goals: (1) to best target limited civil enforcement

²⁷ OMC § 1.10.010 [Purpose]

²⁸ OMC § 1.10.020(C).

²⁹ OMC § 1.10.020(D).

³⁰ OMC § 1.10.020(E). One recent example involves the Alameda County public health orders during the pandemic, which authorized enforcement by the Oakland Police Department. With the proposed OMC 1.10, OPD and the City Attorney could support one another in the enforcement of those public health orders.

³¹ **Attachment 1.**

resources in order to help close racial disparities in Oakland and (2) to review recent enforcement actions to ensure that the authority and remedies provided by proposed OMC 1.10 are being applied in an equitable manner. The City Attorney's Office will provide a report to the City Council after the first three years of implementation, analyzing the impact of proposed OMC 1.10 and the extent to which it has been aligned with equitable enforcement.

Policy Alternative: State Authorization for Enforcement under the Unfair Competition Law

As discussed earlier, the City of Oakland does not have authority under the Unfair Competition Law because Oakland does not meet the minimum population requirement. UCL authority therefore is not available without an action by the California state legislature. This alternative is, at best, difficult to secure. It requires state action on an uncertain timeline. The proposed OMC 1.10, by contrast, is fully within the Council's control and can be passed immediately. The proposed OMC 1.10 also includes an explicit focus on equity that the UCL does not.

FISCAL IMPACT

Effective equitable enforcement reduces staff time and other resources that City departments must invest to try to get repeat violators to stop, while also allowing recovery of City costs. Existing cases brought by the City Attorney's Office provide some illustrations of how these costs and resources can add up. For example, six fires broke out at two Oakland properties in the Eastlake neighborhood between 2018 and 2020. City departments had conducted over twenty-five inspections and issued eight Notices of Violation, three Re-Inspection Notices, two Notices of Intent to Obtain an Inspection and Abatement Warrant, one Order to Abate, and two Red Tag Notices formally declaring a property unsafe for human habitation. The Planning & Building Department, Fire Department, Police Department, and City Administrator's Office together incurred staff costs of over \$40,000 for three properties alone. The City Attorney then filed a lawsuit to address the imminent fire hazards at the properties, to protect the marginalized tenants' rights, and to recover City costs, among other things. This type of successful recovery of administrative, investigative, and other costs and damages incurred by the City can replenish some of the funds that the City has expended to stop harm to Oakland communities.

Like cost recovery, any civil penalties recovered by the City Attorney in litigation are deposited in the City's General Fund, providing financial resources for the City of Oakland, among other things, to respond to the harmful conduct that prompted the lawsuit. Finally, some of the resources expended by the City Attorney in enforcing Oakland laws will be recoverable through attorney's fees.

Over the past five years, the City Attorney secured monetary awards and settlements totaling over **\$48 million** for the City of Oakland and its residents. The vast majority (91%) has come from or will come from major corporations, including between \$10 and \$20 million from opioid defendants; \$14.4 million from lead paint manufacturers and sellers; \$7.4 million from Monsanto chemical manufacturers; and \$6.7 million from real estate magnates. This money will directly

benefit Oaklanders in a number of ways. It will provide critical funds to remediate the nuisance of lead paint, contributing to the removal of a dangerous hazard to childhood health.³² The recoveries will help fund public health efforts in response to the opioid crisis, including key crisis intervention services.³³ And the City Attorney has also secured relocation payments for displaced tenants, helping reduce the harms of displacement and ease their transition to a new home.

PUBLIC OUTREACH / INTEREST

The City Attorney's Office has consulted with community-based partners to maximize engagement. The community-based organizations (CBOs) represent tenants, workers, neighbors, and local businesses. The City Attorney consulted with the following organizations as part of the REIA process: West Oakland Environmental Indicators Project, East Bay Community Law Center, Centro Legal de la Raza, Bay Area Legal Aid, Public Rights Project, and Alliance of Californians for Community Empowerment.

The City Attorney's Office is broadly and institutionally committed to equitable enforcement informed by inclusive community engagement and partnerships. The Community Engagement Working Group of the Affirmative Litigation team has developed goals, values, and best practices for engaging with community groups and members in our day-to-day work. Continued community engagement and dialogue concerning the proposed OMC 1.10 will be incorporated as part of the City Attorney's broader working group efforts. This working group meets monthly to collectively brainstorm approaches for effective community engagement, troubleshoot challenges that arise, and ensure coordination of outreach to new community groups/members and maintenance of existing community relationships across the three Affirmative Litigation units. Through this Working Group, the City Attorney's Office will remain accountable to equitable enforcement informed by inclusive community engagement and partnerships.

COORDINATION

The City Attorney's Office and City Council sponsors coordinated with the Department of Race and Equity and the City Administrator's Office on the introduction of this legislation.

SUSTAINABLE OPPORTUNITIES

The proposed OMC 1.10 is instrumental to the City Attorney's ability to conduct equitable civil enforcement. The following sustainable opportunities – economic, environmental, and race &

³² See Marybelle Tobias, *Racial Equity Impact Analysis: Eliminating Lead Paint Hazards in Oakland & Alameda County*. (Sep. 2021). <https://oaklandside.org/wp-content/uploads/2021/12/Lead-Paint-REIA.pdf>

³³ See Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Distributor Settlement, § 4(B)(ii). <https://nationalopioidsettlement.com/wp-content/uploads/2021/10/final-proposed-ca-state-subdivision-agreement-distributors-settlement.pdf>; see also Distributor Settlement Agreement, Exh. E. <https://nationalopioidsettlement.com/wp-content/uploads/2023/02/Final-Distributor-Settlement-Agreement-3.25.22-Final-Exhibit-C-as-of-5.27.22-Exhibit-G-and-I-as-of-02.22.23.pdf>

equity – are addressed from the perspective of equitable civil enforcement generally. In some of the specific areas referenced below, the City Attorney currently has authority to pursue a civil action but only limited civil remedies under Oakland law. In other areas, the City Attorney does not have clear authority to pursue a civil action at all.

Economic: Equitable enforcement of local laws, such as the Minimum Wage and Sick Leave Ordinance, can prevent labor violations that lead to a reduction and/or loss of employment. Equitable enforcement of tenant protections can help prevent displacement, thereby preventing houselessness, loss of employment, disruption of children’s education, and other harms.³⁴ Securing restitution through civil litigation can provide immediate economic benefits to Oakland residents,³⁵ while civil penalties can provide the City with funds to address the harms of bad acts.

Environmental: Equitable enforcement of environmental protections can stop ongoing harm caused by global warming and by polluters.³⁶ Enforcement of health and safety laws can also prevent violations that impact the environment and health of Oakland residents.

Tenant harassment often takes the form of code violations, failure to conduct repairs, and/or failure to perform maintenance, all of which expose marginalized populations to environmental hazards.³⁷ Housing justice is therefore health justice. Oakland has some of the oldest rental housing in Alameda County, with the median year of construction at 1957 – 12 years earlier than the county average.³⁸ Rental units built before 1940 make up about one-third of Oakland’s total; the older a home is, the more likely it needs capital repairs and upgrades.³⁹ As a result, tenants in older units may face greater environmental hazards. And displacement can lead to houselessness, where the

³⁴ See, e.g. Matthew Desmond and Rachel Tolbert Kimbro. “Eviction’s Fallout: Housing, Hardship, and Health.” Social Forces. (2015)

https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf; Sarah Treuhaft et. al. “Solving the Housing Crisis is Key to Inclusive Prosperity in the Bay Area.” PolicyLink, The San Francisco Foundation, USC PERE. (2018) <https://www.policylink.org/resources-tools/solving-housing-crisis-bay-area>

³⁵ For example, half of Oakland tenants are rent burdened, spending more than 30% of their gross income on housing. Housing Readiness Report: Oakland. Partnership for the Bay’s Future (citing Bay Area Equity Atlas data) <https://www.housingreadinessreport.org/oakland>

³⁶ See, e.g. *People v. BP P.L.C, et. al.* (RG17875889) Alameda County Superior Court. <https://www.oaklandcityattorney.org/News/Press%20releases/Climate%20Change%20Lawsuits.html>. 61% of Oakland residents in a recent survey are willing to pay more to reduce and prepare for climate change. 2021 City of Oakland Budget Priorities Survey. FM3 Research. <https://cao-94612.s3.amazonaws.com/documents/Agenda-Report-Budget-Priorities-Poll-FY21-23-with-Attachments2-signed-Director-CAO.pdf>

³⁷ See, e.g. Samiya Bashir, *Home is Where the Harm Is: Inadequate Housing as a Public Health Crisis*. American Journal of Public Health. Vol. 92, Issue 5. (May 2002) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222229/>; see also Ankur Singh et al., *Housing Disadvantage and Poor Mental Health: A Systematic Review*, 57 Am. J. Prev. Med. 262, 262, 266 (2019) [overcrowding, substandard housing, housing instability, and eviction linked to poor mental health].

³⁸ *Housing Vulnerability in Oakland*. Housing Initiative at Penn. (September 2020) <https://www.housinginitiative.org/oakland.html>

³⁹ *Id.* (citing Mousumi Sarkar. 2011. “How American Homes Vary by the Year They Were Built.” Working Paper No. 2011-18. U.S. Census Bureau; Paul Emrath. 2012. “Quality of the Existing Housing Stock: As Good as You Thought?” Special Studies in Economics and Housing Policy. NAHB.)

average life expectancy of people without housing falls by as much as 27 years.⁴⁰ Equitable civil enforcement can address those environmental hazards and prevent displacement.

Race & Equity: Equitable civil enforcement empowers the City to intervene upstream and prevent subsequent harms – harms that are disproportionately suffered by BIPOC, historically, and/or presently marginalized communities. Equitable civil enforcement can be the difference between housing security versus houselessness, environmental health versus environmental racism, and economic opportunity versus economic exploitation.

The proposed OMC 1.10 will exist in a context where the City Attorney’s Affirmative Litigation team – the units that enforce Oakland law on behalf of the City of Oakland and/or the People of the State of California, including by filing lawsuits – are expressly committed in their mission statements and strategic plans to advancing racial equity. The missions of the City Attorney’s three Affirmative Litigation units – the Neighborhood Law Corps (NLC), the Housing Justice Initiative (HJI), and the Community Lawyering and Civil Rights (CLCR) unit – all center racial equity and focus on injustices that impact Black, Indigenous, Latina/o/x, Asian / Pacific Islander, and other historically and/or presently marginalized communities. The Neighborhood Law Corps is a longstanding community-facing unit that focuses on core life, health, and safety issues such as tenant protection, substandard housing, and public nuisance. The Housing Justice Initiative is dedicated to protecting marginalized Oakland tenants and preserving affordable housing in Oakland by enforcing tenants’ legal rights. Finally, the Community Lawyering and Civil Rights unit is dedicated to advancing systemic rights and opportunities for historically and presently marginalized communities in Oakland by enforcing, strengthening, and creating laws responsive to those communities’ needs, in furtherance of racial, economic, and environmental justice.

For a more detailed discussion, see the Racial Equity Impact Analysis attached to this staff report.

In addition, the proposed ordinance will advance procedural equity and allow the City Attorney to partner more effectively with the Office of the City Administrator, other City departments, community-based organizations, and community members to close the civil enforcement gap. Doing so, in turn, will reduce historical and ongoing racial and other inequities in outcomes for Oakland residents. Equitable civil enforcement is therefore an essential component in the citywide effort to create the conditions necessary for an equitable society in which all Oakland residents can participate, reach their full potential, and prosper.

ACTION REQUESTED OF THE CITY COUNCIL

The co-sponsors request that the Council pass OMC 1.10: the Civil Protection of the People of Oakland Ordinance, detailing the City Attorney’s authority to bring civil actions to protect the

⁴⁰ This is based on one study of homeless adults finding an average age at death of 51.2 years, (*Mortality Among Homeless Adults in Boston: Shifts in Causes of Death Over a 15-year Period*. (2013). JAMA Internal Medicine. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3713619/pdf/nihms-493296.pdf>) compared to the average life expectancy in the United States (78.74 years in 2013, according to the World Bank).

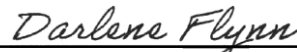
health, safety, and welfare of Oaklanders and equitably enforce violations of City law, consistent with the Charter.

For questions regarding this report, please contact Scott Hugo, Housing Justice Attorney, and Seema Rupani, Community Lawyering and Civil Rights Attorney, at 510-238-6292.

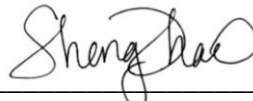
Respectfully submitted,



BARBARA J. PARKER
City Attorney



DARLENE FLYNN
Director, Department of Race and Equity



SHENG THAO
Mayor



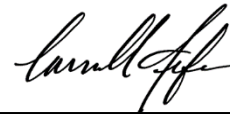
STEVEN FALK
City Administrator



DAN KALB
President Pro Tempore, District 1



NIKKI FORTUNATO BAS
Council President, District 2



CARROLL FIFE
Councilmember, District 3



TREVA REID
Councilmember, District 7

Reviewed by: Malia McPherson
Deputy City Attorney, General Government and
Finance
Advisory Division

Darlene Flynn, Jacque Larrainzar, and Amy
Ferguson-Yep
Department of Race and Equity

Prepared by:
Zoe Savitsky, Supervising Deputy City Attorney
Affirmative Litigation

Scott Hugo, Housing Justice Attorney
Affirmative Litigation

Seema Rupani, Community Lawyering and Civil
Rights Attorney
Affirmative Litigation

Attachment: Racial Equity Impact Analysis (REIA)



AGENDA REPORT

TO: City Council

FROM: Barbara J. Parker
City Attorney

SUBJECT: Racial Equity Impact Analysis (REIA)
of OMC 1.10: The Civil Protection of
the People of Oakland Ordinance

DATE: June 13, 2023

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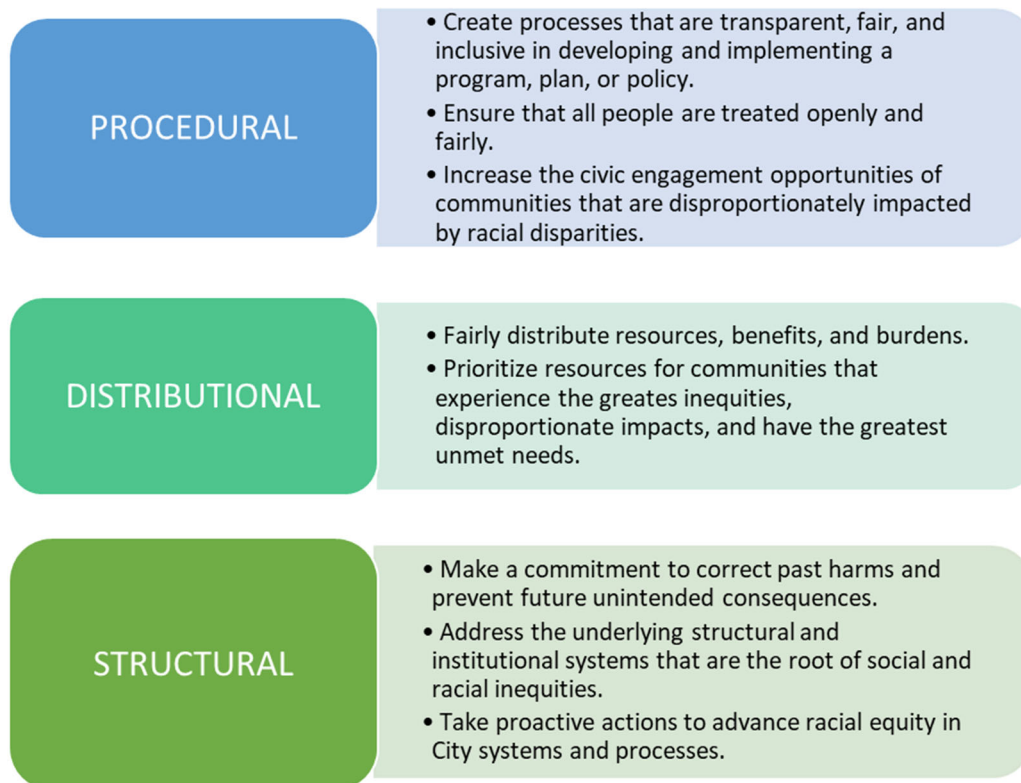
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PART ONE: Racial Equity Impact Analysis and the Proposed OMC Chapter 1.10

I. Introduction

The purpose of a Racial Equity Impact Analysis (REIA) is to explicitly assess and design for racial equity in City of Oakland policies and programs. The REIA process reflects “the City of Oakland’s commitment to taking intentional steps to further racial equity [which] is essential to building and maintaining meaningful relationships with underserved communities.”¹ The ultimate goal is to “work with community to create a city where everyone has access to the opportunities necessary to meet their essential needs, advance their well-being, and achieve their full potential.”²

This REIA is specifically designed to assess racial equity for the proposed Civil Protection of the People of Oakland Ordinance (proposed Oakland Municipal Code Chapter 1.10). The framework this REIA uses for assessing racial equity uses three separate but mutually supporting elements: procedural equity, distributional equity, and structural equity.³



¹ City of Oakland Racial Equity Impact Analysis Worksheet (August 2020).

² *Id.*

³ This framework is adapted from Balu, Rekha et. al. *Pathways to Equity at Scale*. Urban Institute. (Mar. 2023) https://www.urban.org/sites/default/files/2023-03/Pathways%20to%20Equity%20at%20Scale_0.pdf

Because the proposed statute is *procedural* in nature – as opposed to a policy, program, or service that may focus on distributional and/or structural equity – the analysis focuses on *procedural* equity. This REIA concludes that the proposed OMC 1.10 would advance procedural equity by giving the City Attorney clear authority to enforce *all* of Oakland’s laws, and by ensuring transparency and accountability in how the City Attorney exercises that authority. However, because the way the ordinance is *used* if enacted will implicate the other two forms of equity (i.e., distributional, structural), this REIA also includes information about how the City Attorney will track those other two forms of equity going forward.

II. What is the Proposed OMC 1.10?

Proposed OMC 1.10 sets forth the Oakland City Attorney’s full authority to conduct civil enforcement, including filing lawsuits, to protect the people of the City of Oakland. The City Attorney currently has clear authority to enforce some, but not all, of Oakland’s civil laws. The proposed ordinance details the City Attorney’s authority to enforce Oakland’s civil laws and to seek a range of remedies for the City and for Oaklanders. The **equity outcome** for the proposed ordinance is that the City Attorney can conduct effective and equitable civil enforcement of all Oakland laws **such that Oakland’s BIPOC, historically, and/or presently marginalized communities are protected by the law.**

There are three key elements to the proposed OMC 1.10:

1. Authority: the ordinance allows the City Attorney to enforce all of Oakland’s civil laws.
2. Remedies: the ordinance provides for a range of remedies that will empower the City Attorney to request, and after all sides have an opportunity to be heard, a court to subsequently award, effective relief that furthers justice for the City and/or for impacted Oaklanders.
3. Centering Equity: the ordinance explicitly requires that the City Attorney seek *only* outcomes that are fair, equitable, and just in any action brought under the ordinance, and includes a number of additional safeguards to ensure equity in its implementation.

The proposed ordinance is designed for effective *and* equitable civil enforcement. *Equitable enforcement* is

an approach to enforcing the law that foregrounds the impact of harms on [marginalized] communities...that are disadvantaged economically, socially, or politically and therefore more [often subjected] to harm. Equitable enforcement

means considering equity both when identifying and pursuing cases, as well as when deciding what remedies to pursue.⁴

The proposed OMC 1.10 will improve equitable enforcement of City laws passed by the City Council and/or Oakland voters, and assist in securing justice for BIPOC, historically, and/or presently marginalized communities.

PART TWO: How the Proposed OMC 1.10 Would Advance Racial Equity in Oakland

III. The Existing Civil Enforcement Gap

A. Underenforcement of Rights

The REIA process requires that the City “systemically analyze potential impacts of City action or inaction on groups impacted by disparities.”⁵ For the purposes of the City Attorney’s role in City government, “City inaction” includes accounting for the longstanding and ongoing local, state, and national civil “enforcement gap,” a gap that multiplies racial inequities.

The civil enforcement gap is “the gap between the laws on the books and the lived realities of many people those laws are written to serve.”⁶ Although “the laws on the books” in Oakland include numerous protections, (e.g., dignified housing conditions, fair and safe working environments, healthy neighborhoods), the underenforcement of existing laws furthers racial inequities. Put bluntly, underenforcement of such laws “undermines the legitimacy of institutions charged with representing the will of the People... [because the] laws lack real-life effect.”⁷

The Public Rights Project, a national nonprofit organization dedicated to eliminating the gap between the values expressed in laws and the lived reality of marginalized communities, conducted a national survey of corporate abuse in 2019. The survey found that over *half* of

⁴ LiJia Gong, *Growing An Equitable Enforcement Practice: A Guide for Local Prosecutors to Fight Corporate Abuse*. Public Rights Project. (Nov. 2019).

<https://drive.google.com/file/d/14g1Xv7DoBCKSIsqFcxAy1c8pHJVyCxx/view>; see also *Equitable Enforcement to Achieve Health Equity*. ChangeLab Solutions. <https://www.changelabsolutions.org/product/equitable-enforcement-achieve-health-equity> [“a process of ensuring compliance with law and policy that considers and minimizes harms to people affected by health inequities.”]

⁵ REIA Worksheet rev.5.

⁶ Jill E. Habig & Joanna Pearl, *Cities as Engines of Justice*, 45 Fordham Urb. L.J. 1159, 1165 (2019). <https://ir.lawnet.fordham.edu/ulj/vol45/iss5/1>

⁷ *Id.* at 1164; see also Jentry Lanza, *Agency Underenforcement as Reviewable Abdication*. Northwestern University Law Review. Vol. 112, No.5, 1171; *Roman v. Korson*, 918 F. Supp. 1108 (W.D. Mich 1995) [finding that USDA systematically failed to enforce labor housing regulations for migrant farm workers.]; Peter J. Henning, “Wells Fargo Shows Erosion of Corporate Accountability under Trump.” *New York Times*. (Aug. 14, 2017) [“in the world of corporate misconduct, it seems that there is even less need to beg forgiveness these days as the government scales back how much it will police companies that appear to have violated the law.”] <https://www.nytimes.com/2017/08/14/business/dealbook/wells-fargo-corporate-accountability-trump.html>

Americans had experienced one or more incidents of “wage theft, predatory lending, predatory debt collection, unsafe housing conditions, or health problems due to pollution created by a business within the past ten years.”⁸ Yet many of those individuals live in communities like Oakland where protections against such harms exist, at least “on the books.” Thus underenforcement of laws, especially those designed to protect the rights of the most marginalized residents, have significant consequences for quality of life.⁹ For example, “underenforcement of the minimum wage means that low-wage workers, many of whom are immigrants and people of color, are losing out on income they have earned and is essential to their well-being.”¹⁰ Wage theft alone can increase poverty rates among workers by over 20%.¹¹

The Oakland City Council has repeatedly recognized that civil enforcement is a critical means to advance equity for Oakland residents. For example, the Council specifically provided for City Attorney civil enforcement of the rights enshrined in the Tenant Protection Ordinance.¹² The Council also recently declared racism a public health crisis and resolved that “the City shall prioritize providing adequate long-term resources to City departments whose *enforcement* of local, state, and federal laws protect historically marginalized Oakland communities and play a role in improving the social determinants of health by furthering racial justice.”¹³

B. Overenforcement and Overpenalization of BIPOC, Historically, and/or Presently Marginalized Communities

Systemically analyzing the potential impacts of the proposed OMC 1.10 on historically and/or presently marginalized groups requires acknowledging and distinguishing from the *overenforcement* of many laws against BIPOC, historically, and/or presently marginalized individuals and communities.

Across the country, there has been a growing focus on how fines and fees can trap BIPOC, historically, and/or presently marginalized individuals and communities in cycles of poverty and

⁸ Public Rights Project, *Corporate Enforcement Gap Report*. (July 2019), https://drive.google.com/file/d/1TSrl-z5nyOuN_r1cX5sPXAxOO1MiLGO6/view

⁹ See, e.g. Grace Ashford. “Leaks, Mold, and Rats: Why New York City Goes Easy on its Worst Landlords.” New York Times. (December 26, 2018.) <https://www.nytimes.com/2018/12/26/nyregion/nyc-housing-violations-landlords-tenants.html?action=click&module=Top%20Stories&pgtype=Homepage> [impact of underenforcement of housing code against repeat violators.]

¹⁰ *Growing an Equitable Enforcement Practice*, p.6.

¹¹ *Cities as Engines of Justice*, (citing David Cooper & Teresa Kroeger, *Employers Steal Billions From Workers Paychecks Each Year*. Econ. Policy Inst., (May 10, 2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paycheckeach-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>.)

¹² OMC 8.22.670(A)(2); see also OMC 15.08.080(F) [City Attorney enforcement of health and safety standard in Oakland Building Maintenance Code.]

¹³ City of Oakland Resolution No. 89249 [emphasis added]. (June 7, 2022.) File # 22-0417. <https://oakland.legistar.com/LegislationDetail.aspx?ID=5648415&GUID=3302DDAA-B81D-44B8-A3FC-CA542C19B1D9&Options=ID|Text|&Search=89249>

justice system involvement. For example, the United States Department of Justice Civil Rights Division specifically found in Ferguson, Missouri that the local municipal courts

Focus[ed] on revenue over public safety, leading to court practices that violate the 14th Amendment's due process and equal protection requirements; [and]

Exacerbate[ed] the harm of Ferguson's unconstitutional police practices and impose[ed] particular hardship upon Ferguson's most vulnerable residents, especially upon those living in or near poverty. Minor offenses can generate crippling debts, result in jail time because of an inability to pay and result in the loss of a driver's license, employment, or housing.¹⁴

In response to situations like that in Ferguson, MO, and across the country, the Justice Department has repeatedly issued guidance to local courts to try to prevent *criminal and civil* fines and fees from having these negative impacts.¹⁵

Locally, after growing awareness and advocacy concerning the inequitable impact of fines and fees,¹⁶ the Alameda County Board of Supervisors voted in December 2018 to remove probation fees.¹⁷

Because of this context, the proposed OMC 1.10 includes specific equity safeguards in the statute, described in Section V below, to ensure that Oakland's future efforts to close the civil enforcement gap using OMC 1.10 do not *exacerbate* these historical and current inequities, and to avoid any overenforcement and overpenalization via OMC 1.10 of BIPOC, historically, and/or presently marginalized communities.

IV. The Proposed OMC 1.10 Would Help Close the Civil Enforcement Gap and Advance Equity

The proposed OMC 1.10 will exist in a context where the City Attorney's Affirmative Litigation team – the units that enforce Oakland law on behalf of the City of Oakland and/or the

¹⁴ Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri. US Department of Justice. (March 4, 2015) <https://www.justice.gov/opa/pr/justice-department-announces-findings-two-civil-rights-investigations-ferguson-missouri>; see also Glenn Thrush, "Justice Department Presses Local Courts to Reduce Fines," *New York Times*. (April 20, 2023.) <https://www.nytimes.com/2023/04/20/us/politics/justice-dept-courts-fines.html>.

¹⁵ Department of Justice April 20, 2023 letter <https://www.justice.gov/opa/press-release/file/1580546/download>

¹⁶ See, e.g. Theresa Zhen and Brandon Greene, *Pay or Prey: How the Alameda County Criminal Justice System Extracts Wealth from Marginalized Communities*. East Bay Community Law Center. (Oct. 24, 2018.) <https://ebclc.org/in-the-news/report-pay-or-prey-how-the-alameda-county-criminal-justice-system-extracts-wealth-from-marginalized-communities/>; see also Decriminalizing Poverty and Addressing the Racial Wealth Gap. East Bay Community Law Center. (<https://ebclc.org/policy-initiatives/decop/>)

¹⁷ Alameda County Ordinance No. 2018-67. <http://www.acgov.org/probation/documents/SignedOrdinance.pdf>

People of the State of California, including by filing lawsuits – are expressly committed in their mission statements and strategic plans to advancing racial equity. The proposed ordinance will allow the City Attorney to partner more effectively with other City departments, community-based organizations, and community members to close the civil enforcement gap. Doing so will, in turn, reduce historical and ongoing racial and other inequities in outcomes for Oakland residents.

A. Equity-Centered Missions

The existing missions of the three Affirmative Litigation teams – the Neighborhood Law Corps (NLC), the Housing Justice Initiative (HJI), and the Community Lawyering and Civil Rights (CLCR) units – all center racial equity and focus on injustices that impact Black, Indigenous, Latina/o/x, Asian / Pacific Islander, and other historically and/or presently marginalized communities. The Neighborhood Law Corps is a longstanding community-facing unit that focuses on core life, health, and safety issues such as tenant protection, substandard housing, and public nuisance. The Housing Justice Initiative is dedicated to protecting marginalized Oakland tenants and preserving affordable housing in Oakland by enforcing tenants' legal rights. Finally, the Community Lawyering and Civil Rights unit is dedicated to advancing systemic rights and opportunities for historically and presently marginalized communities in Oakland by enforcing, strengthening, and creating laws responsive to those communities' needs, in furtherance of racial, economic, and environmental justice.

Thus OMC 1.10 would be deployed only by units with specific and explicit commitments to racial justice, decreasing the likelihood that the proposed OMC 1.10 could be deployed to further rather than reduce racial inequity.

B. Authority

1. Clear and Comprehensive Authority to Enforce Local Laws

The other large City Attorney offices in California already have authority and remedies similar to what the proposed OMC 1.10 would provide. That authority comes either from the jurisdiction's own local ordinance(s) or through California's Unfair Competition Law (UCL).¹⁸ Their existing authority has already enabled these other City Attorneys to enforce important laws in ways that advance equity, as discussed further below.¹⁹

¹⁸ Business and Professions Code § 17200 *et seq.* The Unfair Competition Law already provides more expansive authority than the proposed OMC 1.10.

¹⁹ Staff contacted partner organizations that study local civil enforcement, along with other large City Attorney offices in California, to request existing assessments of enforcement under analogous local ordinances and/or the UCL. Staff were unable to identify comprehensive, readily available data on enforcement cases brought under other jurisdictions' laws, nor equity analysis of those cases. To staff's knowledge, such an assessment has not been done. This REIA therefore instead relies upon illustrative examples as the best available alternative, while also committing to stronger data collection and analysis of City of Oakland civil enforcement cases.

As an overview, the San Jose City Attorney, the San Diego City Attorney, and the Los Angeles City Attorney each can already file a civil action to enforce *any* violation of their respective municipal codes, request injunctive relief, and recover civil penalties of up to \$2,500 per violation for each day.²⁰ This authority is similar to what the proposed OMC 1.10 would do, except that Oakland’s proposed civil enforcement ordinance explicitly includes equity protections in the text of the statute.

These three jurisdictions, along with others such as the City and County of San Francisco and the County of Santa Clara, can also use the authority granted to them under state law by the UCL. The UCL provides local governments of certain sizes or otherwise denoted in the statute’s text with specific authority to enforce violations of almost *any* law, along with strong remedies to stop “ongoing wrongful business conduct in whatever context such activity might occur.”²¹ UCL remedies include up to \$2,500 per violation in civil penalties, comprehensive injunctive relief, and restitution to those who have been harmed.

The City of Oakland is therefore an outlier; the Oakland City Attorney does not currently have clear authority to enforce all of Oakland’s laws as her peer City Attorneys do. The Oakland City Attorney also lacks independent statutory authority to enforce the UCL due to Oakland’s population size being under the threshold necessary to have authority under this state law.²²

2. *Examples of Expanded Enforcement Authority under OMC 1.10*

The proposed OMC 1.10 will give the City Attorney’s Affirmative Litigation team authority to enforce the many critical local laws that advance equity. This section describes just a few examples of Oakland laws that OMC 1.10 would enable the City Attorney to enforce that do not currently contemplate City Attorney enforcement.

Anti-discrimination laws; protections for the LGBTQIA+ community

Oakland is one of a handful of jurisdictions that has an Equal Benefits Ordinance, which addresses the employment inequities faced by unmarried couples and ensures that domestic partners regardless of gender identity are treated equally. Among other things, Oakland’s Equal Benefits Ordinance requires those contracting with the City of Oakland to offer equal benefits to their employees.²³ However, this ordinance does not specifically contemplate City Attorney enforcement.

²⁰ See San Jose Municipal Code Chapter 1.08; Los Angeles Municipal Code Chapter 11.00; San Diego City Code Chapter 12.

²¹ *People v. McKale* (1979) 25 Cal.3d 626, 631-632.

²² The UCL grants enforcement authority to city attorneys of cities with a population over 750,000. (See Bus. & Prof. Code § 17204.) Oakland’s population was 440,646 as of the 2020 Census.

²³ OMC Chapter 2.32.

Additionally, OMC Chapter 9.44 broadly protects people against discrimination on the basis of sexual orientation, whether that be discrimination in employment, real estate transactions, businesses, or accessing City services and facilities. However, the law does not specifically contemplate City Attorney enforcement, placing a greater burden on an impacted person to bring their *own* lawsuit to enforce their rights in court.

The rise in anti-LGBTQIA+ legislation and violence across the country underscores the importance of the City of Oakland maximizing its ability to protect LGBTQIA+ community members, including passing proposed OMC 1.10, which would give the City Attorney clear enforcement authority for these protections.²⁴

Environmental health and protection laws

The City Council adopted the 2030 Equitable Climate Action Plan (ECAP) in July 2020, a ten-year plan for mitigating and adapting to the climate crisis in ways that improve racial equity across Oakland.²⁵ As part of the ECAP's development process, the City commissioned a Racial Equity Impact Analysis and Implementation Guide which developed clear guidelines to maximize equitable outcomes during implementation.²⁶ The REIA recognized that "the communities in Oakland with the greatest socio-economic burdens are located in natural and built environments that face high climate risks."²⁷ The Council's subsequent declaration of racism as a public health crisis in June 2022 further commits the City to address racially disparate health outcomes,²⁸

²⁴ According to a 2022 study by the Center for American Progress, in 2022 state lawmakers introduced more than 300 bills targeting the rights of LGBTQI+ people. These policies have been linked to a rise in extremist anti-LGBTQI+ and especially anti-transgender violence and rhetoric. The study found that LGBTQI+ people continue to experience discrimination in many settings, including health care, employment, housing, and public spaces. (Caroline Medina and Lindsay Mahowald, *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022*. Center for American Progress. (Jan. 12, 2023.) <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/>.)

²⁵ Oakland 2030 Equitable Climate Action Plan. (July 2020) <https://cao-94612.s3.amazonaws.com/documents/Oakland-ECAP-07-24.pdf>

²⁶ Marybelle Nzegwu Tobias, et. al. Racial Equity Impact Assessment and Implementation Guide for 2030 Equitable Climate Action Plan. https://cao-94612.s3.amazonaws.com/documents/FINAL_Complete_EF-Racial-Equity-Impact-Assessment_7.3.2020_v2.pdf

²⁷ *Id.* p.3.

²⁸ The 2018 Oakland Equity Indicators Report previously documented extreme inequities in public health for Oakland residents as a result of environmental racism. Equity Indicator scores are on a scale of 1 to 100, with 1 representing the highest possible level of inequity, and Public Health received an overall score of 25.8 (the second most inequitable). For example, the report found that African American children in Oakland were over 10 times more likely than White children to be admitted to the emergency department for asthma-related conditions. Childhood asthma has been linked to living in neighborhoods with poor air quality as well as poor housing conditions that expose children to mold and poor ventilation. (2018 Oakland Equity Indicators Report, p. 70 <https://cao-94612.s3.amazonaws.com/documents/2018-Equity-Indicators-Full-Report.pdf>); see also Samiya Bashir, *Home is Where the Harm Is: Inadequate Housing as a Public Health Crisis*. American Journal of Public Health. Vol. 92, Issue 5. (May 2002) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222229/>.)

including through City departments “whose enforcement of local, state, and federal laws protect historically marginalized Oakland communities and play a role in improving the social determinants of health by furthering racial justice.”²⁹

Despite these commitments, Oakland currently has several important environmental protection laws that do not specifically contemplate City Attorney enforcement. These laws include Oakland’s green building ordinances for public and private development, adopted by Council in 2005 and 2010 respectively.³⁰ The Council found the green building requirements, which were based on local climatic, geological, and topographical conditions, to be critical to the economic and environmental health of the City of Oakland. However, while the City Administrator can enforce these ordinances, they do not specifically contemplate City Attorney enforcement. The proposed OMC 1.10 would not *eliminate* or *change* the City Administrator’s authority to enforce those ordinances, but would provide the City with *another* tool for compliance with these important laws – a civil action brought by the City Attorney – where the violations are so severe, persistent, and/or pervasive that civil action is the appropriate approach to serve Oakland and its people. Separately, certain protections built into the Oakland Planning Code do not specifically contemplate City Attorney enforcement authority – for example, the use restrictions that limit where heavy industry can be located and hazardous materials can be stored.³¹

The City Attorney’s ability to enforce Oakland’s strong environmental protection laws, such as the City’s green building ordinances and elements of the Planning Code, would be a step towards advancing environmental justice and addressing racially disparate health outcomes for Oakland residents.

Summary

Oakland has a number of progressive laws aimed at protecting historically and/or presently marginalized community members and contributing to a healthy and thriving City. However, without the full range of tools and authorities to enforce these laws – the kinds of tools and authorities Oakland’s peer cities and counties already have – the City runs the risk of its laws being under-enforced or unenforced entirely. As a result, critical opportunities to advance equity are lost. The proposed OMC 1.10 would provide clear authority for the City Attorney to enforce these laws

²⁹ City of Oakland Resolution No. 89249. (June 7, 2022.) File # 22-0417.

<https://oakland.legistar.com/LegislationDetail.aspx?ID=5648415&GUID=3302DDAA-B81D-44B8-A3FC-CA542C19B1D9&Options=ID|Text|&Search=89249>

³⁰ OMC Chapter 15.35 (Public Projects); Chapter 18.02 (Private Development).

³¹ See, e.g. OMC Chapter 17.10.580 [Heavy/High Impact Manufacturing Industrial Activities]; 17.72.010(B)(1) [M-40 Heavy Industrial Zone]; OMC Chapter 17.100(A) [S-19 Health and Safety Protection Combining Zone Regulations].

on behalf of the City, thereby helping effectuate the intent of progressive laws and closing the enforcement gap.

C. Remedies

The proposed OMC 1.10 also establishes remedies, or tools, designed to reduce existing inequities and further racial justice. Some of those remedies include injunctive relief, restitution, civil penalties, and disgorgement of profits. The remedies fall into two general categories, non-monetary and monetary relief, and they are each explored in turn below.

1. *Non-Monetary Remedies*

Injunctive Relief

OMC 1.10 provides for “injunctive relief.”³² An injunction is an order from a court to *do something* or *not do something*. Courts almost universally recognize that “[t]he purpose of injunctive relief is to prevent continued violations of law.”³³ The ability to grant an injunction provides courts with “broad powers to accomplish the ends of justice” in deciding cases.³⁴

The ability to ask a court for an injunction under the proposed OMC 1.10 will help vindicate legal rights and protect Oakland residents. For example, in 2018, a construction and demolition debris company repeatedly and flagrantly violated state and local laws, including numerous protections in the Oakland Planning Code, by storing dangerous waste debris in a mixed business/residential West Oakland neighborhood. The Clawson neighborhood where this misconduct occurred is historically Black and, as of 2019, Black Oaklanders remained the largest racial group in the area.³⁵ The area also scored in the 79% for pollution burden in comparison to other areas throughout the state, reflecting the fact that the area is disproportionately burdened by and vulnerable to multiple sources of pollution – an ongoing impact of environmental racism.³⁶ Using a creative and sometimes indirect set of legal strategies, the City Attorney won an injunction under *state* public nuisance law that ordered the company to stop hauling harmful debris to the warehouse. Injunctive relief was critical to stopping the harm caused by the company – harm that included increased asthma symptoms for nearby families already overburdened by pollution – and to enforcing environmental protections.

Although this is a success story of the City Attorney securing an injunction *without* the proposed OMC 1.10, the proposed statute would allow for a far more direct route to an injunction

³² OMC § 1.10.020(F)(5).

³³ *Consumers Union of United States, Inc. v. Fisher Development, Inc.* (1989) 208 Cal.App.3d 1433, 1439–1440.

³⁴ *People v. City of Los Angeles* (1948) 83 Cal.App.2d 627.

³⁵ OakDOT Geographic Equity Toolbox: Race & Ethnicity, citing data from 5-Year 2019 American Community Survey data.

³⁶ OakDOT Geographic Equity Toolbox: Pollution, citing data from CalEnviroScreen.

by allowing clear enforcement of *local* public nuisance law and other local protections such as the Planning Code.

Equitable Relief

The proposed OMC 1.10 also provides for “equitable relief,” which includes additional non-monetary remedies such as abatement and the appointment of a receiver.³⁷ Equitable relief is a powerful means by which a court can decide on case-specific, individualized remedies that address the specifically demonstrated harm. One form of equitable relief is the abatement, or mitigation, of a public nuisance. Abatement allows a court to issue an order tailored to stopping a public nuisance and the harm caused by it. Another form is the appointment of a receiver, or a neutral agent of the court, to take over day-to-day control of a property. A receiver can be tasked by the court to address dangerous and substandard conditions, such as imminent fire hazards, and/or to protect the rights of existing tenants from further irreparable harm.

2. Monetary Remedies

Three key forms of monetary remedies in the proposed OMC 1.10 – restitution, civil penalties, and disgorgement of profits – advance two overarching goals in protecting Oakland community members. First, they allow those who were harmed by bad acts to be restored, or made whole, as much as possible. Second, they ensure that violators are not rewarded by making money off of violating Oakland law. Depending on the circumstances of a particular case, a court may award some or all of the monetary remedies proposed to accomplish those ends.

In assessing any and all of these monetary remedies, it is critical to acknowledge that the concept of *criminal* “deterrence” has a long and troubled history in the United States and elsewhere. In the criminal justice context, punishments such as incarceration have traditionally been justified as, among other things, a means of deterring future crime. Empirical research has shown that there is little evidence that the severity of criminal sanctions against *individuals* has a deterrent effect – and has shown that the myth of deterrence can perpetuate systemic racism and other forms of systemic oppression.³⁸

However, the concept of deterrence *has* been shown to have a meaningful effect in certain contexts: namely, when deterring misconduct by corporate actors. There are many legal, societal, economic, and other factors that make remedies such as restitution, civil penalties, and disgorgement of profits more effective in a corporate rather than individual context, ranging from

³⁷ OMC § 1.10.020(F)(6).

³⁸ See, e.g., Jonathan Tebes & Jeffrey Fagan. “Stopped by the Police: The End of “Stop-and-Frisk” on Neighborhood Crime and High School Dropout Rates” (Preliminary draft for 2023 ASSA Meeting, 2022); Aaron Chalfin & Justin McCrary, Criminal Deterrence: A Review of the Literature, 55 J. ECON. LIT. 5 (2017); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: The New Press 2010);

mandatory reporting requirements for publicly traded companies³⁹ to the operationalization of the fiduciary duties of corporate leaders. All of these factors independently and together mean it is important to distinguish between what may meaningfully affect the actions of *individuals* and what impacts the misconduct of *corporations*.

As researchers have shown, enforcement against corporate targets has “been shown to significantly affect firm valuation and decision-making. For firms targeted by enforcement, not only are they punished with legal penalties, but there are also penalties imposed by the market, or reputational penalties.”⁴⁰ Further, empirical research on the effect of an enforcement agency’s efforts found that firms “opportunistically adjust their propensities to commit fraud when the expected likelihood of being detected changes due to changes in enforcement” – i.e., when the agency (in this case, the Securities and Exchange Commission) relaxed their enforcement, significantly more firms committed fraud.⁴¹

Thus in considering where and when it would be appropriate to deploy these types of remedies, the proposed OMC 1.10 aims to limit their use to instances where it would be meaningful, appropriate, and effective to request them.

Restitution

Restitution is a particularly meaningful remedy for a City Attorney to be able to request from a court. It would enable the City Attorney to, for example, seek compensation for Oakland residents who have had money or property wrongly taken from them due to a violation of Oakland law. Situations that could result in the City Attorney asking a court for restitution for Oakland residents include recovering money for tenants who overpaid rent for uninhabitable units,⁴² or recovering unpaid wages or benefits to workers whose rights were violated. Restitution goes

³⁹ For example, Johnson and Johnson was forced to disclose a judgment for \$344 million in civil penalties by the California Attorney General’s Office for egregious violations of California’s Unfair Competition Law and False Advertising Law regarding sales of pelvic mesh. The report further disclosed to investors that the company faces 9,000 plaintiffs with direct claims in pending lawsuits with respect to pelvic mesh, along with increased litigation expenses. (“2022 Annual Report.” Johnson & Johnson. (March 2023). <https://www.investor.jnj.com/asm/2022-annual-report>.) The case is discussed further in this REIA.

⁴⁰ Botong Shang, “Deterrence Effect and Opportunistic Corporate Fraud” (2022), available at SSRN: <https://ssrn.com/abstract=3710224> or <http://dx.doi.org/10.2139/ssrn.3710224>

⁴¹ *Ibid.*

⁴² The 2018 Equity Indicators Report, along with more recent studies, have highlighted that Black and Latina/o/x tenants are disproportionately rent burdened in comparison to White tenants in Oakland. Any restitution secured for low-income Oakland tenants would therefore have a disproportionate benefit for tenants of color, easing their existing economic burden. (See Oakland Equity Indicators Report, Theme 4: Housing (84-104). (2018) <https://cao-94612.s3.amazonaws.com/documents/2018-Equity-Indicators-Full-Report.pdf>; see also *Housing Readiness Report: Oakland*. Partnership for the Bay’s Future (citing Bay Area Equity Atlas data) <https://www.housingreadinessreport.org/oakland> [62% of Black residents and 54% of Latinx residents are rent burdened, in comparison to 38% of White residents.]; *Housing Vulnerability in Oakland*. Housing Initiative at Penn. (September 2020.) <https://www.housinginitiative.org/oakland.html>.)

directly to those who experienced the harm (often through a third-party administrator that distributes the funds to impacted individuals), *not* to the City or City Attorney for governmental use. The remedy of restitution is currently only available under a few of Oakland's laws. The proposed OMC 1.10 would enable the City Attorney, where appropriate, to seek restitution in any civil enforcement actions to make harmed Oaklanders as whole as possible.

Other California City Attorneys have advanced equity by successfully securing restitution for impacted individuals. For example, the Los Angeles City Attorney's Office sued two car wash companies for wage theft and other violations of workers' rights.⁴³ The workers were primarily low-income immigrants, and some had effectively received \$4.50 per hour. The lawsuit was a collaboration between the City Attorney, the Bet Tzedek Employment Rights Project, and the Community Labor Environmental Action Network (a nonprofit community organization that advocates for the rights of car wash workers and other low-wage earners in the Los Angeles area). The Los Angeles City Attorney acknowledged that "[i]t's very challenging to expect the average worker to have the guts to come forward...[w]e need to embrace them...and let them know we'll give them the help they need."⁴⁴ Based on the authority and strong remedies in the state's more powerful version of the proposed OMC 1.10, the UCL, the Los Angeles City Attorney was able to recover over \$1 million in restitution for workers and over \$500,000 in civil penalties, plus costs to the City. Given the relatively small number of workers in that particular case, individual employees received up to \$40,000 in restitution. The Los Angeles City Attorney emphasized the impact of large restitution payments for those who had been harmed: "[t]hink of the magnitude of those awards...[t]his is going to change the lives of the workers we sought to protect in this case."⁴⁵

Civil Penalties

In parallel to the authority provided to peer cities like Los Angeles for up to \$2,500 civil penalties per violation, the proposed OMC 1.10 establishes authority for the City Attorney to similarly seek civil penalties of up to \$2,500 per violation for each day that Oakland law is violated.⁴⁶ A court would then decide whether civil penalties are warranted in any individual case, along with the appropriate amounts. Researchers, civil litigators, agencies authorized to request civil penalties, and civil society partners generally refer to three overall reasons why civil penalties are important: (i) they can help secure compliance by the defendant in the case; (ii) they can show other similarly situated actors that violating the law could have these consequences; and (iii) they

⁴³ *People v. Silver Lake Car Wash, Inc.*, (BC690628). Los Angeles Superior Court.

⁴⁴ Alejandra Reyes-Velarde, "2 Los Angeles carwashes to pay more than \$1 million to employees who claimed wage theft." *Los Angeles Times* (Nov. 27, 2018). <https://www.latimes.com/local/lanow/la-me-ln-silver-lake-car-wash-sett-20181127-story.html>

⁴⁵ *Id.* See also "Herrera's Payday Lender Case Nets \$7.7 Million for Borrowers – at Zero Expense for Taxpayers." San Francisco City Attorney. (Aug. 5, 2013) <https://perma.cc/5DAZ-59FR>. [securing \$7.7 million in restitution for borrowers from payday lenders who issued loans over 11x the allowable interest rate and marketed largely to low and middle income borrowers.]

⁴⁶ OMC § 1.10.020(F)(1).

can help local governments recover and respond to the harmful acts that prompted the lawsuit in the first place.

(i) Securing Compliance with the Law

Courts have recognized that civil penalties can incentivize an actor to stop violating the law due to the prospect of increasing financial costs. A court recently observed that the primary purpose of civil penalties “is to secure obedience to statutes and regulations imposed to assure important public policy objectives...The focus [] is *preventative*.”⁴⁷

In addition, agencies that are authorized to request civil penalties often similarly acknowledge their critical role. As one example, the U.S. Environmental Protection Agency’s official Policy on Civil Penalties states that civil penalties can provide incentives for a violator to settle and institute prompt remedial action, ensuring swift resolution of the environmental harm.⁴⁸

(ii) Changing the Financial Calculus and Deterring Future Violations

That EPA Policy also underscores the importance of changing the financial calculus for actors who violate the law:

If a penalty is to achieve deterrence, both the violator and the general public must be convinced that the penalty places the violator in a worse position than those who have complied in a timely fashion. Neither the violator nor the general public is likely to believe this if the violator is able to retain an overall advantage from noncompliance. Moreover, allowing a violator to benefit from noncompliance punishes those who have complied by placing them at a competitive disadvantage. For these reasons, it is Agency policy that penalties generally should, at a minimum, remove any significant economic benefits resulting from failure to comply with the law.⁴⁹

Particularly in combination with restitution, civil penalties can provide a strong financial deterrent to well-resourced actors who violate Oakland law. By contrast, researchers have found that

⁴⁷ *People v. Johnson & Johnson* (2022) 77 Cal.App.5th 295, 352 [awarding \$302 million in civil penalties against major corporation under the Unfair Competition Law.]

⁴⁸ Environmental Protection Agency General Enforcement Policy #GM – 21, “Policy on Civil Penalties.” (Feb. 16, 1984). <https://www.epa.gov/sites/default/files/documents/epapolicy-civilpenalties021684.pdf>

⁴⁹ *Id.*; see also Robert Freedman, “SEC: Big Fines Make Violations More Than a Cost of Doing Business.” *Legal Dive*. (Nov. 16, 2022) <https://www.legaldive.com/news/sec-enforcement-actions-big-fines-Gurbir-Grewal-Gary-Gensler/636746/> [describing recent change in SEC enforcement policy to increase civil penalties and require admissions of guilt in order to deter future violations by corporations.]

minimal financial penalties become merely a cost of doing business for larger corporate actors.⁵⁰ Thus civil penalties of up to \$2,500 per violation increase the cost of violating Oakland laws, changing the calculus for well-resourced actors on whether they will profit from their misconduct.

(iii) Responding to the Harm

Finally, civil penalty recoveries return to the City and help fund the Council's efforts to advance equitable outcomes for Oakland residents. For example, in 2022 the City Attorney recovered over \$158,000 in civil penalties for egregious tenants' rights violations against senior, elderly BIPOC tenants at an "independent living facility" in East Oakland.⁵¹ Civil penalties therefore assist the City in responding to and healing from violations committed against its residents.

Example: How Civil Penalties Can Lead to Equitable Outcomes in Response to Corporate Harm

Recent civil enforcement actions against Wells Fargo reveal how civil penalties can potentially deter both the violator and other similarly situated corporate actors from repeatedly engaging in the misconduct. Wells Fargo is an example of a corporate bad actor that has repeatedly engaged in unlawful conduct and faced multiple lawsuits over the years, including by the Oakland City Attorney, for the bank's racially discriminatory practices. Although the City of Oakland's lawsuit against Wells Fargo under the federal Fair Housing Act and California Fair Employment and Housing Act was ultimately stymied by the appellate court, Wells Fargo has had to pay significant civil penalties to other local enforcement agencies. For example, in May 2015, the Los Angeles City Attorney sued Wells Fargo under the UCL, alleging Wells Fargo fraudulently opened customer accounts and issued credit cards without authorization, causing financial losses and other hardships such as credit issues for customers. The City of Los Angeles reached a settlement with Wells Fargo that included not only restitution for affected customers and employees, but also \$50 million in civil penalties to the city for future consumer protection.⁵²

Then-L.A. City Attorney Mike Feuer said of the settlement, "We're holding Wells Fargo accountable and assuring the violations we've alleged never happen in the future. This extraordinary resolution sends a strong message – to big banks and consumers alike – that we'll be vigilant in protecting consumer rights."⁵³ Similarly, when the Consumer Financial Protection Bureau fined Wells Fargo for related misconduct, the consumer program director at US Public

⁵⁰ See Celine McNicholas, et. al. "Civil Monetary Penalties for Labor Violations are Woefully Insufficient to Protect Workers. Economic Policy Institute." (July 15, 2021.) ["Because workers' rights and safety violations result in such low financial penalties, these fines function as the cost of doing business rather than as deterrents."]

<https://www.epi.org/blog/civil-monetary-penalties-for-labor-violations-are-woefully-insufficient-to-protect-workers/>

⁵¹ *People v. Dario, et. al.* (RG20070921) Alameda County Superior Court.

⁵² Hayley Fox, "Wells Fargo Slapped with \$50 Million Fines in L.A. Settlement." *Los Angeles Business Journal*. (Sep. 8, 2016.) <https://labusinessjournal.com/finance/banks/wells-fargo-slapped-50-million-fines-l-settlement/>

⁵³ *Id.*

Interest Research Group declared that “[i]t’s a message to all the bank lawyers out there that this kind of behavior should never happen again. It’s a very strong message to other institutions about the gravity of this appalling conduct. \$100 million is real money, even to a big bank.”⁵⁴

This messaging effect has been demonstrated in a similar context by a study of Occupational Safety and Health Administration (OSHA) press releases about facilities that violated safety and health regulations. According to the study, other facilities substantially improved their compliance and experienced fewer occupational injuries after the press release.⁵⁵ The study estimated that OSHA would have to conduct an additional 210 inspections in order to achieve the same substantial improvement in compliance as a single press release.⁵⁶

Although civil penalties are a powerful potential remedy, most statutes authorizing civil penalties include significant equitable safeguards. Most importantly, civil penalty statutes like Los Angeles’ Chapter 11.00 or the UCL typically authorize *up to* a certain amount in penalties, but require an independent, equity-inclusive proceeding to set the *actual amount* of the penalties. So although courts may agree that the plaintiff has a *right* to civil penalties by winning their case, courts are free to – and do – take equity into account in deciding the *amount* of penalties, and sometimes even set penalties at \$0 if justice so requires. The proposed OMC 1.10’s safeguards will be described in Section V below.

Disgorgement of Profits

The proposed OMC 1.10 also provides for the monetary remedy known as “disgorgement of profits.”⁵⁷ Disgorgement of profits is a powerful and flexible remedy against well-resourced corporate actors who repeatedly violate the law. By preventing the violator from financially benefiting off their violations of the law, disgorgement changes the financial calculus for the specific actor and others more generally. Disgorgement of profits focuses on the violator’s “unjust enrichment” – i.e., the profits they made that are directly connected to their violations of the law. Unlike restitution, which focuses on the harmed individual’s *losses* and so requires returning the money or property wrongly taken from individuals, disgorgement focuses on the corporation’s ill-gotten *gains*. Put another way, this remedy requires the violator to return the profits they made by violating the law. Without this remedy, civil prosecutors like the Oakland City Attorney may not have sufficient leverage to hold well-resourced defendants accountable to complying with the law. This is because other forms of monetary relief available under OMC 1.10 such as civil penalties may be a drop in the bucket for corporate actors who profit from repeatedly violating the law. And because this remedy would only be available under proposed OMC 1.10 where the City Attorney

⁵⁴ James Rufus Koren, “Wells Fargo to Pay \$185 Million Settlement for ‘Outrageous’ Sales Culture.” (Sep. 8, 2016.) <https://www.latimes.com/business/la-fi-wells-fargo-settlement-20160907-snap-story.html>

⁵⁵ Matthew S. Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*. (2020) American Economic Review, 110(6): 1866-1904. <https://doi.org/10.1257/aer.20180501>

⁵⁶ *Id.*

⁵⁷ OMC § 1.10.020(F)(6).

can prove that the regulated entity made some sort of profit from their unlawful conduct, the remedy by its own terms contains protections against any misuse.

V. Equitable Safeguards within the Proposed OMC 1.10

A. Intentional Design for Equity

OMC 1.10 intentionally centers and requires equitable civil enforcement. Under the proposed OMC 1.10, enforcement must (1) address structural inequities *and* (2) avoid civil enforcement that instead perpetuates the status quo. OMC 1.10's text limits adverse impacts and unintended consequences such as the overpenalization of BIPOC, historically, and/or presently marginalized communities described in Section III(B). The ordinance "build[s] in decision-making prompts that evoke consideration of equity,"⁵⁸ along with key procedural protections, to prevent unjust outcomes.

B. Purpose: Fair, Equitable, and Just Outcomes

The proposed OMC 1.10's Purpose states : "[i]n accord with the City's policy of initiating litigation only when there are not other safe, efficient, effective, and equitable means to address and resolve issues, this Chapter requires that any actions brought hereunder seek outcomes that are fair, equitable, and just."⁵⁹ The ordinance includes a decision-making structure requiring the City Attorney to consider whether a potential action under the ordinance seeks "outcomes that are fair, equitable, and just."

C. Due Process Protections

As mentioned above, the proposed OMC 1.10 is a *procedural* statute. Specifically, it provides clear authority for the City Attorney to go to court to enforce all of Oakland's laws and to request more forms of relief than are currently authorized. But proposed OMC 1.10 does not give the City Attorney herself authority to issue notices or decide violations or set fines, fees, or penalties on her own. Instead, the proposed OMC 1.10 necessarily includes robust due process protections because civil enforcement goes through the civil court system.

The court system provides far greater due process protections than those afforded to parties in administrative proceedings. For example, the City Attorney does not have the power to directly award remedies for the City and/or Oaklanders. The City Attorney can ask a court for remedies under the ordinance, but it is up to the court to then decide which remedies to award. Any remedies awarded by a court are only after civil due process, including a right to be heard, to submit opposing evidence, to challenge the City's claims, etc. Courts often ask for separate briefing, or written arguments by the parties, about the appropriateness of specific forms of relief such as

⁵⁸ REIA Worksheet rev5.

⁵⁹ OMC § 1.10.010 [Purpose].

injunctions, restitution, and civil penalties. The court's ultimate decision – what (if anything) to award, how much to award, etc. – is specific and individualized to the evidence and the parties involved in the case.

The due process protections in civil litigation therefore provide a second, robust layer of safeguards against inequitable outcomes beyond the proposed OMC 1.10's specific and enumerated equity requirements for decision-making by the City Attorney.

D. Heightened Safeguards for Civil Penalties

Because civil penalties are a more unusual form of relief, the proposed OMC 1.10 includes two specific and special protections designed to limit any inequitable outcomes in the request for and potential granting of civil penalties. First, as noted above, like civil penalties statutes in other local, state, or federal laws, the ordinance authorizes the City Attorney to seek *up to* \$2,500 per violation of local law for each day of the violation. Second, proposed OMC 1.10 sets specific equity-focused criteria designed to ensure that the penalties are set at the right amount to reach just and equitable outcomes.

On the first protection: neither the City Attorney nor the court are *required* to ask for or grant penalties at the full amount. Instead, when a court sets any penalties under proposed OMC 1.10, it does so according to legal standards of fairness and due process.⁶⁰ The phrase “up to” therefore allows the court flexibility to set the civil penalty amount in light of the evidence, the defendants' position, and the harm done to the Oakland community.

On the second protection: the ordinance establishes detailed criteria to ensure the civil penalties in a particular case are appropriate to the defendant and the violations. Specifically, the ordinance sets nine separate factors for the City Attorney to consider in their request for any penalties, and for the court to assess in setting the amount of any civil penalty.⁶¹ Those factors include:

1. the nature and seriousness of the misconduct;
2. the number of violations;

⁶⁰ For example, the United States Supreme Court has articulated standards for determining if a monetary award represents excessive penalization in violation of the Constitution. (*See United States v. Bajakajian* (1998) 524 U.S. 321.)

⁶¹ A number of the factors are included in the criteria set for civil penalties under the Unfair Competition Law; however OMC 1.10 expands upon those factors to strengthen the equitable protections. (*See Business & Professions Code § 17206(b).*) The court in *People v. Johnson & Johnson*, *supra* note 45, assessed civil penalties under the Unfair Competition Law and False Advertising Law at \$1,250 per violation. The court then provided detailed analysis under the penalty factors justifying the amount. For example, the court found that the defendants' “grave” and “egregious” misconduct spanned 17 years, knowingly and deceptively withholding crucial information about permanently implanted pelvic mesh that caused “debilitating, chronic pain”, “destroying [functions] that go to the very core of personal identity, dignity, and quality of life.” (2002) 77 Cal.App.5th 295, 314-315.)

3. the persistence of the misconduct despite prior efforts by the City or other actors to secure compliance;
4. the length of time over which the misconduct occurred;
5. the willfulness of the misconduct;
6. the potential deterrent effect;
7. the assets, liabilities, and net worth of the defendant;
8. whether the misconduct resulted from commercial activity or financially benefited the responsible party; and
9. other factors that serve justice.

Between the mandate to seek fair, equitable and just outcomes; the robust due process protections of civil litigation; and the heightened safeguards specifically established for civil penalties, OMC 1.10 is designed to allow strong civil penalties in circumstances where they are necessary to stop harm while also minimizing the potential for overpenalization and inequitable outcomes. OMC 1.10 therefore does not present the same serious concerns regarding inequitable fines and fees exemplified by findings such as those by the Department of Justice about Ferguson, Missouri.

E. Clear Guidance to the Courts

In addition to all the equity protections described above, the proposed ordinance also explicitly guides courts as they exercise their discretion to determine the kinds and amounts of relief to provide. The ordinance states that the ultimate purpose of Chapter 1.10 is to “protect[] the residents of Oakland and effect[] complete justice.”⁶² This guidance will be important as courts apply Oakland law to the specific facts and parties before them in a case and decide what remedies are appropriate. The proposed ordinance further instructs courts to construe the chapter “liberally for the accomplishment of its purposes,” allowing courts to adapt to the demands of justice in the specific situation.⁶³ And if courts turn to the legislative history of this ordinance to help with interpreting its provisions, they will find a focus on equity and avoiding disproportionate racial impacts. The legislative history will then further assist the court in arriving at an equitable outcome.

F. The Proposed OMC 1.10 as a Model for Equitable Civil Enforcement

The proposed OMC 1.10’s explicit commitment to equity stands out in comparison to similar civil enforcement ordinances of peer cities and counties. This commitment, along with the designed safeguards, provide the necessary authority and remedies to advance equity for Oakland residents while also limiting inequitable applications. The proposed ordinance would make Oakland a leader in equitable enforcement of the law.

⁶² OMC § 1.10.020(G).

⁶³ OMC § 1.10.020(J).

VI. Equity Analysis of Recent Oakland City Attorney Civil Enforcement Cases

A. Scope of the Equity Analysis

The following equity analysis is backwards-looking and based on data about recent cases initiated by the City Attorney's Office. The analysis is not comprehensive due to data and resource constraints. Because these cases were brought prior to the enactment of the proposed OMC 1.10, this analysis also does not capture data on the expanded authority and remedies that proposed OMC 1.10 would provide. Nevertheless, the analysis provides useful insights on the relationship between past City Attorney civil enforcement work and racial equity.

The City Attorney's Office files an average of six lawsuits each year. Before filing, the City Attorney weighs the extent of the harm to Oaklanders, the conduct and power of the violator, the equity impacts, and whether the violations are likely to stop without City Attorney intervention. Over the past five years, the City Attorney has filed or settled **29 total lawsuits** (thus an average of six per year). The lawsuits have encompassed everything from tenant protection to anti-human trafficking to health and safety to environmental justice to actions against the Trump Administration to lawsuits holding major corporations accountable (including fossil fuel companies, lead paint manufacturers, and opioid manufacturers).

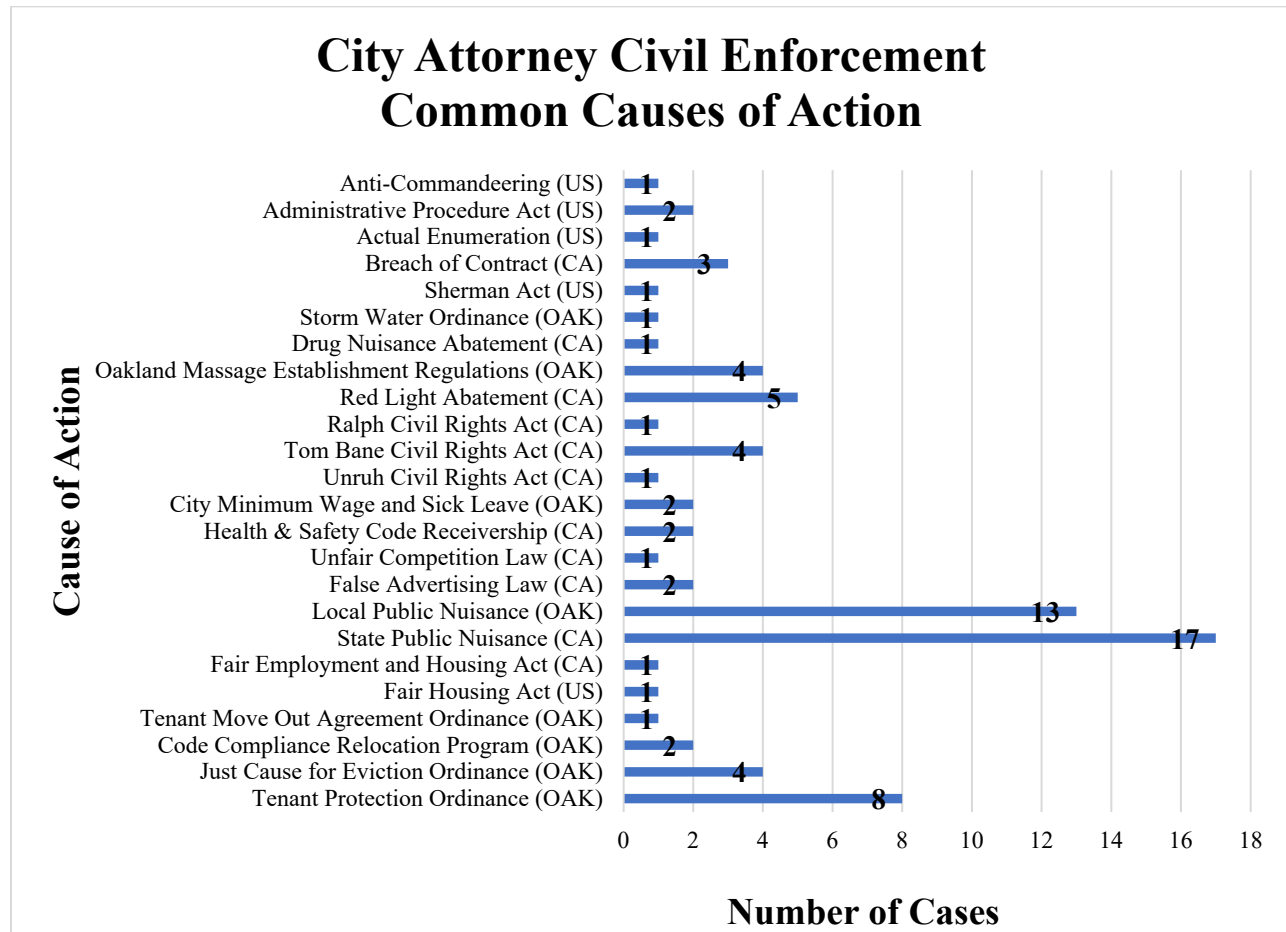
B. Methodology

First, City Attorney staff identified the universe of civil lawsuits that have either (i) been filed or (ii) settled since **January 1, 2018**. Next, staff reviewed the lawsuits to assess: the authority for the action (e.g., Oakland's Tenant Protection Ordinance), the remedies sought, a summary of the action, information on the enforcement target, and the final results. Staff then utilized the OakDOT Geographic Equity Toolbox⁶⁴ to map the population served, including Priority Neighborhood categorization, racial composition, pollution, and Displacement and Gentrification categorization for housing cases. Because the majority of Community Lawyering and Civil Rights unit cases are citywide, rather than focused on specific properties, analysis utilizing the OakDOT Geographic Equity Toolbox was not possible for roughly a third of the total cases. Staff used information from the OakDOT Geographic Equity Toolbox to complement existing data captured as part of the litigation about the population served (tenants, neighbors, workers, etc.). Finally, for each case staff identified the relevant Equity Themes and Indicators as defined in the 2018 City of Oakland report. Because the analysis is necessarily qualitative, it is based on best estimates from available information.

⁶⁴ <https://www.oaklandca.gov/resources/oakdot-geographic-equity-toolbox>

C. Results

- The City Attorney secured monetary awards and settlements totaling over **\$48 million** for the City of Oakland and its residents.
 - The vast majority of that money (**91%**) came from major corporations, including:
 - Opioid defendants: between \$10 and \$20 million
 - Lead paint manufacturers and sellers: \$14.4 million
 - Monsanto chemical manufacturers: \$7.4 million
 - Real estate magnates: \$6.7 million
- The City Attorney secured equitable relief, including injunctions, in **88%** of the cases where such relief was sought at the outset.
- The most common claims included State Public Nuisance (59% of cases), Local Public Nuisance [OMC 1.08] (45%), Tenant Protection Ordinance (28%), Red Light Abatement (17%), Oakland Massage Establishment Regulations (14%), Tom Bane Civil Rights Act (14%), and Just Cause for Eviction Ordinance (14%).
 - The high percentage of cases involving State Public Nuisance and Local Public Nuisance (OMC 1.08) reflects the flexibility that public nuisance law provides to address the myriad forms of harm that communities may experience, from local environmental damage to large-scale abuses by fossil fuel, lead paint, or opioid companies. The high percentage of cases involving the Tenant Protection Ordinance reflect the clear and disproportionate harm of the housing crisis on low-income residents of color, along with the clear authority and remedies in the ordinance for civil enforcement by the City Attorney.
 - Although the City Attorney's Office does not routinely enforce the Red Light Abatement Act or the Massage Establishment Regulations, these laws were an important source of protections for a specific set of cases Oakland filed aimed at disrupting human and sex trafficking at illicit massage businesses (IMBs) in Oakland.

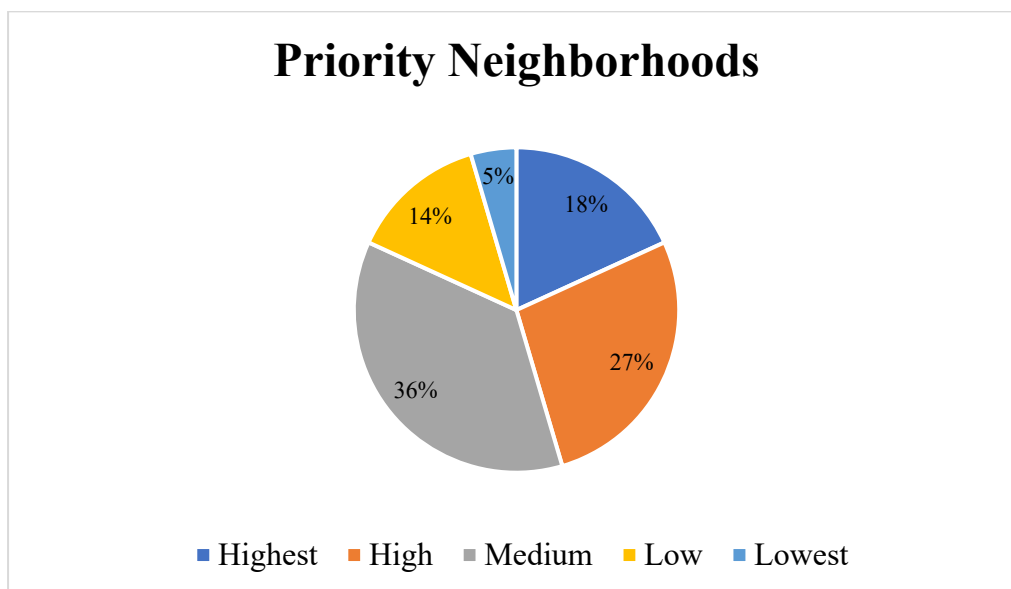


- **Nearly three-quarters (72%)** of the lawsuits were against corporate or other government actors.
 - Notable examples of **corporate** targets include:
 - Wells Fargo Bank (race discrimination in mortgage lending);
 - Exxon Mobil Corporation, B.P. P.L.C., Chevron Corporation, ConocoPhillips Company, and Royal Dutch Shell (role in climate deception and climate harms);
 - the Sherwin-Williams Company, ConAgra Grocery Products Company, and NL Industries, Inc. (lead paint manufacturers' creation of a nuisance);
 - Monsanto (manufacturing dangerous PCBs); and
 - Purdue Pharma L.P., Purdue Pharma Inc., the Purdue Frederick Company, Inc, Teva Pharmaceutical Industries, LTD, Teva Pharmaceuticals USA, Inc., Cephalon, Inc, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeill-Janssen Pharmaceuticals, Inc., Endo Health Solutions, Inc.,

Endo Pharmaceuticals, Inc., Actavis PLC, Actavis, Inc., Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma (opioid manufacturers for the opioid crisis).

- Notable examples of **government** targets include:
 - the U.S. Department of Commerce (adding a citizenship question to the Census); and
 - the U.S. Department of Justice and U.S. Department of Homeland Security (policy of sending or threatening to send federal agents to progressive cities).
- Of the 8 cases involving solely individual defendants, enforcement targets have come from a variety of racial backgrounds. All have been sued because they were, at a minimum, a landlord, business owner, or business operator.
- City Attorney cases have overwhelmingly focused on serving low-income, BIPOC, historically, and/or presently marginalized communities in Oakland.
 - 28% of all City Attorney cases have aimed to protect low-income *tenants* by preventing displacement, remedying substandard conditions, and/or stopping harassment. This includes tenants whose identities spanned across a range of racial/ethnic groups, ages, and neighborhoods. For example, the City Attorney has sued to protect monolingual elderly Chinese residents of a single room occupancy residential hotel in Old Oakland; low-income Latina/o/x tenants in the Eastlake/Fruitvale neighborhood; and senior, disabled Black tenants in an East Oakland “independent living facility.”
 - 17% of cases have served residents threatened by grave health and safety hazards, including imminent fire risks, in their neighborhoods.
 - 14% of cases have served residents in flatland neighborhoods threatened by environmental harms.
 - 14% of cases sought to disrupt harms against women who had been trafficked predominantly from Southeast Asia.
 - 7% of cases have served primarily BIPOC low-wage workers who were subjected to labor violations.
 - City Attorney cases have also directly and indirectly served unhoused individuals impacted by the opioids crisis, BIPOC children and families impacted by lead poisoning, and BIPOC home mortgage borrowers impacted by discriminatory lending policies.

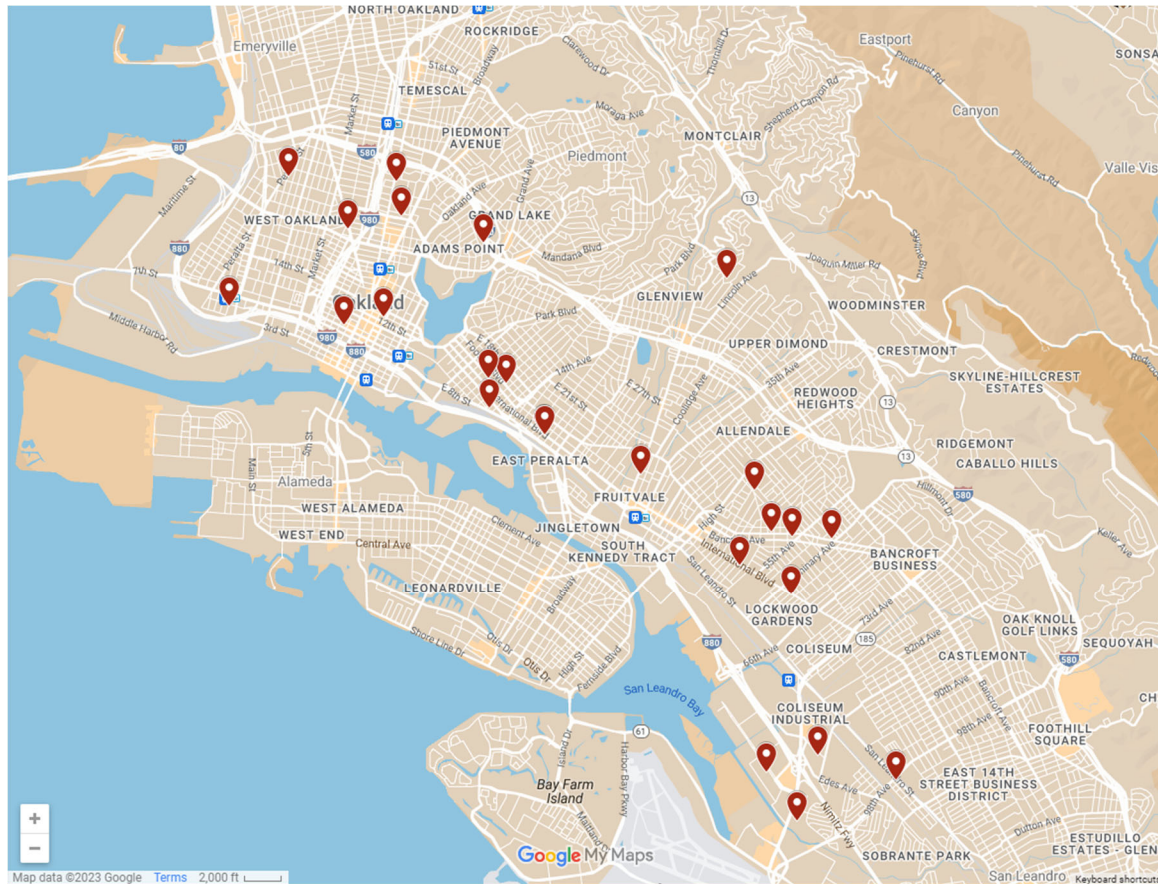
- For the 22 City Attorney lawsuits addressing violations *at specific properties* in Oakland, the properties were located in the following Priority Neighborhoods: Medium (36%), High (27%), Highest (18%), Low (14%), and Lowest (5%).⁶⁵
 - The Priority Neighborhood categorization is determined by the OakDOT Geographic Equity Toolbox based on data from the 2019 American Community Survey (ACS), using seven demographic factors: the percentage of people of color, low-income households (< 50% Area Median Income), people with a disability or disabilities, seniors 65 years and over, single parent families, severely rent-burdened households, and lower educational attainment (less than a bachelor's degree). The categorization assists City staff with assessing the relative equity priority of different census tracts in Oakland, “leverag[ing] attention and funding to neighborhoods that may have been historically and currently overlooked by city services and planning processes.”⁶⁶
 - **Over 80%** of the specific properties in City Attorney lawsuits were located within the highest three priority neighborhood levels.



⁶⁵ OakDOT Geographic Equity Toolbox. Note: lawsuits that involve citywide claims are not included.

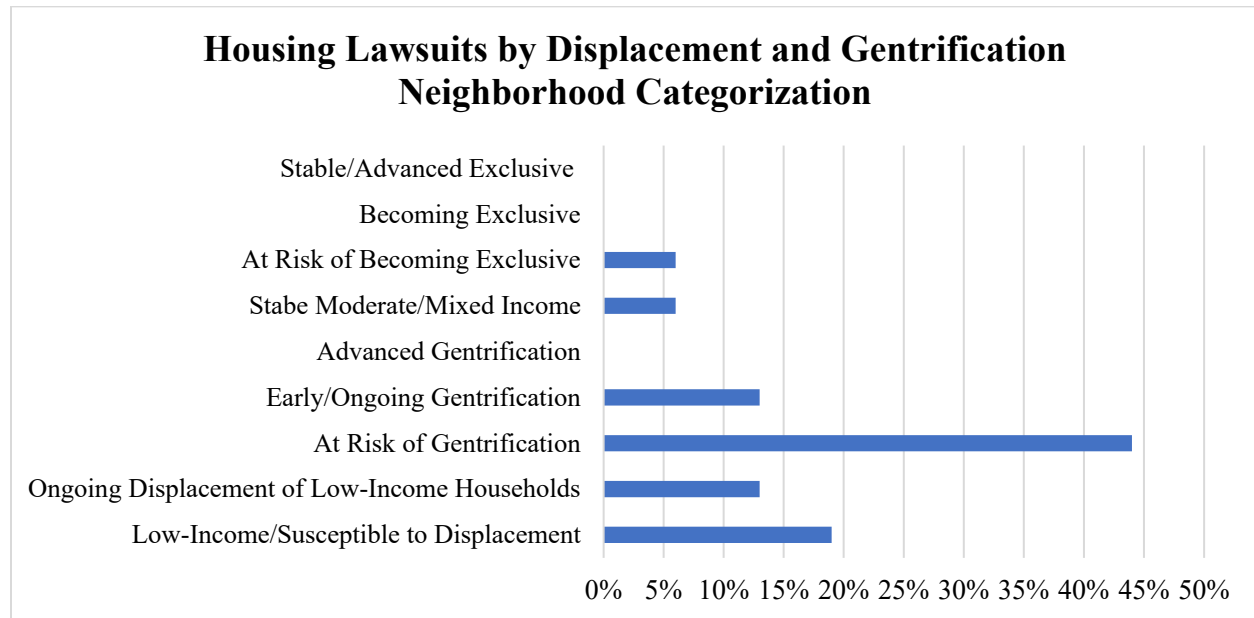
⁶⁶ Oakland Geographic Equity Toolbox and Equity Map: Methodology and Literature Review, p.4. City of Oakland Department of Transportation. (July 2020.) <https://cao-94612.s3.amazonaws.com/documents/Methodology-Literature-Review-FINAL-Update.pdf>

Map of Property Specific Cases



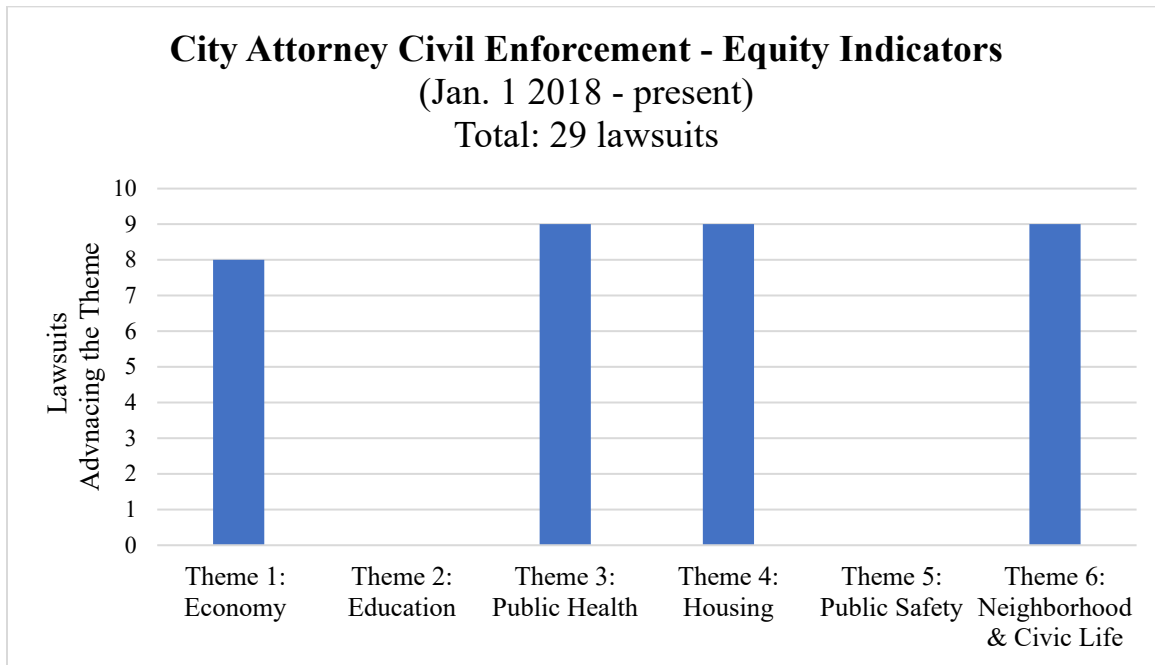
- For the 16 housing lawsuits addressing violations at specific properties in Oakland, roughly **90%** of the properties were located in the following neighborhood categories: At Risk of Gentrification (44%), Low-Income/Susceptible to Displacement (19%), Ongoing Displacement of Low-Income Households (13%), and Early/Ongoing Gentrification (13%).⁶⁷
 - This reflects effective targeting of housing enforcement in neighborhoods most at risk of displacement and gentrification.

⁶⁷ The Displacement and Gentrification neighborhood categories are from the OakDOT Geographic Equity Toolbox, which utilizes the Urban Displacement Project's 2018 Displacement and Gentrification Map. The neighborhood categorizations therefore may be slightly outdated in 2023.



- City Attorney lawsuits advanced at least one Equity Theme in all 29 lawsuits.⁶⁸ The breakdown was:
 - Theme 1 (Economy): 8 lawsuits
 - Theme 3 (Public Health): 9 lawsuits
 - Theme 4 (Housing): 9 lawsuits
 - Theme 6 (Neighborhood & Civic Life): 9 lawsuits.
 - Note: the total (35) is greater than the total number of lawsuits (29), as some cases advanced multiple Equity Themes.

⁶⁸ The 2018 Equity Indicators Report created “themes,” or broad categories of areas that impact the lives of Oaklanders. Read the report for more information on the City’s equity indicators framework, including the City’s rankings for each theme and topic within them. [Oakland Equity Indicators \(cao-94612.s3.amazonaws.com\)](https://cao-94612.s3.amazonaws.com/Oakland+Equity+Indicators+Report+2018.pdf)



VII. Community Outreach

A. Engagement with Community Stakeholders

The City Attorney's Office has consulted with community-based partners to maximize engagement. The CBOs represent tenants, workers, neighbors, and local businesses. The City Attorney consulted with the following organizations as part of the REIA process: West Oakland Environmental Indicators Project, East Bay Community Law Center, Centro Legal de la Raza, Bay Area Legal Aid, Public Rights Project, and Alliance of Californians for Community Empowerment.

B. Prior Community Testimonials on Equitable Enforcement

In addition to specific outreach conducted for this ordinance, CBOs and residents have testified over the past five years about the importance of the City Attorney enforcing Oakland laws broadly – and equitably. For example, one nonprofit partner highlighted the unique value of injunctive relief secured by the City of Oakland for its residents:

When the Oakland City Attorney's Office brings a lawsuit, they have the unique role of representing the entire City of Oakland and not just individual tenants. Many of the tenants that nonprofits [...] serve understandably do not want to openly

confront their landlords...The City can seek relief for those tenants as well. The City's unique focus on injunctive relief often leads to critical measures that allow tenants to safely remain in their homes – for example, requiring landlords to provide heat in the middle of winter.

The Oakland City Attorney's Office [civil enforcement] results in the kind of widespread impact and meaningful injunctive relief that are traditional hallmarks of class actions [which bring] about policy changes and forc[e] landlords to comply with the law.⁶⁹

Oakland residents have also attested to the importance of the City Attorney's Office partnering with community to secure equitable outcomes. For example, one community member and neighborhood leader shared the impact of this partnership at the conclusion of an environmental justice lawsuit in West Oakland:

This is a David vs. Goliath story between the neighbors who suffered and a major company [...] People usually wait years in this neighborhood to see any meaningful change. Companies have done harm for decades, so it was extraordinary that [the company] was stopped so quickly. It was a win not just for the immediate neighborhood, but for all of West Oakland. People feel like someone is looking out for them – that a company came in and started spewing dust into the air that we breathe, and that the City Attorney's office worked with the community to stop it. We feel that there's hope, that we can fight for our rights and that we can win.⁷⁰

C. Continuing Community Engagement

Equitable enforcement relies on the City Attorney having accurate, timely information about the harms impacting Oakland's BIPOC, historically, and/or presently marginalized communities. That information can only be received if the City Attorney's Office (and the City of Oakland more generally) is intentional about building relationships with trusted community partners and fostering open lines of communication. The City's Administrative Instruction on Inclusive Community Engagement notes that "[a]s a local government, it is our duty to create and support space for dialogue, consultation, and information sharing that are inclusive of everyone

⁶⁹ Declaration of Jesse Newmark in Support of Plaintiffs' Motion for Attorney's Fees. *People v. DODG Corp.*, et. al. (RG19022353) Alameda County Superior Court.

⁷⁰ Declaration of Carol Wyatt in Support of Plaintiffs' Motion for Attorney's Fees. *People v. Santos Engineering*, et. al. (RG1889670) Alameda County Superior Court; see also "They Didn't Care, So We Fought!" Public Rights Project.

<https://www.youtube.com/watch?v=UHWuOfbyBfw&list=PLRnIALyHv53C2DsgetcmadbTIUGYlpeft&index=41> [highlighting community advocates Barbara Johnson and Chantal Dyer.]

who lives in our City...[especially] members of communities most impacted by racial disparities.”⁷¹

The Community Engagement Working Group of the Affirmative Litigation team has developed goals, values, and best practices for engaging with community groups and members in our day-to-day work. Continued inclusive community engagement and dialogue concerning the proposed OMC 1.10 will be incorporated as part of the City Attorney’s broader working group efforts. This working group meets monthly to collectively brainstorm approaches for effective community engagement, troubleshoot challenges that arise, and ensure coordination of outreach to new community groups/members and maintenance of existing community relationships across the three teams. Through this Working Group, the City Attorney’s Office will remain accountable to equitable enforcement informed by inclusive community engagement and partnerships.

VIII. Equitable Civil Enforcement and Future Data Collection and Analysis

Ongoing data collection and analysis is necessary to serve two critical goals: (1) to best target limited civil enforcement resources in order to help close racial disparities in Oakland and (2) to review recent enforcement actions to ensure that the authority and remedies provided by OMC 1.10 are being applied in an equitable manner. To that end, the proposed OMC 1.10 requires regular data collection and analysis on the population served, enforcement targets, relevant equity indicators, and outcomes.⁷²

The City Attorney’s Office will work to improve gathering data on the population served during investigations and civil litigation. This can take the form of direct community outreach with neighbors, tenants, workers, etc., coordination with community-based partners who have organized and advocated for the community members, and civil discovery requests to enforcement targets. The City Attorney’s Office will seek disaggregated data to the greatest extent possible, and will complement these direct data gathering efforts with the use of tools like the OakDOT Geographic Equity Toolbox. The City Attorney’s Office will provide a report to the City Council after the first three years of implementation, analyzing the impact of OMC 1.10 and the extent to which it has been aligned with equitable enforcement.⁷³

IX. Conclusion

OMC 1.10 is legislation that incorporates procedural equity, which will then support future City Attorney efforts to create structural equity. The proposed OMC 1.10 advances procedural equity by establishing the clear authority to enforce all of Oakland law along with the remedies

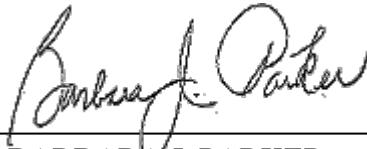
⁷¹ Administrative Instruction 6802: Inclusive Community Engagement. City of Oakland. (Jan. 18, 2023.) <https://cao-94612.s3.amazonaws.com/documents/6802-Inclusive-Community-Engagement-AI-1.18.23-EDR-Signed.pdf>

⁷² This will build on existing City Attorney efforts to systematically capture relevant housing enforcement data such as the tenants served – race, monthly rent, disability, family status, etc. – and to track enforcement actions.

⁷³ OMC 1.10.040

necessary to effectuate justice for impacted individuals. The ordinance would empower the City Attorney, on behalf of the City of Oakland, to take meaningful steps towards closing the civil enforcement gap for BIPOC, historically, and/or currently marginalized communities, advancing structural equity for Oaklanders. Equitable safeguards are woven throughout the ordinance to ensure that the authority and remedies advance justice, rather than amplify injustice.

Equitable civil enforcement is therefore an essential component in the citywide effort to reduce disparities and create the conditions necessary for an equitable society in which all Oakland residents can participate, reach their full potential, and prosper. The commitment to equitable civil enforcement in OMC 1.10 will translate in the future to defending Oaklanders' right to healthy neighborhoods, fair wages and worker protections, and safe, dignified homes.



BARBARA J. PARKER
City Attorney

Prepared by:

Zoe Savitsky, Supervising Deputy City Attorney
Affirmative Litigation

Scott Hugo, Housing Justice Attorney
Affirmative Litigation

Seema Rupani, Community Lawyering and Civil
Rights Attorney
Affirmative Litigation

Reviewed by:

Darlene Flynn, Jacque Larrainzar, and Amy
Ferguson-Yep

Department of Race and Equity