



**DAN KALB**

COUNCILMEMBER – DISTRICT ONE

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**TO:** Members of the City Council and Members of the Public

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

**FROM:** Councilmember Kalb

**DATE:** 7/3/24

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**RECOMMENDATION**

Councilmember Dan Kalb recommends the City Council adopt a:

**RESOLUTION ON THE CITY COUNCIL’S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 300, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:**

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);**
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;**
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;**
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;**
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;**
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO CHOOSE CONFLICT COUNSEL IF THE CITY ATTORNEY DETERMINES A CONFLICT OF INTEREST EXISTS IN THE CITY ATTORNEY’S REPRESENTATION OF THE COMMISSION;**
- (7) REQUIRE THE CITY COUNCIL OR A COUNCIL COMMITTEE TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;**

- (8) **AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY EVERY TWO YEARS;**
- (9) **AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY IN WHICH THE CUMULATIVE VALUE EXCEEDS FIFTY DOLLARS (\$50) IN A CALENDAR YEAR; AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION**

### SUMMARY

In 2014 I put forth Measure CC, landmark legislation to establish Oakland’s PEC. The measure passed with an overwhelming 73.9% of the vote. This year, the PEC reached out to my office in order to update the Commission’s governance structure to incorporate best practices proven in other jurisdictions and to align the Commission’s structure and staffing to better accomplish its responsibilities. This report describes the changes proposed by myself and the PEC to the original legislation passed in 2014.

In the attachment to this report I have included the legislative update the PEC proposed to my office, which does not include my changes. That report also provides more detail on the history of this legislation and the PEC’s process in designing this updated legislation. I have also included the PEC’s staff report as well as legislation originally submitted by the City Administration’s Office to propose that the PEC handle setting the Mayor’s salary. The attachments are enumerated at the bottom of this document.

I want to thank the PEC for putting forward such a comprehensive and well-researched proposal. Having a modernized PEC will increase the public’s trust in government and re-establish Oakland as a leader in ethical and accountable government.

A summary of the additions and changes to the original 2014 legislation made by both myself and the PEC can be found below.

- **Mission:** Amending the Charter to include in the PEC’s listed purposes promoting a more inclusive, representative, and accountable democracy in Oakland, consistent with Measure W (2022).
- **Commissioner Qualifications:** Adopting additional minimum qualifications for a person to be appointed to the Commission to promote Commissioner independence and avoid the appearance that a Commissioner is biased in favor of or against an elected official or political faction.
- **During and Post Service Restrictions:** Prohibiting Commissioners from being compensated by or receiving gifts from an elected official during their tenure.

- **Commissioner Removal:** Permitting the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause and specifying that one cause may be conviction of a felony of moral turpitude, which is consistent with causes for removal of Police Commissioners
- **Commissioner Vacancy Appointment:** Providing that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the PEC may make the appointment in order to ensure extended vacancies do not impact Commission operation.
- **Staffing:** Increasing Enforcement’s minimum staffing by 1 Investigator no earlier than July 2026 to address the Commission’s critical case backlog.
- **Legal Capacity:** Provided that the City Attorney has identified a conflict of interest, the Executive Director shall have sole discretion to select conflict counsel.
- **Salary-Setting:** Changing the frequency in which the Commission adjusts the salaries of the City Attorney and City Auditor from annually to every two years, aligning those increases with the same schedule the Commission uses for setting the Council’s salary.
- **Legislative Proposals:** Requiring that Commission legislative proposals be referred to the City Council for consideration within 180 days.
- **Lobbyist Gifts:** Prohibiting registered lobbyists from giving gifts to elected officials, candidates, and their immediate family, whose value cumulatively exceeds \$50 during any calendar year.

Please note that this proposal adds (1) much-needed investigator position to the PEC starting in July of 2026, and retains the extreme fiscal necessity language allowing the Council the right to limit staffing like this new position. Therefore, there is no financial risk by adopting this measure.

Thank you for your consideration of these important charter amendments. For questions, please contact [dkalb@oaklandca.gov](mailto:dkalb@oaklandca.gov) and my Chief of Staff Keara O’Doherty, [kodoherty@oaklandca.gov](mailto:kodoherty@oaklandca.gov).

Respectfully submitted,



Dan Kalb  
City Councilmember, District 1

**ATTACHMENT A:** PEC Charter Proposal  
**ATTACHMENT B:** PEC Agenda Report

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:**

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);**
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;**
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;**
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;**
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;**
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO HIRE OUTSIDE LEGAL COUNSEL IN ADDITION TO USING THE CITY ATTORNEY TO RENDER LEGAL ADVICE AND SERVICES TO THE COMMISSION RELATING TO LAWS THE COMMISSION ADMINISTERS OR ENFORCES;**

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- (7) EXPAND THE TYPES OF LAWS THAT THE CITY COUNCIL MUST FORWARD TO THE COMMISSION TO REVIEW;**
- (8) REQUIRE THE CITY COUNCIL TO CONSIDER ALL PROPOSALS FROM THE COMMISSION REGARDING AMENDMENTS TO ANY LAW THE COMMISSION ENFORCES OR ADMINISTERS;**
- (9) AMEND THE CITY ATTORNEY AND CITY AUDITOR SALARY REVIEW SCHEDULE TO ALLOW THE COMMISSION TO SET THE SALARY ON A BI-ANNUAL BASIS; AND**
- (10) AMEND THE LOBBYIST REGISTRATION ACT TO RESTRICT LOCAL GOVERNMENTAL LOBBYISTS FROM MAKING ANY PAYMENT OR INCURRING ANY EXPENSE OF ANY AMOUNT THAT DIRECTLY BENEFITS AN ELECTED CITY OFFICEHOLDER, CANDIDATE OR MEMBER OF THEIR IMMEDIATE FAMILY; AND**

**DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION**

**WHEREAS**, in 2014, Oakland voters passed Measure CC, with 73.9% of voter support, adding Section 603 to the City Charter to significantly strengthen the independence, authority, and staffing of the Public Ethics Commission (Commission); and

**WHEREAS**, the Commission's workload and responsibilities have increased significantly since the passage of Measure CC; and

**WHEREAS**, after ten years, the provisions in Section 603 no longer reflect the Commission's actual staffing and budgetary needs and have not kept pace with best practices in other jurisdictions for ensuring ethics commission independence; and

**WHEREAS**, on April 10, 2024, the Commission adopted a set of recommendations to strengthen its independence, modernize its governance procedures to align with best practices in other jurisdictions, and enhance its staffing and administrative capacity to meet current program needs; and

**WHEREAS**, there have been no significant revisions to the Commission's governance structure since 2014; and

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**WHEREAS**, in 2022 Oakland voters passed Measure W, the Fair Elections Act, with 73.9% voter support, which commits the Commission to implementing the Democracy Dollars public campaign financing program to make Oakland elections more equitable, accessible, and fair ; and

**WHEREAS**, the Commission's enforcement caseload now vastly outpaces staff capacity, forcing over half its cases to be put on indefinite hold, leading to diminished enforcement and deterrence, which is contrary to the goals and purpose of the Commission; and

**WHEREAS**, the Commission requires an adequate staffing level to meet its commitment to voters to implement the Fair Elections Act, enforce ethics laws, and keep up with its other core functions; and

**WHEREAS**, an effective, independent, and adequately funded watchdog agency is critical to increasing the public's trust in the governance of the City of Oakland; and

**WHEREAS**, the City Council finds that amendments to the Lobbyist Registration Act further the purposes of that ordinance, by prohibiting gifts to elected officials, candidates, and their immediate family which may create a risk or the appearance of corruption; now therefore be it

**RESOLVED:** That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

**FURTHER RESOLVED:** That the City Council hereby proposes to amend Charter section 603, 401(1), 403((3) and Oakland Municipal Code Chapter 2.24 AND 3.20 to add, delete, or modify sections as set forth below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by ~~strike-through type~~; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed).

The people of the City of Oakland do ordain as follows:

**Section 1. Amendments of Section 603 of the Charter of the City of Oakland.** Section 603, *Public Ethics Commission*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

### **SECTION 603 – PUBLIC ETHICS COMMISSION**

#### **(a) Creation, and Role Purpose and Responsibilities.**

(1) There is hereby established a Public Ethics Commission as an independent department of the City whose purpose shall be to promote more inclusive,

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representative, and accountable democracy in Oakland and to promote fairness, openness, honesty and integrity in City government.

~~which~~(2) The Commission shall be responsible for:

(1) enforcement of laws, regulations and policies intended to assure fairness, openness, honesty and integrity in City government, including compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, lobbyists, candidates, campaign committees, and other persons subject to laws within the jurisdiction of the Commission;

(2) education and responding to issues regarding the aforementioned laws, regulations and policies, and;

(3) impartial and effective administration and implementation of programs to accomplish the goals and purposes of the Commission as defined by this Section, including programs to promote more inclusive, representative, and accountable democracy in Oakland.

Such laws, regulations, policies, and programs shall include those relating to campaign finance, lobbying, transparency, and governmental ethics, as they pertain to Oakland.

(3) The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing.

(4) Nothing in this Section shall preclude other City officials, agencies, boards and commissions from exercising authority heretofore or hereafter granted to them, with the exception of Charter Section 603(b)(5).

**(b) Functions and Duties.** It shall be the function and duty of the Public Ethics Commission to:

(1) Foster and enforce compliance with:

(i) Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") of this Charter, for violations occurring on or after January 1, 2015;

(ii) The Oakland Campaign Reform Act, Oakland Fair Elections Act, False Endorsement in Campaign Literature Act, Oakland's Conflict of Interest Code, code of ethics and governmental ethics ordinance, the Oakland Lobbyist Registration Act, the Oakland Sunshine Ordinance, any ordinance intended to protect City whistleblowers from retaliation, and other Oakland laws regarding campaign finance, lobbying, transparency, or governmental ethics, as provided by ordinance or this Charter.

(iii) Related state laws including, but not limited to, the Political Reform Act, Ralph M. Brown Act, and Public Records Act, as they pertain to Oakland.

(2) Report to the City Council concerning the effectiveness of all local laws regarding campaign finance, lobbying, transparency, and governmental ethics.

(3) Issue oral advice and formal written opinions, which may be done in consultation with the City Attorney.

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(4) Within the time period for submission of such information for the timely completion of the City's regular budget process, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.

(5) Act as the filing officer and otherwise receive and retain documents whenever the City Clerk would otherwise be authorized to do so pursuant to Chapter 4 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), ~~provided that this duty shall be transferred to the Commission during the 24 months following the effective date of this provision and the Commission shall be the sole filing officer for the campaign finance programs by January 1, 2017.~~

(6) Educate and promote understanding regarding the requirements under the Commission's oversight and study any significant non-compliance problems or trends with Oakland's campaign finance, lobbying, transparency, and governmental ethics laws and identify possible solutions for increasing compliance.

(7) Review and make recommendations regarding all City systems used for public disclosure of information required by any law within the authority of the Commission.

(8) Administer and adopt policies to implement the Democracy Dollars Program or any other campaign public financing program.

~~(98)~~ Perform such other functions and duties as may be prescribed by laws of this Charter or City ordinance.

**(c) ~~Councilmember~~ Elected Official Salary Increases.** The Public Ethics Commission shall set the salary for City Councilmembers, the City Attorney, and the City Auditor as provided for in Charter Sections 202, 401(1), and 403(1) ~~Council compensation as provided for in Charter Section 202.~~

**(d) Appointment, Qualifications, Vacancies, Terms.** The Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents. Commissioners shall serve without compensation.

The Commission shall be appointed as follows in subsection (1) and (2).

(1) (i) Appointments by Mayor, City Attorney and City Auditor.

The Mayor shall appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

The City Attorney shall appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters.

The City Auditor shall appoint one member who has a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.



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~~Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting. The Mayor, City Attorney, and City Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official.~~

~~Upon the effective date of this section, the three members appointed by the Mayor prior to 2015 shall continue to serve the remainder of their terms. Vacancies in the three positions appointed by the Mayor shall be filled in the following manner: the City Attorney shall appoint a member to fill the first vacancy; the City Auditor shall appoint a member to fill the second vacancy and the Mayor shall appoint the member to fill the third vacancy. Thereafter, the positions appointed by the Mayor, City Attorney and City Auditor shall be filled in the same manner and upon consideration of the same criteria as the initial appointments.~~

The appointments made by the Mayor, City Attorney, and City Auditor may be rejected by City Council Resolution within 45 days of receiving formal notice of the appointment. An appointment shall become effective once written notice is made by the appointing authority to the City Clerk. Upon receiving such written notice, the Clerk shall promptly provide formal notice to the City Council and the Executive Director of the Commission.

~~(2) (ii) Commission Appointments. The four members of the Commission who are not appointed by the Mayor, City Attorney or City Auditor shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities. Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.~~

(2) Commissioner Qualifications.

(i) Each member of the Commission shall be a resident of Oakland and registered to vote in a City or Oakland Unified School District election.

(ii) Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.

(iii) A person is ineligible to be appointed to the Commission if that person, in the two (2) years preceding their appointment, has been any of the following:

(A) A City or Oakland Unified School District elected official;

(B) A spouse, registered domestic partner, parent, sibling, or child of a City or Oakland Unified School District elected official;

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(C) An employee of a City or Oakland Unified School District elected official;

(D) A candidate for a City or Oakland Unified School District elected office;

(E) An employee of, or paid consultant to, a candidate running for a City or Oakland Unified School District elected office, or a campaign committee controlled by a City or Oakland Unified School District elected official;

(F) An officer or paid employee of a political party;

(G) A person who has contributed, in the aggregate, more than two times the individual contribution limits (excluding any contributions attributable to public campaign funds) to one or more candidates for a City or Oakland Unified School District elected office, to a campaign committee controlled by a City or Oakland Unified School District elected official, or to a campaign committee that supported or opposed a candidate for a City or Oakland Unified School District elected office;

(H) A registered Oakland lobbyist.

Notwithstanding the requirements of this Paragraph, a Commissioner appointed prior to January 1, 2025, shall be subject only to the qualifications in effect at the time of the Commissioner's appointment.

(3) Terms of Office. All categories of member shall be appointed to staggered terms. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three (3) years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, such member may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, such member may serve two consecutive full three-year terms. In the event a member's replacement has not been appointed by the conclusion of the member's term, that member may continue to serve as a member of the Commission during the following term in a holdover capacity for a period not to exceed one year until a new member is appointed to serve the remainder of such following term.

(4) Quorum and Voting. Four (4) members shall constitute a quorum. Provided that a quorum exists, the Commission may take action by majority vote of the members present at a meeting, except as otherwise required in this Section or another law enacted by the voters.

(5) Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or ~~is absent continuously from the City for a period of more than 30 days~~ is absent from three (3) consecutive

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regular Commission meetings without permission from the Chair of the Commission, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four (4) members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member. Vacancies not filled by the Mayor, City Attorney, or City Auditor within 12090 days of the occurrence of such vacancy ~~may~~ shall be filled instead by the ~~Commission~~City Council in the same manner as provided by Charter, Section 601 following a public recruitment and application process and by the affirmative vote of at least four (4) members of the Commission. The Commission's appointee shall possess the same background qualifications that would otherwise be required of an appointee of the Mayor, City Attorney, or City Auditor as set forth in (d)(1)(i). For purposes of this paragraph, a seat filled by a member acting in a holdover capacity will be considered vacant as of the expiration of the holdover's prior term of office.

(6) Removal. Members of the Commission may be removed, after a hearing, by either the City Council by the affirmative vote of at least six (6) members of the Council or by the Commission by the affirmative vote of at least five (5) members of the Commission, by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular meetings except on account of illness or when absent by permission of the Commission, or substantial violation of this Charter Ssection.; Prior to the hearing, the member at risk of removal shall be provided with-after written notice of the grounds on which removal is sought and an opportunity for a written response. The City Council or the Commission may initiate removal proceedings and shall provide such written notice to the member.

**(e) Qualifications and During and Post-Service Restrictions.** ~~Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections. No member of the Commission shall:~~

(1) Have an employment or contractual relationship with the City during the member's tenure and for a period of one year after the date of separation.

(2) Have an employment or contractual relationship with an elected official of the City or Oakland Unified School District, or receive a gift or other compensation from such officials, during the member's tenure.

~~(32)~~ Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for a period of one year after the date of separation.

~~(43)~~ Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland; during the member's tenure or participate in or contribute to an Oakland municipal campaign.

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(54) Endorse, support, oppose, contribute to, or volunteer or work on behalf of any candidate or ballot measure in an City or Oakland Unified School District election during the member's tenure, except for a ballot measure that expressly pertains to the activities or authority of the Commission or to the laws under the jurisdiction of the Commission. The Commission may adopt rules to implement this exception.

(6) Serve as an officer or employee of a political party during the member's tenure.

Notwithstanding the requirements of this Subsection, a Commissioner appointed prior to January 1, 2025, shall be subject only to the during and post-service restrictions in effect at the time of the Commissioner's appointment.

### **(f) Enforcement.**

(1) Authority. In furtherance of Charter Section 603(b)(1) and (5), the Public Ethics Commission is authorized to:

- (i) Conduct investigations;
- (ii) Conduct audits of compliance with disclosure requirements with the Commission;
- (iii) Conduct public hearings as provided by the Commission's complaint procedures or other law;
- (iv) Issue subpoenas to compel the production of books, papers, records and documents and take testimony on any matter pending before the Commission. The Commission may seek a contempt order as provided by the general law of the state for a person's failure or refusal to appear, testify, or to produce required books, papers, records and documents;
- (v) Impose penalties, remedies and fines, as provided for by ordinance. Ordinances enforced by the Public Ethics Commission shall not be subject to the \$1,000 limit on fines provided Sections 217 and 1208 of this Charter. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to the Alameda County Superior Court by filing a petition for writ of mandamus;
- (vi) Submit referrals to other enforcement authorities, including but not limited to the Alameda County District Attorney, California Fair Political Practices Commission, and California Attorney General;
- (vii) Seek remedial relief for violations and injunctive relief;
- (viii) By an affirmative vote of at least five (5) members, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 218 and 1202 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;

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(ix) Reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 907 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;

(x) Perform other functions as authorized by law.

(2) Final enforcement action. Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four (4) members.

~~(3) Investigations. Preliminary review by Commission staff of allegations Confidentiality. Records and information obtained by the Commission during the preliminary review and investigation of a complaint shall be confidential and exempt from public disclosure, to the extent permitted by law, until any of the following occurs:~~

~~(i) Placement of the item on a Public Ethics Commission meeting agenda~~Final enforcement action by the Commission;

~~(ii) Passage of one year since the complaint was filed;~~

~~(iii)~~ Action by the Executive Director closing the ~~file~~ matter without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or

~~(iiiiv)~~ Expiration of the Statute of Limitations.

Nothing in this section limits the ability of the Commission to disclose such records or information when charging, prosecuting, closing, or dismissing an investigation or complaint into alleged violations of the laws under its jurisdiction. This section does not prevent the Commission from applying any other exemption from disclosure that may be available under City or state public records disclosure laws. To the extent permitted by law, disclosure of records or information in the course of making a referral to other enforcement authorities shall not constitute a waiver of the confidentiality protections under this section.

(4) Penalty guidelines and Enforcement Discretion. The Public Ethics Commission shall develop a policy setting forth standards for imposing penalties and exercising enforcement discretion. Commission staff shall adhere to the policy when recommending penalties under each of the different penalty provisions that the Commission has the power to enforce.

(5) Per diem late filing fees. Regarding per diem fees that are authorized due to the late filing of disclosure reports, including campaign finance statements, lobbyist reports, and other ethics-related disclosures filed with the Commission by law, the following shall apply:

(i) Assessments. Any instance of late filing that triggers the assessment of a fee of \$1,000 or more by the Commission shall be placed on a Commission meeting agenda before issuance of the fee;

(ii) Waiver guidelines. The Commission shall establish waiver guidelines in accordance with state law, which the Commission, as the filing officer, shall follow in determining whether or not to grant a waiver. These guidelines shall be published on the Commission's website. The

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Commission shall prescribe criteria for appeal to the Commission of waiver decisions made by the Executive Director. At each regular Commission meeting, the Executive Director shall provide a written report, which shall be published online, regarding any waivers decisions made since the previous regular meeting;

(iii) Referral of final, uncollected fees to collections. Unpaid non-investigatory, per diem late filing fees for disclosure programs that are past due for more than 90 days shall be referred to a City delinquent revenue collection office.

(6) Private right of action. Oakland residents shall have a private right of action to file suits to enforce the Oakland Campaign Reform Act, Oakland Lobbyist Registration Act, Oakland Sunshine Ordinance, and any City governmental ethics ordinance when the City does not impose or stipulate to a penalty or file suit for a particular violation. Such private right of action shall be enabled for a given ordinance once criteria for such suits, including but not limited to a required notice period, actionable violations and remedies that may be sought, are prescribed by the ordinance.

### **(g) Staff Assistance & Budget.**

(1) The City shall appropriate a sufficient budget for the Public Ethics Commission to fulfill the functions and duties as set forth above.

(2) Sufficient staffing shall not be less than the following minimum staffing requirement. The City shall meet a minimum staffing requirement for the Commission. The minimum staffing shall consist of the following full-time positions or their equivalent should classifications change:

(i) Executive Director;

(ii) Enforcement Chief;

(iii) Two (2) Ethics Investigators;

(iv) Effective July 1, 2027, one other full-time equivalent non-administrative enforcement staff position, which may include an investigator, staff attorney, auditor, or other appropriate position to be determined as necessary by the Commission;

(v) ~~Three~~ Four (4) full-time equivalent staff positions, which may include including an Ethics Analyst I, Ethics Analyst II, Administrative Analyst I, and Administrative Assistant I, or other similar positions to be determined as necessary by the Commission.

(vi) Effective July 1, 2023, the City shall also provide additional adequate staff necessary to properly administer the Democracy Dollars Program established by the Oakland Fair Elections Act, including, but not limited to, one full-time Democracy Dollars Program Manager and three (3) full-time equivalent positions, to be determined as necessary by the Commission, all of whom shall report to the Executive Director of the Public Ethics Commission.

(3) The minimum staffing budget set-aside may be ~~suspended~~ or reduced, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council

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resolution. The proportion of such reduction may not exceed the overall reduction in staffing for all City employees paid out of the General Purpose Fund for that fiscal year or two-year budget cycle.

(4) The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four (4) members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.

(5) The Enforcement Chief may be a licensed California attorney and shall serve at the pleasure of the Executive Director.

(6) Other than the Executive Director and Enforcement Chief, staff shall be civil service in accordance with Article IX of the City Charter. Candidates for staff vacancies shall be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time, except that said selective certification shall not be subject to discretionary approval by the Personnel Director.

(7) All staff are subject to the restrictions in Charter Section 603(e), except that staff are not prohibited from employment with the City and the ~~one-year~~ post-service restrictions shall apply only to the Executive Director.

**(h) Amendment of Laws.** Prior to adopting, or enacting any amendments to laws that the Commission has the power to enforce or administer, the City Council shall make a finding that the proposed changes further the goals and purposes of the ~~ordinance law~~ or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to such laws that the Commission has the power to enforce and proposed ballot measures that would adopt or amend such laws shall be submitted to the Commission for review and comment, prior to passage of the amendments or approval of the proposed measures for the ballot by the City Council.

### **(i) Legal Services.**

(1) The City Attorney shall provide the Commission with legal assistance, to the extent such assistance does not constitute a conflict.

(2) In addition to receiving legal advice and legal services from the City Attorney, the Commission may employ and/or contract for, in the discretion of the Executive Director, one or more attorneys to provide legal advice and legal services to the Commission relating to the laws that the Commission administers or enforces, including but not limited to representing the Commission in enforcement-related litigation, or when the Executive Director determines there is an actual conflict in the City Attorney providing legal assistance to the Commission. The choice of counsel shall be at the sole discretion of the Executive Director. When considering a candidate for an attorney

## ATTACHMENT A: PEC Initial Charter Proposal

position, the Executive Director shall consider the candidate's familiarity with laws relating to campaign finance, government ethics, lobbying, open meetings and public records.

(3) The City Council shall appropriate a reasonable budget for the Commission to contract for legal services, contract for investigatory services, and for holding administrative hearings.

**(j) Consideration of Commission Proposals.** The Commission may propose amendments to any law it enforces or administers which, upon being submitted to the Chair of the Rules Committee, shall be considered by the full City Council within 180 days.

**(k) References to Other Laws in this Section.** All references to other laws in this Section shall refer to these laws as they may be amended from time to time.

### **SECTION 2. Amendments of Section 401(1) of the Charter of the City of Oakland.**

Section 401(1), *City Attorney*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

**Section 401(1). City Attorney.** The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be set ~~annually~~ every two years by the Public Ethics Commission to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the Office of the City Attorney and salaries for other City department heads, and shall be comparable to the salaries of City Attorneys and other comparable positions, such as County Counsel or Port Attorney, in California cities, counties and agencies selected by the Commission. The City Attorney's salary may not be reduced during the City Attorney's term of office except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

### **SECTION 3. Amendments of Section 403(1) of the Charter of the City of Oakland.**

Section 403(1), *City Auditor*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~striketrough~~ and new text shown as underscored:

**Section 403(1). City Auditor.** The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible for the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor, and shall have a minimum of three years of public sector experience in auditing, policy analysis, performance evaluation, investigative oversight, and/or accountancy, or equivalent private sector experience. The salary of the City Auditor shall be set ~~annually~~ every two years by the Public Ethics Commission, to provide for competitive compensation and equitable alignment and, taking into account the top of the range for the highest paid professional employee in the



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Office of the City Auditor and salaries for other City department heads, and shall be comparable to the salaries of public sector auditor positions in California cities and counties selected by the Commission. The City Auditor's salary may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion.

### **SECTION 4. Adoption of Oakland Municipal Code, Section 2.24.110.**

Oakland Municipal Code, Chapter 2.24, *Public Ethics Commission*, Section 2.24.110, *City Council Amendments* is hereby adopted as follows with new text shown as underscored:

#### **2.24.110 - City Council amendments.**

The City Council may make any amendments to this Chapter that are consistent with the purpose, responsibilities, and independence of the Commission as provided in the City Charter. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to this Chapter and proposed ballot measures that would amend this Chapter shall be submitted to the Commission for review and comment, prior to passage of the amendments or approval of the proposed measures for the ballot by the City Council.

### **SECTION 5. Repeal and Reenactment of Oakland Municipal Code, Section 3.20.180.**

Oakland Municipal Code, Section 3.20.180, *Restrictions on payments and expenses benefitting local public officials, candidates for local office, designated employees and immediate families*, is hereby repealed and reenacted as follows with deleted text shown as ~~struckthrough~~ and new text shown as underscored.

3.20.180 - Restrictions on payments and expenses benefitting local public officials, candidates for local office, designated employees and immediate families.

A. ~~No local governmental lobbyist or a local governmental lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected City officeholder, candidate for elected City office, a designated employee, or a member of the immediate family of one (1) of these individuals, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.~~

B. No local governmental lobbyist shall make any payment or incur any expense that directly benefits a designated employee, or a member of the immediate family of a designated employee, in which the cumulative value of such payments or expenses exceeds two hundred forty dollars (\$240.00) during any calendar year.

C. No local governmental lobbyist shall make any payment or incur any expense of any amount that directly benefits an elected City officeholder, candidate for elected City office, or a member of the immediate family of one (1) of these individuals.

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D. The payments and expenses specified in subsections (A) through (C) include gifts, honoraria and any other form of compensation but- do not include (1) campaign contributions; (2) payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal. Code of Regs. No. 18944. 1 (a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this Section.

**SECTION 6. Severability.** If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 7. Effective Date.** This Measure shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council, except the amendments to the Lobbyist Registration Act shall go into effect on January 1, 2025.

and be it

**FURTHER RESOLVED:** That each ballot used at the November 5, 2024 election shall have printed therein, in addition to any other matter required by law the following:

**CHARTER AMENDMENT TO SECTIONS 603, 401 AND 403 OF THE CITY  
CHARTER AND AMENDMENT TO OAKLAND MUNICIPAL CODE,  
CHAPTERS 2.24 AND 3.20**

**MEASURE \_\_\_\_**

ATTACHMENT A: PEC Initial Charter Proposal

Measure _____.	Yes	
<b>[FINAL BALLOT QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]</b>		
	No	

;and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the Clerk of the City of Oakland (“City Clerk”), at least 88 days prior to the November 5, 2024 General Municipal Election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

**FURTHER RESOLVED:** That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter and Oakland Municipal Code amendments, and said date shall be posted by Office of the City Clerk; and be it

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice, publication and printing of notices as to said proposed Charter and Oakland Municipal Code amendments in the manner provided for by law; and be it

**FURTHER RESOLVED:** That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2024 General Municipal Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 5, 2024 General Municipal Election, consistent with applicable law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID,  
AND PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTACHMENT A: PEC Initial Charter Proposal

ATTEST: \_\_\_\_\_  
ASHA REED  
Acting City Clerk and Clerk of  
the Council of the City of  
Oakland, California

3350812v3



# AGENDA REPORT

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**TO:** City Council

**FROM:** Nicolas Heidorn  
Executive Director  
Public Ethics Commission

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

**DATE:** May 16, 2024

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## RECOMMENDATION

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

**RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD AMEND CITY CHARTER SECTIONS 603, 401 AND 403, AND OAKLAND MUNICIPAL CODE CHAPTERS 2.24 AND 3.20 TO, AMONG OTHER THINGS:**

- (1) REVISE THE QUALIFICATIONS AND RESTRICTIONS ON ELIGIBILITY TO SERVE AS A COMMISSIONER ON THE PUBLIC ETHICS COMMISSION (COMMISSION);**
- (2) ESTABLISH THAT MEMBERS OF THE COMMISSION MAY SERVE IN HOLDOVER STATUS FOR A PERIOD OF ONE YEAR;**
- (3) SPECIFY THE VOTE THRESHOLD FOR ACTION BY THE COMMISSION;**
- (4) REVISE THE REMOVAL PROCEDURES FOR MEMBERS OF THE COMMISSION;**
- (5) ADD ADDITIONAL MINIMUM STAFFING REQUIREMENTS FOR THE COMMISSION AND LIMIT THE ABILITY OF THE CITY TO REDUCE STAFFING BASED ON FISCAL NECESSITY;**
- (6) PROVIDE THE EXECUTIVE DIRECTOR THE ABILITY, AT THEIR DISCRETION, TO HIRE OUTSIDE LEGAL COUNSEL IN ADDITION TO USING THE CITY ATTORNEY TO RENDER LEGAL ADVICE AND SERVICES TO THE COMMISSION RELATING TO LAWS THE COMMISSION ADMINISTERS OR ENFORCES;**
- (7) EXPAND THE TYPES OF LAWS THAT THE CITY COUNCIL MUST FORWARD TO THE COMMISSION TO REVIEW;**

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

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

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

**DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION**

### **EXECUTIVE SUMMARY**

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

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

Significant elements of this proposal include:

- **Mission:** Amending the Charter to include in the PEC's listed purposes promoting a more inclusive, representative, and accountable democracy in Oakland, consistent with Measure W (2022).
- **Commissioner Qualifications:** Adopting additional minimum qualifications for a person to be appointed to the Commission to promote Commissioner independence and avoid the appearance that a Commissioner is biased in favor of or against an elected official or political faction.
- **During Service Restrictions:** Prohibiting Commissioners from being compensated by or receiving gifts from an elected official during their tenure.

- **Commissioner Removal:** Permitting the City Council by 6/8 vote or the Commission by a 5/7 vote to remove a Commissioner for cause.
- **Commissioner Vacancy Appointment:** Providing that, if a Commission vacancy has not been filled within 120 days by the appointing Citywide official, the responsibility for filling the vacancy transfers to the PEC to ensure extended vacancies do not impact Commission operation.
- **Staffing:** Increasing Enforcement's minimum staffing by 1 Investigator in FY 2025-26 and 1 additional FTE in FY 2027-28 to address the Commission's critical case backlog. Providing that, in times of extreme fiscal necessity, Commission staff may be reduced up to the same proportion as any Citywide reduction in staffing.
- **Legal Capacity:** Providing that the Enforcement Chief may be an attorney and authorizing the Commission to hire or contract for legal staff to assist with the enforcement of laws under the Commission's jurisdiction.
- **Salary-Setting:** Changing the frequency in which the Commission adjusts the salaries of the City Attorney and City Auditor from annually to every two years, aligning those increases with the same schedule the Commission uses for setting the Council's salary.
- **Legislative Proposals:** Requiring that Commission legislative proposals be referred to the City Council for consideration within 180 days.
- **Lobbyist Gifts:** Prohibiting registered lobbyists from giving gifts to elected officials, candidates, and their immediate family, consistent with best practices in other jurisdictions.

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

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

### **BACKGROUND / LEGISLATIVE HISTORY**

In 2014, the City Council unanimously proposed, and the voters overwhelmingly (73.9% in favor) adopted, Measure CC, which added Section 603 to the City Charter. For the first time, Measure CC guaranteed minimum staffing for the Commission and adopted other reforms to significantly strengthen the Commission's independence. Measure CC also incorporated several ethics commission best practices to ensure the Commission would be a fair, effective, and impartial watchdog over, and enforcer of, Oakland's ethics, campaign finance, lobbying, and transparency laws. In significant part due to the success of those reforms, the PEC's workload and assigned responsibilities have expanded significantly in the decade since Measure CC's passage. However, there have been only minor amendments to Section 603 since then; after ten years, the provisions in Section 603 no longer reflect the Commission's actual staffing and budgetary needs and have not kept pace with best practices for ensuring ethics commission independence.

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

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

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

### **ANALYSIS AND POLICY ALTERNATIVES**

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

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

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

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

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



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

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

#### *B. Strengthen Commissioner Qualifications to Promote Commission Independence*

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

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

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

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

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

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

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

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

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

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

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

**Other Jurisdictions — During & Post-Service Restrictions**

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

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

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

Currently, a Commissioner may only be removed for cause by their appointing authority with Council approval. This may create the risk or misperception that a Commissioner is beholden to their appointing official, rather than being an impartial adjudicator. The lack of a supermajority vote for removal also risks making removal seem political. This recommendation would instead permit the Council, which does not have an appointment to the PEC, and the Commission, to remove a member for cause by supermajority vote. This recommendation is to help ensure Ethics Commissioners are, and are perceived to be, fair and impartial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Other Jurisdictions – Legal Capacity**

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

*H. Ensure Commission Legislative Proposals are Considered by the Council*

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



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

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

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

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

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

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

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

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

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

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



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

### Other Jurisdictions – Lobbyist Gift Regulation

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

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

#### K. Other Clarifying Changes

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

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

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

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

**FISCAL IMPACT**

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

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

*In greater detail:*

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

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

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

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

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

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

### **PUBLIC OUTREACH / INTEREST**

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

### **COORDINATION**

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

### **SUSTAINABLE OPPORTUNITIES**

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

***Environmental:*** No environmental opportunities have been identified.

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

### **ACTION REQUESTED OF THE CITY COUNCIL**

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

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

Respectfully submitted,

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

ATTACHMENT B: PEC Agenda Report

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*Nicolas Heidorn*

NICOLAS HEIDORN

Executive Director

Public Ethics Commission