

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, March 4, 2019
Hearing Room 1
6:30 p.m.



Commissioners: Jodie Smith (Chair), James E.T. Jackson (Vice-Chair), Jill Butler, Lisa Crowfoot, Gail Kong, and Nayeli Maxson

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Simon Russell, Investigator

City Attorney Staff: Trish Hynes, Deputy City Attorney

REGULAR MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

ACTION ITEMS

- 4. Approval of Commission Meeting Draft Minutes.**
 - a. February 4, 2019 Regular Meeting Minutes ([Attachment 1 – Minutes](#))
- 5. Mediation Program.** Commission staff presents a summary of the Commission’s Mediation Program and includes a draft Mediation Request Form that was revised pursuant to the Commission’s discussion and public input at the February meeting. The Mediation Request Form will clarify the process for people seeking the Commission’s help with their public records request and will provide Commission staff with information that is more specific and helpful in resolving these types of matters. ([Attachment 2 – Staff Memorandum](#); [Attachment 3 – Mediation Request Form](#); [Attachment 4 – Oakland Sunshine Ordinance](#))
- 6. Letter from the Public Ethics Commission.** Commissioners will review, discuss, and potentially approve a draft letter to the Mayor and City Council that articulates the Commission’s request for additional positions as part of the upcoming budget approval process. ([Attachment 5 – Letter from the PEC](#))

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, March 4, 2019
Hearing Room 1
6:30 p.m.



DISCUSSION ITEMS

7. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission's last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work. Current or recent subcommittees include the following:
 - a. **Campaign Finance Subcommittee** – Nayeli Maxson (Chair), Lisa Crowfoot, and James Jackson

INFORMATION ITEMS

8. **Civic and User Engagement Program.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities, including activities that previously were included in a separate report from Ethics Analyst Jelani Killings. ([Attachment 6 – Disclosure Report](#))
9. **Enforcement Program.** Commission staff reports on the Commission's enforcement work since the last regular Commission meeting. ([Attachment 7 – Enforcement Report](#))
10. **Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Attachment 8 – Executive Director's Report](#))

CLOSED SESSION

11. **Executive Director Performance.** The Commission will meet in closed session to discuss the Executive Director's performance. This is a personnel-related matter authorized to occur in closed session pursuant to Government Code Section 54957(b).

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, March 4, 2019
Hearing Room 1
6:30 p.m.



2/22/2019

Approved for Distribution

Date



Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email ethicscommission@oaklandca.gov or call (510) 238-3593 or (510) 238-2007 for TDD/TTY five days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a ethicscommission@oaklandca.gov o llame al (510) 238-3593 o al (510) 238-2007 para TDD/TTY por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議前五個工作天電郵

ethicscommission@oaklandca.gov 或 致電 (510) 238-3593 或 (510) 238-2007 TDD/TTY。

Attachment 1

**CITY OF OAKLAND
PUBLIC ETHICS COMMISSION**

One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, February 4, 2019
Hearing Room 1
6:30 p.m.

DRAFT



Commissioners: Jodie Smith (Chair), James E.T. Jackson (Vice-Chair), Jill Butler, Lisa Crowfoot, Gail Kong, and Nayeli Maxson

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Jelani Killings, Education Analyst; Simon Russell – Investigator/Acting Enforcement Chief

City Attorney Staff: Trish Hynes, Deputy City Attorney

REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:32 p.m.

Members present: Commissioners Smith, Jackson, Butler, Crowfoot, Kong, Jackson, Maxson

Staff present: Suzanne Doran and Simon Russell.

City Attorney Staff: Trish Hynes, Deputy City Attorney

2. Staff and Commission Announcements.

Chair Smith welcomed Commissioner Maxson and noted that a seat is currently open and will be filled by the City Auditor. The City Auditor is currently accepting applications.

Chair Smith also shared that two new positions will be requested in the upcoming budget cycle.

3. Open Forum.

There were two public speakers.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

January 7, 2019 Regular Meeting Minutes

A public speaker commented that when complainants/respondents make a comment at a meeting, their name should be reflected in the minutes.

Commissioner Crowfoot moved and Commissioner Jackson seconded to approve the minutes. Commissioner Maxson abstained due to not being present at the meeting.

Attachment 1

**CITY OF OAKLAND
PUBLIC ETHICS COMMISSION**
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, February 4, 2019
Hearing Room 1
6:30 p.m.



DRAFT

The motion passed 5-0, with Commissioner Maxson abstaining.

There were two public speakers.

5. Mediation Request Form.

Commission staff presented a new Mediation Request Form for Commission review. Commissioners discussed the mediation form and made several suggestions such as: include complainants' rights, explanation of the process, plain language to explain the process, and to include a time frame.

Commissioner Maxson moved and Commissioner Jackson seconded to send back the form for revisions and clarification. The motion passed 6-0.

There were three public speakers.

6. Ethics Resource Guide.

Commissioners reviewed and discussed a new Government Ethics Act Guide that provides an overview of the City's local ethics laws.

Commissioner Crowfoot moved and Commissioner Jackson seconded to approve the guide with minor amendments. The motion passed 6-0.

There were three public speakers.

DISCUSSION ITEMS

7. Reports on Subcommittees and Commissioner Assignments.

- a. **Campaign Finance Subcommittee** –Lisa Crowfoot, and James Jackson

Chair Smith asked Commissioner Crowfoot, Jackson, and Maxson to be members of the subcommittee. All three accepted.

Chair Smith asked Commissioner Maxson to be Chair. Commissioner Maxson accepted.

- b. **Education and Outreach Subcommittee** –James Jackson, and Gail Kong
Chair Smith closed the subcommittee.

Commissioner Butler will identify community events for commissioners to attend,

- c. **Complaint Procedures Subcommittee** (*ad hoc*, created 3/26/18) –Jodie Smith

Attachment 1

**CITY OF OAKLAND
PUBLIC ETHICS COMMISSION**
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, February 4, 2019
Hearing Room 1
6:30 p.m.



DRAFT

Chair Smith closed this subcommittee.

- d. **Ticket Policy Guidance Subcommittee** (*ad hoc*, created 9/11/18) – James Jackson and Gail Kong

Chair Smith closed this subcommittee.

There were three public speakers.

INFORMATION ITEMS

8. Oakland Campaign Reform Act Contribution Limit and Expenditure Ceiling Annual Adjustment for 2019.

Commission staff presented an adjustment to Oakland's campaign contribution limits and expenditure ceiling amounts according to the increase in the Consumer Price Index as required annually by the Oakland Campaign Reform Act.

There were two public speakers.

9. Disclosure Program.

There was one public speaker.

10. Education and Engagement Program.

There were no public speakers.

11. Enforcement Program.

Mr. Gene Hazzard, the complainant on the case dismissal in the Enforcement Report, commented on the dismissal letter related to his complaint.

There were two public speakers, including the complainant.

12. Executive Director's Report.

There were two public speakers.

The meeting adjourned at 8:52 p.m.

Attachment 2



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill Butler
Lisa Crowfoot
Gail Kong
Nayeli Maxson

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kyle McLean, Legal Extern
Whitney Barazoto, Executive Director
DATE: February 22, 2019
RE: Public Records Request Mediation Program and Request Form

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) Mediation Program as implemented by Commission staff pursuant to the Oakland Sunshine Ordinance. It also provides additional information regarding the need to create a Mediation Request Form, separate from the Commission's general Complaint Form, to both streamline and clarify the purpose and flow of mediation process.

Commission Authority

The Oakland Sunshine Ordinance aims to ensure that the people of the City of Oakland are fully informed and retain control over the instruments of local government by granting the people of the City the right to open meetings and access to public records. The ordinance gives the PEC the duty to develop and maintain an administrative process for review and enforcement of the ordinance, among which may include the use of mediation to resolve disputes arising under this ordinance.¹

The Sunshine Ordinance does not give the PEC the power to impose monetary penalties for a violation of the Sunshine Ordinance. However, the Commission can seek remedial relief for violations, and injunctive relief, as outlined in the Commission's general enforcement authority provided by Oakland City Charter section 603(f). This section further authorizes the Commission to conduct investigations, issue subpoenas to compel the production of documents, and require individuals to appear and testify on any matter before the Commission. If a person fails or refuses to appear, testify, or produce required documents, the Commission may seek a contempt order as provided by the general law of the state.

Any person whose request to inspect or copy public records has been denied by any local body, agency or department, may demand mediation of his or her request with the Executive Director of the Public Ethics Commission, or some mutually agreed person who agrees to volunteer his or her time, serving as mediator.² Mediation shall commence within ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable. The local body, agency or department shall designate a representative to participate in the mediation. Nothing shall prevent the parties from mediating any dispute by telephone.³ The mediator shall attempt to resolve the dispute

¹ O.M.C. 2.20.070(A)(3). This section further provides that "[n]o such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act."

² OMC 2.20.270(C)(1)

³ OMC 2.20.270(C)(2)

Attachment 2

to the mutual satisfaction of the parties; however, the mediator's recommendations shall not be binding on any party. All statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.⁴

Finally, no person may file a complaint with the PEC alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation.⁵

Mediation Process

The current implementation of the mediation process as prescribed by the Sunshine Ordinance can be confusing and discouraging for requesters who are trying to obtain public records to which they are entitled. The existing process requires requesters to submit a complaint form to PEC staff alleging a violation of the Oakland Sunshine Ordinance. There is no mention on this complaint form that requesters must first undergo mediation despite this being an express prerequisite outlined in the Sunshine ordinance. The complaint form does include a link to the PEC's Complaint Procedures and the Sunshine Ordinance (which specifies that mediation must take place), but if the form is accessed in person, or if the requestor does not have internet access, the link is useless. Even if the requester can access either document, both documents are quite long and the mention of mediation buried within a variety of other information.

Further, the existing complaint form used for mediations does not provide any explanation of how mediation takes place, what to expect from the process, or when the mediation will begin or end. It also does not ask for the kinds of information that will be most useful to the mediator and relevant to typical mediation cases. For example, helpful and relevant information not currently gathered by the existing complaint form includes the following:

1. The records the requester is seeking;
 - a. Are there multiple records requests?
 - b. Has the request been partially fulfilled?
 - c. Is the requester seeking documents or oral information?
 - d. Was the request made through NextRequest?
2. The respondent of the records request;
 - a. Did NextRequest route the request to the proper City employee?
 - b. Is the request seeking documents from multiple agencies or departments?
 - c. Does the respondent actually possess the records requested?
 - d. Does the respondent know where these records are kept and have access to them?
3. The problem that the requester has with the City's response to their request;
 - a. Is the problem related to the timeliness of the response?
 - b. Is the problem related to the completeness of the response?
 - c. Did the requester communicate with the respondent via email or telephone, and are these communications reflected on NextRequest?
4. What success would look like for the requester;

⁴ OMC 2.20.270(C)(3)

⁵ OMC 2.20.270(F)

Attachment 2

- a. Is the requester seeking production of additional documents, and if so, which documents?
- b. Does the requester know that the records sought exist, or do they believe that the City should have these records despite never personally viewing them?
- c. Does the requester have access to the records, but is looking for punitive action against the respondent for the untimeliness of the response?

Mediation Request Procedure

A. Mediation Form

Commission staff developed a Mediation Request Form so that the documentation of the process is aligned with the procedural requirements of the Sunshine Ordinance and the public is well-informed of the mediation process and the role of the mediator. Staff presented a draft of the form at the Commission's February meeting and has since revised the draft based on Commissioner and public input that included the following:

1. Simplification of the information provided at the top of the form so that individuals without experience in legal analysis can more clearly understand the procedures of the records request mediation.
2. An additional statement outlining that the mediation process is required by the Sunshine Ordinance; and that the Sunshine Ordinance is drafted by City Council but enforced by the PEC.
3. An additional statement clarifying that the mediation process takes place via telephone and email and does not require the requester to physically meet in person.
4. An additional statement notifying the requester that mediation shall commence within ten days of the request being received, unless the mediator determines that such a deadline is impractical.
5. An additional statement notifying the requester how they can end mediation.

During the February 2019 meeting, Commissioners suggested that staff incorporate a list of exempt records not subject to disclosure. While the list of exemptions within the Sunshine Ordinance may be brief, some of them depend on the interpretation of the California Public Records Act (CPRA) exemptions and would not be a complete list by itself. CPRA exceptions are numerous and complicated, and the mediator's role includes conducting the legal analysis to identify or rule out an exception, as necessary, and apply the law to the facts of each case on behalf of the requester. Instead, staff could provide a link upon request to an explanatory document, such as the League of California Cities CPRA Guide or comparable resource that provides an overview of the seventy-six current exemptions within the CPRA in addition to the Sunshine Ordinance exemptions that supplement the state rules.

B. Formal Complaint and Potential Investigation

Upon conclusion of the mediation, the mediator notifies the requester that the mediation process has concluded and that the requester can file a formal complaint if the requester so desires. In that case, the mediator will offer to pre-fill a formal complaint form based on the information provided in the Mediation Request Form and provide a copy to the requester. This procedure will alleviate the burden and redundancy of the requester of filling out a second form with the information already provided to

Attachment 2

staff. Commission investigative staff then reviews both the Complaint Form and Mediation Request Form as part of staff's preliminary review to determine whether to open an investigation.

If the requester does not wish to submit a formal complaint, then the mediator may submit an informal complaint to the Enforcement Unit. Enforcement staff has discretion to process and review informal complaints pursuant to II(A)(2) of the PEC's Complaint procedures.

In order to prevent statements obtained during mediation from being used by Enforcement staff, as prohibited by the Oakland Sunshine Ordinance, the mediator will not participate in any subsequent investigation.

If it is determined that an investigation is warranted, then Staff may subpoena records that have not been produced, take testimony of the respondent at a Commission meeting, and seek other remedial and injunctive relief as authorized by section 603(f) of the City Charter.

Staff Recommendation

Staff recommends that the Commission adopt the attached Mediation Request Form to streamline and clarify the Commission's mediation process for those seeking the Commission's assistance with a denial of their public records request.

Attachments:

1. Mediation Request Form
2. Oakland Sunshine Ordinance

Attachment 3

For PEC Staff Use Only



Request for Mediation of Public Records Request

Staff Initials: _____

Request #: _____

The California Public Records Act and Oakland Sunshine Ordinance provide the right for the people to inspect and obtain copies of public records, unless the records are exempt from disclosure. Any person whose request to inspect or copy public records has been denied or delayed by any local body, agency, or department may request mediation of his or her request through the Public Ethics Commission (PEC). A public record is any writing that contains information about the conduct of the public's business, such as documents, letters, photos, emails, recordings, data, and electronically-collected information.

The PEC is responsible for conducting mediation and, in some cases, may investigate an unlawful denial of a public records request under the Oakland Sunshine Ordinance as adopted by City Council. A requestor who alleges the failure to permit the timely inspection or copying of a public record must first request and participate in mediation before filing a complaint with the PEC.

PEC staff will attempt to begin mediation within 10 days; however, due to high demand for PEC staff resources, most mediations begin later than 10 days and may take weeks or longer to resolve. The mediator, a PEC Commissioner or staff member, will conduct most communication between the parties by phone or email and will aim to resolve the dispute to the mutual satisfaction of both parties. The mediator's recommendations are not binding on any party, and statements made during mediation cannot be used or considered in any subsequent or related proceeding. A final report regarding the mediation will be provided to the Public Ethics Commission at a public meeting, and you will be informed of that report in advance of the Commission's meeting.

If you would like to submit a request for mediation, please complete this form. This form becomes a public record available for inspection and copying by the public, along with any documents submitted with this form. A copy of this request also will be provided to the persons identified in the allegations below. For more information about the Public Ethics Commission's mediation process, see the [Oakland Sunshine Ordinance \(Oakland Municipal Code Chapter 2.20\)](#). To withdraw or terminate your mediation request once it has been submitted, please notify PEC staff in writing.

Contact Information of Person Making Request:

Name: _____ Street Address: _____

Email: _____ City: _____ State: _____ Zip: _____

Phone: _____

Description of Request. Please complete the lines below and/or provide an attachment with the following details:

- **What records are you seeking?** Please include your RecordTrac request number, if known.

Attachment 3

- **From whom are you seeking the records?** Please employee name, and any known title, department, phone number, email address, etc.

- **Why are you seeking mediation?** Please describe the problem(s) you have encountered, and the outcome you are seeking.

- Additional information or documentation that might aid in the mediation. Please include copies of such documentation and list them here.

Verification. I certify under penalty of perjury under the laws of the State of California that my above and attached statements are true and correct.

Executed on _____ at _____
(Date) (City, State)

(Signature)

Request Submission. Please complete and submit this form and any attachments by email, mail or fax:

Email: EthicsCommission@oaklandca.gov
Mail: Public Ethics Commission
1 Frank H. Ogawa Plaza, Rm. 104 Oakland, CA 94612
Phone: (510) 238-3593
Fax: (510) 238-3315

Oakland Sunshine Ordinance

Chapter 2.20 - PUBLIC MEETINGS AND PUBLIC RECORDS

Sections:

Article I. - In General

2.20.010 - Findings and purpose.

The Oakland City Council finds and declares:

- A. A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in the process.
- B. Commissions, boards, councils, advisory bodies and other agencies of the city exist to conduct the people's business. This chapter is intended to assure that their deliberations and that the city's operations are open to the public.
- C. This chapter is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Oakland can be fully informed and thereby retain control over the instruments of local government in their city.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.1, 1997)

2.20.020 - Citation.

This chapter may be cited as the Oakland Sunshine Ordinance.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.2, 1997)

Article II. - Public Access to Meetings

2.20.030 - Definitions.

Words or phrases in this chapter shall be defined pursuant to the Ralph M. Brown Act, Government Code Section 54950 et seq. and the Public Records Act, Government Section 6250 et seq., unless otherwise specified as follows:

- A. "Agenda" means the agenda of a local body which has scheduled the meeting. The agenda shall meet the requirements of Government Code Section 54954.2, except that the timing requirements of this chapter shall control. For closed sessions, the agenda shall meet the requirements set forth in Government Code Section 54954.5. The agenda shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of abbreviations or acronyms not in common usage and terms whose meaning is not known to the general public. The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda-related material. A description of an item on the agenda is adequate if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item.
- B. "Agenda-related materials" means the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background information or recommendations concerning the

Attachment 4

subject matter of any agenda item. Notwithstanding the foregoing, agenda related materials shall not include:

1. The written text or visual aids for any oral presentation so long as such text or aids are not substituted for, or submitted in lieu of, a written report that would otherwise be required to meet the filing deadlines of this chapter; and
 2. Written amendments or recommendations from a member of a local body pertaining to an item contained in agenda related materials previously filed pursuant to Section 2.20.070 or Section 2.20.080
- C. "Agenda subscriber" means any person or organization who requests in writing, on an annual basis, the receipt of an agenda or agenda-related materials as specified in Section 2.20.090 of this chapter.
- D. "City" means the city of Oakland.
- E. "Local body" means:
1. The Oakland City Council, the Oakland Redevelopment Agency, and the Board of Port Commissioners;
 2. Any board, commission, task force or committee which is established by City Charter, chapter or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners;
 3. Any advisory board, commission or task force created and appointed by the Mayor and which exists for longer than a twelve (12) month period; and,
 4. Any standing committee of any body specified in subsections (E)(1)(2) or (3).

"Local body" shall not mean any congregation or gathering which consists solely of employees of the city of Oakland, the Oakland Redevelopment Agency, or the Port of Oakland.

- F. "Meeting" shall mean any congregation of a majority of the members of a local body at the same time and location, including teleconference location as permitted by Government Code Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the local body.
1. A majority of the members of a local body shall not, outside a meeting defined in this subsection F., use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the local body.
 2. Subsection F.1. shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting defined in this subsection F. with members of a local body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the local body the comments or position of any other member or members of the local body.
 3. Nothing in this subsection F. shall impose the requirements of this chapter upon any of the following:
 - a. Individual contacts or conversations between a member of a local body and any other person that do not violate subsections F.1. and 2.;
 - b. The attendance of a majority of the members of a local body a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the local body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which

Attachment 4

the organizers have required other participants or registrants to pay fees or charges as a condition of attendance;

- c. The attendance of a majority of the members of a local body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency;
- d. The attendance of a majority of the members of a local body at an open and noticed meeting of another local body of the local agency or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency;
- e. The attendance of a majority of the members of a local body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency; or
- f. The attendance of a majority of the members of a local body at an open and noticed meeting of a standing committee of that body, provided that the members of the local body who are not members of the standing committee attend only as observers.

"Meeting" shall also mean a meal or social gathering of a majority of the members of a local body immediately before, during or after a meeting of a local body.

- G. "Notice" means the posting of an agenda in a location that is freely accessible to the public twenty-four (24) hours a day and as additionally specified in Section 2.20.070 and 2.20.080
- H. "On-line" means accessible by computer without charge to the user.
- I. "Software or hardware impairment" means the city is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas on-line due to inoperability of software or hardware caused by the introduction of a malicious program (including, but not limited to, a computer virus), electrical outage affecting the city's computer network, or unanticipated system or equipment failure. "Software or hardware impairment" may also include situations when the city is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitate deactivating the system network; however, the city shall make reasonable efforts to avoid a delay in the preparation, distribution, or posting of agendas and agenda related material as a result of required or necessary maintenance or installation of system upgrades.
- J. "Standing committee" means any number of members of a local body which totals less than a quorum and which has a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of the local body.

(Ord. No. 12909, § 3, 1-6-2009; Ord. 12668 § 3, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.3, 1997)

2.20.040 - Conduct of meetings for additional bodies covered by the chapter.

- A. To the extent not inconsistent with state or federal law, a local body shall require, as a condition of any express delegation of power to any public agency, including joint powers authorities, or other person(s), whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency or other person(s) at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.).

Attachment 4

- B. To the extent not inconsistent with state or federal law, a private entity that owns, operates or manages any property in which the city, Redevelopment Agency, or the Port Department has or will have an ownership interest, including a mortgage, and on which property the private entity performs a governmental function or service, shall conduct any meeting of its governing board at which an item relating to the administration of the property or the public function or service is discussed or considered subject to the following conditions:
1. Such meetings need not be formally noticed, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the meeting be made available upon request;
 2. Such meetings need not be conducted in any particular location to accommodate spectators, although spectators shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy;
 3. Such business meetings need not provide opportunities for comment by spectators, although the governing board may, in its discretion, entertain questions or comments from spectators as may be relevant to the item considered; and,
 4. The private entity or persons may restrict the attendance of spectators only to the specific item(s) directly relating to the administration of the property or of the public function or service and, as to such specific item(s), may prohibit the attendance of spectators during the discussion or consideration of any item that would be the permitted subject of a closed session hearing under the Ralph M. Brown Act.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.4, 1997)

2.20.050 - Meetings to be open and public: Application of Brown Act.

All meetings of local bodies specified in Sections 2.20.030(E) and Section 2.20.040(A) shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) unless greater public access is required by this chapter, in which case this chapter shall be applicable.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.5, 1997)

2.20.060 - Conduct of business: Time and place for meetings.

- A. Every local body specified in Section 2.20.030(E) shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible local bodies specified in Section 2.20.030(E)(1) and (2) shall conduct their regular meetings on weekday evenings.
- B. Regular and special meetings of legislative bodies specified in Section 2.20.030(E) shall be held within the city of Oakland except to do any of the following:
1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local body is a party;
 2. Inspect real or personal property which cannot be conveniently brought to Oakland, provided that the topic of the meeting is limited to items directly related to the real or personal property;
 3. Participate in meetings or discussions of multi-agency significance that are outside Oakland. However, any meeting or discussion held pursuant to this subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by the respective local body specified in this chapter; or
 4. Meet outside the city of Oakland with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the city of Oakland, the Oakland Redevelopment Agency or the Port of Oakland, and over which issue the other federal or state agency has jurisdiction.

Attachment 4

- C. If a regular meeting for any local body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least five days in advance.
- D. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding officer of the local body or his or her designee. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.
- E. No local body shall take any action at a meeting which occurs when a quorum of the local body becomes present at a meeting of a standing or ad hoc committee of the local body, although the committee may take action consistent with its jurisdiction and authority.

(Ord. 12483 (part), 2003; Ord. 12463 § 2, 2003; Ord. 11957 § 00.6, 1997)

2.20.070 - Notice and agenda requirements: Special meetings.

- A. Special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:
 - 1. Posting a copy of the agenda in a location freely accessible to the public at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda;
 - 2. Filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and,
 - 3. Delivering a copy of the agenda to each member of the local body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.
- B. Local bodies specified in Section 2.20.030 (E)(1) shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting on-line at the local body's website at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.
- C. Notwithstanding the requirements of 2.20.070(A) and (B), if a special meeting is called for a Monday, notice shall be deemed timely made if the filing, posting and distribution requirements of subsections (A) and (B) are made no later than 12:00 p.m. (noon) on the preceding Friday.
- D. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the local body may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this section is given at least ten days prior to the special meeting. This ten day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of the local body occur.
- E. To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.
- F. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.

Attachment 4

(Ord. 12668 § 4, 2005; Ord. 12483 (part), 2003; Ord. 12463 § 3, 2003; Ord. 12106, 1999; Ord. 11957 § 00.7, 1997)

2.20.080 - Notice and agenda requirements: Regular meetings.

- A. Ten Day Advance Notice Requirement for Regular Meetings of the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees shall provide notice before any regular meeting by:
1. Posting a copy of the agenda in a location freely accessible to the public twenty-four (24) hours a day no later than ten days before the date of the meeting;
 2. Filing a copy of the agenda and all agenda-related material with the Office of the City Clerk and the Oakland main library no later than ten days before the date of the meeting; and,
 3. Posting a copy of the agenda on-line at the local body's website no later than ten days before the date of the meeting. Notwithstanding Section 2.20.080(D), the failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.
- B. Supplemental Agenda and Related Materials Requirements for Regular Meetings of the City Council Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. Notwithstanding the notice provisions of 2.20.080(A), the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees, may amend or supplement a posted agenda or agenda-related materials no later than seventy-two (72) hours before a regular meeting and only for the following reasons or under the following conditions:
1. To add an item due to an emergency or urgency, provided the local body makes the same findings as required by Section 2.20.080(E) before taking action;
 2. To delete or withdraw any item from a posted agenda; however, nothing herein shall limit the ability of a local body to delete or withdraw an item during the meeting as long as the local body permits members of the public to address the deleted or withdrawn item;
 3. To provide additional information to supplement the agenda-related material previously filed with the Office of the City Clerk provided that the additional information was not known to the Mayor or staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted by this section are reports responding to questions or requests raised by members of a local body after posting and filing of the ten day agenda and materials, and analyses or opinions of the item by the Office of the City Attorney, City Auditor, or any member of the City Council;
 4. To correct errors or omissions, or to change a stated financial amount, or to clarify or conform the agenda title to accurately reflect the nature of the action to be taken on the agenda item;
 5. To consider the recommendations, referrals, minutes, modifications of or actions taken on any item heard by a standing committee of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission provided that the item has not been materially changed after the committee considered the item;
 6. To place an ordinance on the agenda pursuant to Oakland City Charter Section 216 because the Mayor has caused its reconsideration by the City Council under the Mayor's power to suspend an ordinance receiving five votes; or,
 7. To place an item on the agenda to allow the Mayor to cast a vote pursuant to Oakland City Charter Section 200; or

Attachment 4

8. To continue an agenda item to the next regular meeting of the local body so long as members of the public are given an opportunity to address the local body on the item at the meeting from which the item is continued.
- C. Seventy-two (72) Hour Advance Notice Requirement for Regular Meetings of All Local Bodies Other Than the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. Any local body specified in Section 2.20.030(E)(2), (3), and (4), with the exception of standing committees of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission, shall provide notice for any regular meeting in compliance with the Ralph M. Brown Act and shall also file a copy of the agenda and all agenda-related material with the Office of the City Clerk at least seventy-two (72) hours before the time of any regular meeting.
- D. Excuse of Sunshine Notice Requirements. If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if:
 1. The minimum notice requirements of the Brown Act have been met; and,
 2. The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:
 - a. The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
 - b. There is a need to take immediate action which relates to federal or state legislation or the local body's eligibility for any grant or gift; or,
 - c. The item relates to a purely ceremonial or commendatory action. Notwithstanding the provisions of this subsection, the City Council, Redevelopment Agency, Board of Port Commissioners or Public Ethics Commission may excuse, by a two-thirds vote of those members present, any of the additional notice requirements imposed by Section 2.20.080 so long as the failure to meet any additional notice requirement was due to a software or hardware impairment as defined by Section 2.220.030(l) and such additional notice requirements are satisfied no later than eight days before the date of the meeting.
- E. Action on Items Not Appearing on the Agenda. Notwithstanding subsection (D) of this section, a local body may take action on items not appearing on a posted agenda only if:
 1. The matter is an emergency. Upon a determination by a majority vote of the local body that a work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or,
 2. The matter is urgent. Upon a determination by a two-thirds vote by the members of the local body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those present, that there is a need to take immediate action which came to the attention of the local body after the agenda was posted, and that the need to take immediate action:
 - a. Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
 - b. Relates to federal or state legislation; or,
 - c. Relates to a purely ceremonial or commendatory action.
- F. Nothing in this section shall prohibit a local body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to 2.20.080(E) before or during a meeting.

Attachment 4

- G. Nothing in this section shall prohibit the Office of the City Attorney from conforming a document to comply with technical requirements as to form and legality.
- H. The Mayor, City Administrator and City Attorney in their capacities with the city and Redevelopment Agency must submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and Section 2.20.070. However, the referenced officers may submit additional documents to the legislative body and the legislative body may accept the documents if the legislative body makes a finding by two-thirds vote of the members present that the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines. Copies of such documents shall be made available to the public at the related meeting. This subsection shall not apply to the City Auditor, and the City Council may consider reports from the City Auditor that are presented to the Council after the deadlines specified in this chapter. Nothing in this section or in any other provision of this chapter shall be interpreted to require that the Mayor, City Administrator or City Attorney submit to the City Clerk any documents that are not public records.

(Ord. 12668 § 5, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.8, 1997)

2.20.090 - Agenda-related materials as public records: Agenda subscribers.

In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code 6250 et seq.) and this ordinance, every local body specified in Section 2.20.030(E) shall make available for immediate public inspection and copying all agendas and agenda-related materials.

- A. Every local body may charge a fee to agenda subscribers and media organizations to cover reasonable mailing costs of the agenda and agenda-related materials. Neither this section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act or this ordinance.
- B. Every local body shall make available for immediate public inspection and copying all documents that have been distributed to a majority of its members. The right to immediate public inspection and copying provided in this section shall not include any material exempt from public disclosure under this ordinance or under state or federal law.
- C. All requests by agenda subscribers to receive agendas or agenda-related materials by mail shall be made in writing and delivered to the Office of the City Clerk or, in the case of the Board of Port Commissioners, to the Secretary of the Board. The City Clerk shall maintain a list of all local bodies and shall immediately forward a copy of the written request to the appropriate local body to ensure compliance with the request. Any written request shall be valid for the calendar year in which it is filed, and must be renewed after January 1 of each year.
- D. Notwithstanding any other provision of this ordinance, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the local body taken at the meeting for which the agenda or the agenda-related material was not timely received.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.9, 1997)

2.20.100 - Agenda and oral disclosures: Closed sessions.

- A. In addition to the brief general description of agenda items to be discussed or acted upon in open session, the permissive provisions of Government Code Section 54954.5 are mandatory under this ordinance with respect to any closed session item.
- B. Any action taken without proper agenda disclosure pursuant to this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.10, 1997)

2.20.110 - Statement of reasons for closed sessions.

Attachment 4

- A. Prior to any closed session, a local body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.
- B. In the case of an item added to the agenda pursuant to Government Code Section 54954.2(b) or Section 2.20.080(E) herein, the statement shall be made in open session concurrent with the findings required pursuant to that section.
- C. A local body shall re-state the reasons for closed session before convening a closed session at any meeting and as to any item that has been adjourned or continued from a prior meeting.
- D. The public shall have the right to comment on any item of closed session before the closed session convenes.
- E. Nothing in this section shall require or authorize a disclosure of information that is confidential under law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.11, 1997)

2.20.120 - Conduct of closed session.

- A. A local body shall consider in closed session only those matters specified in the statement required in Section 2.20.110
- B. After any initial closed session to consider the sale, lease, gift, purchase, or exchange of any property to which the city, Redevelopment Agency, or Port of Oakland has or will have an ownership or possessory interest, such local bodies shall notice for open session a discussion of the advisability of taking such an action before a final action is taken in the matter. This requirement shall not apply if the local body adopts a finding that holding an open session discussion would prejudice the local body in the proposed proceeding or transaction.
- C. With respect to any closed session discussion pertaining to employee salaries and benefits, a local body shall not discuss compensation or other contractual matters with one or more employees having a direct interest in the outcome of the negotiations.
- D. The following provisions of the Brown Act apply to the conduct of closed session by local bodies and are hereby incorporated by reference as though fully set forth herein: Government Code Sections 54956.8; 54956.9; 54957; and 54957.6.
- E. The Offices of the City Attorney, the City Clerk, and the Public Ethics Commission shall provide any person with a copy of the Brown Act or Public Records Act without charge.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.12, 1997)

2.20.130 - Disclosure of closed session discussions and actions.

- A. After every closed session, in addition to the required disclosures pursuant to Government Code Section 54957.1, a local body shall reconvene into open session prior to adjournment and shall disclose publicly all portions of its discussion which are not confidential. The local body may, by motion and vote in open session, elect to disclose any other information which a majority deems to be in the public interest. Any disclosure pursuant to this section shall be made through the presiding officer or such other person, present in the closed session, designated to convey the information.
- B. Immediately following the closed session a local body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:
 - 1. Real property negotiations: Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the local body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the local body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon upon

Attachment 4

inquiry by any person, and, in any event, at the next meeting of said local body after the other party or its agent has informed the local body of its action. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this section need not be made until the condition has been satisfied or an agreement has been reached with respect to all the properties, or both.

2. Litigation: Direction or approval given to the local body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the local body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.
 3. Settlement: If a local body accepts a settlement offer signed by an opposing party, the local body shall report its vote of approval and identify the substance of the agreement. If final approval rests with another part or with the court, the local body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A local body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this section need not be disclosed until the closely related case is settled or otherwise finally concluded.
- C. Reports required to be made pursuant to this section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.
- D. A written summary of the information required to be reported immediately pursuant to this section, or documents containing that information, shall be made available for inspection and copying by the close of business on the next business day following the meeting. Written notice that such a written summary or supporting documentation is available as to every reported document shall be posted the next business day following the meeting in the place where the meeting agendas of the local body are usually posted.
- E. Action taken in closed session which is not immediately disclosable under this section shall be disclosed and noticed under the procedures set forth in Section 2.20.130(D) at such time as disclosure is required.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.13, 1997)

2.20.140 - Barriers to attendance prohibited.

- A. No local body specified in this ordinance shall conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever a local body anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system shall be used to permit the overflow audience to listen to the proceedings, unless the speakers would disrupt the operation of a local agency office.

Attachment 4

- B. Any person attending an open meeting of a local body shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.14, 1997)

2.20.150 - Public testimony at regular and special meetings.

- A. Every agenda for every regular or special meeting shall provide an opportunity for members of the public to directly address a local body on items of interest to the public that are within the local body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2(b). The agenda of local bodies need not provide an opportunity for members of the public to address the local body on any item that has already been considered by a committee, composed exclusively of members of the local body, at a meeting in which members of the public were afforded the opportunity to address the committee before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the local body.
- B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. The presiding officer of any local body may request speakers representing similar views to designate a spokesperson in the interest of time. Nothing shall prohibit a local body from adopting rules for allocating additional time to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the local body's consideration of those items.
- C. Every local body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. It shall be the policy of the city that all speakers be entitled to a minimum of two minutes of speaking time per agenda item, subject to the discretion of the presiding officer of the local body. The presiding officer shall announce publicly all reasons justifying any reduction in speaker time. The stated reasons shall be based at least on a consideration of the time allocated or anticipated for the meeting, the number and complexity of agenda items, and the number of persons wishing to address the local body.
- D. No local body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the local body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the local body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall confer any privilege or protection beyond that which is otherwise provided by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.15, 1997)

2.20.160 - Minutes and recordings.

- A. All local bodies specified in Section 2.20.030(E)(1) and (2) and their standing committees shall record the minutes for each regular and special meeting convened under the provisions of this ordinance. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the local body began and ended any closed session, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten business days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than five business days after the meeting at which the minutes are adopted.
- B. Every local body specified in Section 2.20.030(E)(1) shall make a visual and audio recording of every open meeting. Local bodies specified in Section 2.20.030(E)(2) and (4) shall audio tape each regular

Attachment 4

and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying and shall not be erased, deleted or destroyed for at least four years, provided that if during that four-year period a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the local body. Notwithstanding any other provision of law, every local body specified in Section 2.20.030(E)(1) shall permanently maintain all recordings of all meetings.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.16, 1997)

2.20.170 - Public comment by members of local bodies.

Every member of a local body retains the rights of any citizen to comment publicly on the wisdom or propriety of government actions, including those of the local body of which he or she is a member. Local bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those judgments or opinions pertaining to the disclosure or non-disclosure of discussions or actions taken in closed session. The release of specific factual information made confidential by state or federal law, including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this ordinance, may constitute grounds for censure or for an action for injunctive or declaratory relief by the local body. Nothing in this section shall confer any privilege or protection for expression beyond that which is otherwise provided by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.17, 1997)

Article III. - Public Information

2.20.180 - Definitions.

Whenever in this Article the following words or phrases are used, they shall mean:

- A. "Agency" means an agency of the city of Oakland.
- B. "Department" means a department of the city of Oakland or a department of the Port Department of the city of Oakland.
- C. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.18, 1997)

2.20.190 - Release of documentary public information.

Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of Government Code Section 6253.9 are incorporated herein by reference.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.19, 1997)

2.20.200 - Release of oral public information.

Release of oral public information shall be accomplished as follows:

- A. Every Agency director for the city and Redevelopment Agency, and department head for the Port shall designate a person or persons knowledgeable about the affairs of the respective

Attachment 4

agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The name of every person so designated under this section shall be filed with the City Clerk and posted online.

- B. It shall be the duty of every designated person or persons to provide information on a timely and responsive basis to those members of the public who are not requesting information from a specific person. It shall also be the duty of the person or persons so designated to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- C. Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the agency or department and does not materially misrepresent the agency or department position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.21, 1997)

2.20.210 - Public review file—Policy body communications.

Every local body specified in Section 2.20.030(E)(1) shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing which the clerk or secretary of such local body has distributed to, or sent on behalf of, a quorum of the local body concerning a matter that has been placed on the local body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. Excepted from the communications file shall be commercial solicitations, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this chapter. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file provided that the letter or memorandum of transmittal is included in the communications file.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.22, 1997)

2.20.220 - Non-exempt public information.

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

- A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning contracts, memoranda of understanding or other matters subject to negotiation and pending a local body's approval need not be subject to disclosure until final action has been taken.
- B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a local body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.
- C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):

Attachment 4

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:
 - a. Sex, age and ethnic group;
 - b. Years of graduate and undergraduate study, degree(s) and major or discipline;
 - c. Years of employment in the private and/or public sector;
 - d. Whether currently employed in the same position for another public agency;
 - e. Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
 2. The professional biography or curriculum vitae of every employee who has provided such information to the city, Redevelopment Agency or the Board of Port Commissioners excluding the home address, home telephone number, social security number, date of birth, and marital status of the employee.
 3. The job description of every employment classification.
 4. The exact gross salary and paid benefits available to every public employee.
 5. Any adopted memorandum of understanding between the city or Board of Port Commissioners and a recognized employee organization.
- D. Law Enforcement Information. The Oakland Police Services Agency shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Such redacted information may include:
- a. The names of juvenile witnesses or suspects;
 - b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
 - c. The identity of a confidential source;
 - d. Secret investigative techniques or procedures;
 - e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
 - f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.
2. The Oakland Police Services Agency shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.
- E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city, Redevelopment Agency and Board of

Attachment 4

Port Commissioners and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract until and unless that person is awarded the contract. All bidders and contractors shall be advised that information covered by this subdivision will be made available to the public upon request.

- F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:
1. Any proposed or adopted budget for the city, Redevelopment Agency and the Port Department, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the City Council, Redevelopment Agency or Board of Port Commissioners or their standing committees.
 2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.23, 1997)

2.20.230 - Immediate disclosure request.

- A. Notwithstanding any other provision of law and subject to the requirements of this section, a written request to inspect or obtain copies of public records that is submitted to any department or agency or to any local body shall be satisfied no later than three business days unless the requestor is advised within three business days that additional time is needed to determine whether:
1. The request seeks disclosable public records or information;
 2. The requested records are in the possession of the agency, department or local body;
 3. The requested records are stored in a location outside of the agency, department or local body processing the request;
 4. The requested records likely comprise a voluminous amount of separate and distinct writings;
 5. Reasonably involves another agency, department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request; or,
 6. There is a need to compile data, to write programming language or a computer program or to construct a computer report to extract data.
- B. All determinations made pursuant to Section 2.20.230(A)(1)-(6) shall be communicated in writing to the requestor within seven days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than fourteen (14) days after the written determination pursuant to 2.20.230(A)(1)-(6) is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. All written requests to inspect or copy documents within three business days must state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state "Immediate Disclosure Request" and a number by which the requestor may be contacted.
- C. An Immediate Disclosure Request is applicable only to those public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials. All Immediate Disclosure Requests shall describe the records sought in focused and specific language so they can be readily identified.

Attachment 4

- D. The person seeking the information need not state a reason for making the request or the use to which the information will be put.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.24, 1997)

2.20.240 - Minimum withholding.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.25, 1997)

2.20.250 - Justification for withholding.

Any withholding of information shall be justified, in writing, as follows:

- A. A withholding under a permissive exemption in the California Public Records Act or this ordinance shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.26, 1997)

2.20.260 - Fees for duplication.

- A. No fee shall be charged for making public records available for inspection.
- B. No fee shall be charged for a single copy of a current meeting agenda.
- C. A fee may be charged for: 1) single or multiple copies of past meeting agenda or any agenda-related materials; 2) multiple copies of a current meeting agenda; and, 3) any other public record copied in response to a specific request.
- D. The agency, department or the city may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.
- E. No charge shall be made for a single copy of a Draft or Final Environmental Impact Report and Environmental Impact Statement.
- F. All fees permitted under this section shall be determined and specified in the city of Oakland Master Fee Schedule, as amended.
- G. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with State law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.27, 1997)

Article IV. - Policy Implementation

2.20.270 - City of Oakland Public Ethics Commission.

- A. Duties: In the implementation of this ordinance, the Public Ethics Commission shall:

Attachment 4

1. Advise the City Council and the Board of Port Commissioners and provide information to other city departments and local bodies on appropriate ways in which to implement this ordinance with a priority on simple, standard procedures.
 2. Assist in citywide training for implementing the ordinance.
 3. Develop and maintain an administrative process for review and enforcement of this ordinance, among which may include the use of mediation to resolve disputes arising under this ordinance. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act.
 4. Propose amendments to the City Council of this ordinance as needed.
 5. Report to the City Council on any practical or policy problems encountered in the administration of this chapter.
- B. Enforcement.
1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (A)(3) herein, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this chapter.
 2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a local body has violated this ordinance. The costs and fees shall be paid by the local body and shall not become a personal liability of any public officer or employee of the local body.
 3. If the litigation is judged to be frivolous by the court, the defendant local body may assert its right to be paid reasonable court costs and attorneys' fees.
- C. Mediation.
1. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any local body, agency or department, may demand immediate mediation of his or her request with the Executive Director of the Public Ethics Commission, or some mutually agreed person who agrees to volunteer his or her time, serving as mediator.
 2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable. The local body, agency or department shall designate a representative to participate in the mediation. Nothing shall prevent the parties from mediating any dispute by telephone.
 3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendations shall not be binding on any party. All statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.
- D. Cure and Correction.
1. Nothing in this ordinance shall prevent a local body from curing or correcting an action challenged on grounds that a local body violated any material provision of this chapter. A local body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.
 2. In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this chapter, or took action upon an item for which the agenda related material was not timely filed pursuant to Section 2.20.080(H), the local body shall agendize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1)-(4), inclusive.

Attachment 4

E. Reports or Recommendations From Meetings Alleged To Have Been Held In Violation of this Chapter.

If the sole purpose or nature of an action that is challenged for violation of this chapter is to make or convey an advisory report or recommendation to another local body, such local body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said local body to hear or take action on the item in the absence of such report or recommendation.

F. Limitation of Actions.

No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.080 if he or she attended the meeting or had actual notice of the item of business at least seventy-two (72) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.070 if he or she attended the meeting or had actual notice of the item at least forty-eight (48) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation as specified in Section 2.20.270(C).

(Ord. 12668 § 6, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.28, 1997)

2.20.280 - Responsibility for administration.

- A. The City Manager shall administer and coordinate the implementation of the provisions of this chapter for all local bodies, agencies and departments under his or her authority, responsibility or control.
- B. The City Manager shall provide the Public Ethics Commission with staff to permit the Public Ethics Commission to fulfill the functions and duties set forth herein. The City Attorney shall provide the Public Ethics Commission with legal assistance, to the extent such assistance does not constitute a conflict.
- C. The Office of the City Clerk shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it. The Office of the City Clerk shall retain copies of agenda-related materials filed with it by local bodies specified in Section 2.20.030(E)(2)(3) and (4) for a period of at least sixty (60) days following the meeting for which said agenda-related materials were submitted.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.29, 1997)

2.20.290 - Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.30, 1997)

2.20.300 - Effective date.

The amendments herein shall become effective on May 1, 2003.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.31, 1997)

Attachment 5

DRAFT PEC Letter to the Mayor and DRAFT PEC Letter to City Council Members

March 4, 2019

The Honorable Libby Schaaf [City Council President Kaplan and Members]
Mayor [City Council]
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

Dear Mayor Schaaf [Council President Kaplan and Members],

On February 13, 2019, the Executive Director for the Public Ethics Commission (PEC or Commission) submitted a budget request for two positions to be added to the Commission's budget and staff structure. This letter communicates the PEC's needs and recent request for positions to accomplish its City Charter-mandated duties.

While the Commission was retooled in 2014 to provide staffing and structure commensurate to the statutory demands placed upon it at the time, recent increases in workload show the need for additional staffing to carry out the range of the Commission's responsibilities at this 5-year mark.

Commission Investigative Work Outpaces Current Staffing

First, the Commission's single investigator can no longer keep pace with the number of investigations demanded of Commission staff. The PEC received a record 50 complaints in 2018, up from 23 in 2017, and some of which multiplied in number with several respondents involved in the same allegation. The Commission now averages double the number of incoming complaints post-2014 than it did before receiving staffing in 2014 to cover the then-existing caseload.

By the end of 2018, the Commission's caseload was at 74 pending cases, with some cases backlogged from 2014 and 2015. Many cases involve multiple violations and/or complex facts or law requiring high-level investigative and legal analysis, such as one case in which staff found probable cause for 47 ethics violations by a City employee, including bribery and misuse of City resources, among other allegations. Some investigations involve City employees who are still employed, making these cases highly time-sensitive in determining wrongdoing and properly notifying City management.

Given the significant increase in both the volume and complexity of Commission investigations, the PEC requests funding for a new *Senior Ethics Investigator* position to address this staffing deficiency.

Attachment 5

Growth of Advice and Compliance Work Signals Stronger Ethical Culture and Requires Increased Staffing

Similarly, the Commission has received an increasing number of calls for advice and assistance from City staff, officials, candidates for City office, lobbyists, and others attempting to comply with ethics, campaign finance, lobbying, and transparency laws. These calls have more than doubled each year for the past three years, from 94 calls in 2016, to 251 in 2017, to 400 in 2018. While this growing number of calls is an incredibly positive indicator of an increasingly ethical culture in the City, Commission staff can no longer keep pace with its advice functions within existing staff resources.

In addition, Commission staff have enhanced candidate and filer support to achieve better compliance without the need for monetary penalties for certain types of low-level violations, such as inadvertent campaign reporting violations. This approach achieves the Commission's mission of prosecuting only when necessary but further stresses our front-facing staff resources. Lastly, the Commission has not been able to move its policy agenda forward in the last half of 2018 due to its lack of a policy analyst to do that work. For example, the PEC's current project to expand engagement in the political process by reforming the City's public campaign finance system has been on hold for months due to staff's reassignment of duties to cover advice, assistance, and enforcement demands.

Thus, the PEC requests a new *Ethics Analyst III* position to address these significant education, compliance, and policy workload needs.

Sufficient Commission Funding Required by Charter

City Charter section 603(g)(1) requires the City Council to "appropriate a sufficient budget for the Public Ethics Commission to fulfill the functions and duties as set forth" in the Charter, including providing education, ensuring compliance, drafting policy recommendations, conducting investigations, and enforcing violations of government ethics, campaign finance, lobbying, and transparency laws. As described above, the Commission's staffing allocation is no longer sufficient to fulfill the Commission's Charter and statutorily-mandated duties.

Public Shares Commission's Concerns

Just as importantly, members of the public consistently tell the Commission that they expect us to resolve investigations more promptly and thoroughly, and to continue to address weaknesses in the City's ethics framework. We hear that it is unacceptable to have 2014-2015 cases still unresolved. We hear that the Commission does not mediate requests for public records quickly enough. We hear that some investigations need to be broadened. We hear that policies need to be re-evaluated or reformed. We agree. The Commission needs additional staff resources to respond to these valid, reasonable public demands.

Forward Momentum

The Public Ethics Commission has made incredible progress in the last five years to develop solid government ethics prevention, compliance, data illumination, policy development, and enforcement programs, and has been repeatedly cited as an industry model in recent years by new and longstanding ethics commissions alike. With this significant progress, however, awareness and utilization of the Commission's services has naturally increased, requiring the allocation of further resources to fulfill

Attachment 5

our legally-required responsibilities, meet our City's needs, and continue the Commission's good work for the City of Oakland.

Accordingly, we respectfully request the allocation of funds and creation of two additional staff positions for the Public Ethics Commission, beginning with the 2019-20 fiscal year.

Sincerely,

Jodie Smith, Chair

On behalf of the Public Ethics Commission

(This letter was approved by the Public Ethics Commission at its meeting on March 4, 2019.)

Attachment 6



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill Butler
Lisa Crowfoot
Gail Kong
Nayeli Maxson

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: February 22, 2019
RE: Disclosure and Engagement Report

This memorandum provides an update of the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as required. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Disclosure - Filing Officer

Campaign disclosure – January 31 marked the deadline for semi-annual campaign statements covering the period from July 1 through December 31, 2018. All active campaign committees registered with the City of Oakland were required to file.

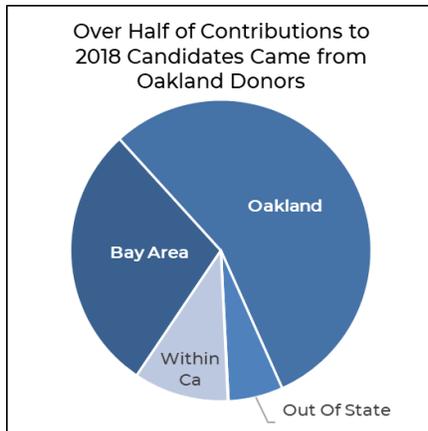
The large majority of 2018 candidates timely filed their campaign statements by the January 31st deadline, with two late filings completed within days of the deadline. Outreach to bring five non-filers into compliance is ongoing. Staff contacted all non-filers via email and letter within days of the deadline and follow-up phone calls beginning ten days after the deadline passed. Staff also provided in-depth one-on-one technical assistance to two filers without professional treasurers allowing them to complete their filings. Subscribers to our campaign mailing list received an advisory notice informing them of the revised 2019 contribution limits and expenditure ceilings.

Surface review of the nearly 100 electronic and paper filings filed in January and February is in progress and requests for amendments and enforcement referrals will be made as necessary.

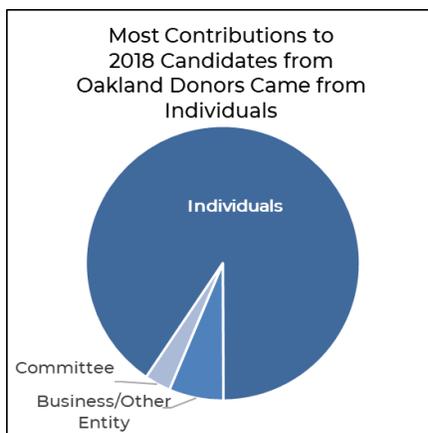
Campaign finance overview – Based on the campaign finance data through the end of 2018¹, over \$2.3 million in contributions and \$2.4 million in campaign expenditures were reported by candidates

¹ All calculations based on campaign activity data from January 1, 2017 – December 31, 2018 as reported through February 6, 2019. Data submitted after that date is not reflected in this report. Calculations are based on campaign finance data as reported by filers and may include filer error. Therefore, all figures should be treated as estimates.

Attachment 6



running for Oakland office in 2018. Contributions of \$100 or more made up 94 percent of candidates' campaign funds, and just over half (55 percent) of those contributions listed a donor with an Oakland address. Of the remaining contributions, 28 percent listed a Bay Area address, 10 percent a California address outside the Bay Area, and 6 percent an out-of-state address.



The large majority of contributions reported out of Oakland, 90 percent, came from approximately 2,472 individuals.² The typical Oakland contributor made only one contribution during the 2018 election cycle (69 percent), and the average contribution amount was \$320³. However, contributions of \$200 or less made up half of reported contributions. Sixty-one percent of contributions to candidates from Oakland residents came from individuals with addresses in five out of Oakland's 14 residential zip codes (94611, 94610, 94618, 94602, and 94605), consistent with patterns observed in the 2014 and 2016 election cycles.

Of the remaining Oakland contributions, 6 percent came from businesses or other entities and 3 percent came from political action committees registered in Oakland.

All campaign finance disclosure filings are uploaded to the PEC's searchable [Public Portal for Campaign Finance and Lobbyist Disclosure](#), and users may view and download copies in PDF file format as well as raw data.

SOURCE: FPPC FORM 460, SCHEDULES A AND C

Lobbyist disclosure – The annual lobbyist registration deadline passed on January 31. To date, there are 35 individuals registered to lobby the City of Oakland in 2019. Staff posted an updated 2019 Oakland lobbyist roster on the PEC website.

The 2018 fourth quarter lobbyist activity report deadline passed on January 30. To date, 40 reports have been filed, 72 percent timely, with most late filings received the day after the deadline. Commission staff is reaching out to four possible non-filers to gain compliance and clarify filing status.

Overview of lobbyist activity – Lobbyists reported a total of \$205,680 in economic consideration received in the fourth quarter, for a total of \$1,815,978 in 2018.

Two lobbyists account for 47 percent in economic consideration received for lobbying Oakland public officials – Jason Overman of Lighthouse Public Affairs and Greg McConnell of The McConnell Group.⁴

Lobbyists reported soliciting 27 campaign contributions in 2018.⁵

² Estimate based on the number of unique contributor names within the same city.

³ Average does not include self-funding by candidates to their own campaigns, which are also reported as contributions from individuals.

⁴ Oakland lobbyists are not required to disclose economic consideration received by the Lobbyist Registration Act, however, the quarterly report requests that information. Therefore, these figures represent voluntary reporting only.

⁵ Oakland lobbyists are required by the Lobbyist Registration Act to disclose contributions they solicited for candidates and officeholders by providing the name of the contributor and the recipient. The quarterly report form also requests lobbyists

Attachment 6

Disclosure and Engagement report
February 22, 2019

The five clients with the most reported spending on City lobbying in 2018 are:

Client	Compensation to lobbyist(s)
Harborside (cannabis industry)	\$270,000
Jobs and Housing Coalition (advocacy group for Oakland employers and housing builders)	\$180,000
Airbnb (short term rentals)	\$172,500
Veritas Investment (real estate investment management/property owner)	\$120,000
Argent Materials (concrete and asphalt recycling)	\$105,000

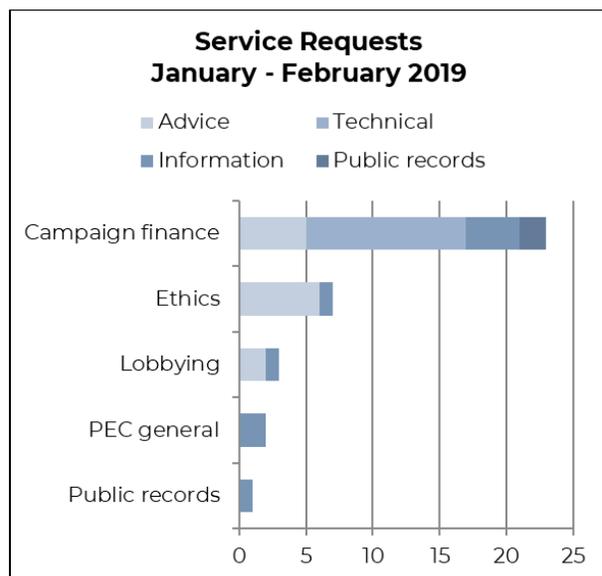
All lobbyist disclosure filings are uploaded to the PEC's searchable [Public Portal for Campaign Finance and Lobbyist Disclosure](#), and users may download copies in PDF file format.

Engagement and Outreach

Advice and Technical Assistance – Commission staff fielded 36 requests for information, informal legal advice, technical assistance or ethics-related public records in January and February.

Education and Training – Throughout January and February, staff conducted several ethics presentations and question and answer sessions:

- Bicyclist and Pedestrian Advisory Board members received information about the Commission and its services, an overview of the Government Ethics Act including Form 700 filing requirements, and were provided a summary of the Sunshine Ordinance.
- Staff met with Council President Kaplan's senior staff for an ethics check-in. Council staff were provided an ethics resource binder that included a guide and fact sheets relating to the Government Ethics Act, conflicts of interests, gift restrictions, non-interference provision, and the City's ticket distribution policy. PEC staff will continue to conduct ethics check-ins with elected officials and staff members throughout the year.
- Staff trained 14 new employees on GEA provisions at the City's monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and an overview of the Government Ethics Act.



Publications – February marked the latest issue of the PEC newsletter *Public Trust*. The issue highlights the Commission's current ethics education efforts, disclosure activities, Form 700 filing requirements, program updates, and introductions to our newest Commissioners, Jill Butler and Nayeli Maxson.

voluntarily report the amount of the contributions, but that information is not required by law. The amounts for only three out of the 27 solicited contributions were reported in 2018.

Attachment 6

Disclosure and Engagement report
February 22, 2019

Social Media – Each month, Commission staff selects focus areas to promote in posts to the Commission’s social media accounts. February focused on raising awareness of the update to candidate contribution limits.

General Outreach – Commission staff is participating in OpenOakland’s March 2nd Open Data Day event at City Hall Hearing Room 3 from 1 – 4 PM. This year’s theme is Public Records Requests as open data and panelists from the City Attorney’s office, Public Ethics Commission, and NextRequest will cover topics including:

- Oakland Sunshine Law and the California Public Records Act
- The PEC’s role and Public Records mediation program
- Features of the City’s online public records request system, NextRequest

Attachment 7



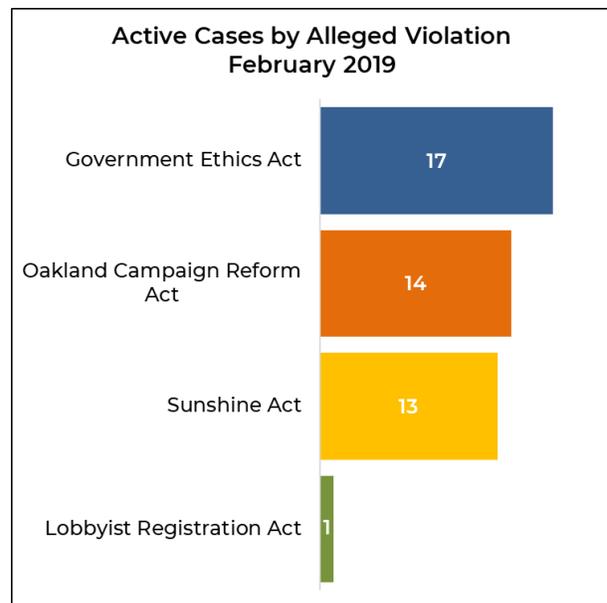
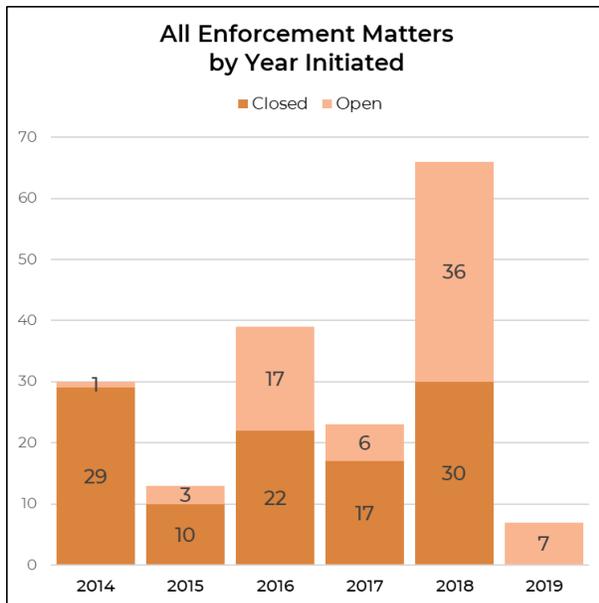
Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill Butler
Lisa Crowfoot
Gail Kong
Nayeli Maxson

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Acting Chief of Enforcement
DATE: February 21, 2019
RE: Enforcement Program Update

Current Enforcement Activities

Since the last Enforcement Program Update on January 25, 2019, Commission staff received 1 sworn complaint and 1 request for mediation of a public records request. Enforcement staff opened 2 new investigations based on complaints, dismissed 1 complaint after determining that the allegations did not warrant a PEC investigation, and closed 1 complaint that was withdrawn by the complainant. This brings the total Enforcement caseload to 25 matters in the intake or preliminary review stage, 8 matters under active investigation, 19 matters under post-investigation analysis, and 6 matters in settlement negotiations or awaiting an administrative hearing. Enforcement's caseload also includes 12 ongoing records request mediations.



Enforcement staff proactively inquired about the Oakland Police Department (OPD) staff forwarding of an e-mail to the media concerning a political campaign event based on a reporter call and article, "Oakland employee's email from Kamala Harris campaign may run afoul of ethics laws," *San Francisco Chronicle*, 24 January 2019. Enforcement staff contacted OPD staff and determined that the e-mail was sent for non-political purposes, specifically to inform the media how to obtain press credentials as part of OPD's logistical responsibilities at the event. As such, no misuse of City resources occurred.

Attachment 7

Enforcement Program report
February 21, 2019

Nevertheless, Enforcement staff provided education about the law to help OPD staff avoid both actual and perceived violations of the City's misuse of public resources provision in the future.

Commission Staff continues to prioritize cases based on the following priority factors: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources.

Since the last Enforcement Program Update on January 25, 2019, the following status changes occurred:

1. *In the Matter of Desley Brooks* (Complaint No. 18-07): Staff dismissed this complaint after determining the allegations do not constitute a violation of any of the laws under the PEC's jurisdiction. (See Attachment 1)
2. *In the Matter of Desley Brooks* (Complaint No. 18-15): This complaint alleging violations of unspecified laws under the PEC's jurisdiction was withdrawn by the complainant in light of the fact that the subject of the complaint is no longer in office, and that the PEC lacks enforcement authority over some of the allegations.
3. *In the Matter of Libby Schaaf and Justin Berton* (Complaint No. 18-45): Staff opened an investigation based on this complaint alleging the use of City resources and position for non-City purposes.
4. *In the Matter of the Planning & Building Department and Amber Todd* (Complaint No. 18-48): Staff opened an investigation based on this complaint alleging the failure to produce documents.
5. Complaint No. 19-04: Commission Staff received one formal complaint and is conducting a preliminary review of the allegations.

Attachment 7



ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593

February 19, 2019

Thu Trang
Natural Nails

Re: PEC Complaint No. 18-07; Dismissal Letter

Dear Ms. Trang:

On February 15, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (#18-07 alleging that Councilmember Desley Brooks used her Google and Facebook accounts to make negative statements about your business.

We have reviewed your complaint and determined that it does not allege any violation of the laws within the jurisdiction of the PEC. The Government Ethics Act provides that a City official may not use public resources for private purposes, nor may the official misuse his or her position to coerce or induce another person to provide private advantage or gain to another person.¹ Here, Facebook and Google are not public resources and therefore not subject to the first related provision. Second, even if one could argue that Ms. Brooks induced or coerced her followers into boycotting a business, there no gain or advantage alleged as required by the second related statute.

Because your complaint does not make an allegation within the jurisdiction of the PEC, we are dismissing your complaint.

Please note that we will inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on March 4, 2019, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to

¹ O.M.C. Section 2.25.060(A)(1) and 2.25.060(A)(2).

Attachment 7

PEC Complaint No. 18-07; Dismissal Letter

Page 2 of 2

attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have any questions regarding this issue, please feel free to contact me.

Sincerely,



Simon Russell, Acting Chief of Enforcement

cc: Desley Brooks

Attachment 8



Jodie Smith, Chair
James E.T. Jackson, Vice-Chair
Jill Butler
Lisa Crowfoot
Gail Kong
Nayeli Maxson

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: February 22, 2019
RE: Executive Director's Report

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities since the Commission's last regular meeting that are not otherwise covered by staff program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and activities for 2018-19 for each program area.

Enforcement Chief Appointment

Congratulations to Kellie F. Johnson, the Commission's newly appointed Enforcement Chief, effective February 28, 2019. Kellie brings over 20 years of experience combined between investigating and enforcing ethics compliance by attorneys with the Oregon State Bar (7 years) as well as prosecuting domestic violence, gang-related, and other crimes with the District Attorney's Offices in two separate counties (13 years). Kellie graduated *Cum Laude* with a B.A. in Political Science from Humboldt State University and achieved a special certification in the political geography of China after attending Guangxi University as an exchange student. She has a J.D. from the University of Oregon Law School, and she served as a judicial clerk to the Honorable Pierre Van Rysselberghe in Lane County Circuit Court.

California Fair Political Practices Commission – Ticket Regulation (18944.1)

The California Fair Political Practices Commission consulted with PEC staff regarding the PEC's review of the distribution and use of City tickets by City officials attending events at the Oracle Arena and Oakland Coliseum. The FPPC recently decided to review and revise FPPC Regulation 18944.1, which governs the exemption to the state gift rules that allows City officials to receive and use such "City tickets." Commission staff shared the PEC's report and resulting policy suggestions and provided input on the FPPC's draft amendment to the regulation that is moving through the FPPC's process in the coming months.

Limited Public Financing Program

The City Auditor's Office has initiated the statutorily-mandated audit of the 2018 Limiting Public Financing (LPF) Program. Commission staff will be working with the City Auditor's Office in the coming months to provide LPF records and assist in completion of the required audit. The LPF program provides District-City Council candidates with public funds via reimbursements for eligible campaign-related expenses, and the Public Ethics Commission is responsible for the implementation of the program and the distribution of public funds.

New Commissioner Orientation

Commission staff will conduct an orientation for new Commissioners Butler and Maxson on March 8, 2019. The session will cover PEC history, mission, and jurisdiction; each of our program areas; due process for quasi-judicial boards; and an overview of our operations and strategic plan. Also in place is a new initiative, suggested by Commissioner Kong, to partner a newly appointed and veteran commissioner to facilitate new commissioners getting acquainted with the PEC's processes.

Commission Retreat

The Commission's annual retreat is scheduled for April 4, from 3-8pm in Hearing Room 4.

Attachment: Commission Programs and Priorities

Attachment 8

PUBLIC ETHICS COMMISSION Programs and Priorities 2018-19

Program	Goal	Desired Outcome	Key Projects for 2018-19
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Adoption of PEC-drafted City Ticket Distribution policy and process changes 2. Campaign Finance/Public Financing Act Project to expand participation in the campaign process 3. Partner with OpenOakland on small projects v
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Online ethics training for Form 700 filers – ensure training delivered to a) staff/officials (1000), b) board/commission members, and c) consultants 2. Candidate education – 2018 Election (online, binder, in-person orientation, April FPPC training, etc.) v 3. Public Financing for candidates 2018 (outreach, training/assistance, maximize use of funds, etc.) v 4. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2)v 5. Education materials for people doing business with the City 6. Web-based ethics materials, html Ethics Training v
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Outreach to client groups: <ul style="list-style-type: none"> -2018 Candidates v -Public financing program v -people doing business with the City 2. Sustain/enhance general PEC social media outreach v 3. PEC Roadshow – focus on CF project outreach (Commissioners) v 4. PEC website upgrade v 5. Establish Communications Plan v
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Ongoing: Campaign Filing Officer, E-filing System Management v 2. Campaign Reporting Compliance and Referral program v 3. Open Disclosure 2018 – campaign data visualization project v 4. Lobbyist Registration – solidify filing officer process v, create e-filing system 5. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility 6. Initiate/develop project plan to establish comprehensive contractor database
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates	Public servants, candidates, lobbyists, and City contractors	<ol style="list-style-type: none"> 1. Proactive investigations focusing on ethics violations v 2. Share prelim review/intake among enforcement team v

Attachment 8

	complaints of non-compliance with laws within the PEC's jurisdiction.	are motivated to comply with the laws within the PEC's jurisdiction.	<ol style="list-style-type: none"> 3. Collaboration with other government law enforcement agencies v 4. Track investigation steps (commencement/completion) 5. Establish process for phone/text subpoenas
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Address complaints against the PEC v 2. Create manual for Sunshine Complaint Mediation, recruit law clerk v 3. Amend Complaint Procedures 4. Update Penalty Guidelines v 5. Resolve all 2014 cases 6. Ensure completion of all case data
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Publish performance goals and data on PEC website – dashboards 2. Review data to adjust activities throughout the year 3. Ongoing: professional development and staff reviews v 4. Staff to create position manuals to establish long-term continuity