CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, May 7, 2018
Hearing Room 1
6:30 p.m.

Commissioners: Jonathan Stein (Chair), Jodie Smith (Vice-Chair), Simón Bryce, Lisa Crowfoot, James E.T. Jackson, Gail Kong, and Krisida Nishioka

Commission Staff to attend: Whitney Barazoto, Executive Director; Milad Dalju, Deputy Director and Chief of Enforcement; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; 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.

CONSENT ITEMS¹

   a. March 26, 2018, Commission Retreat Meeting Minutes (Attachment 1 – Minutes)
   b. April 2, 2018, Regular Meeting Minutes (Attachment 2 – Minutes)

GUEST PRESENTATION

5. Enhancing Political Engagement in Oakland: Barriers and Solutions. The Commission will receive a presentation from Dyana Mardon, graduate student with the Goldman School of Public Policy and law student with Boalt at U.C. Berkeley. Ms. Mardon completed a research project in coordination with the Commission’s Campaign Finance subcommittee and will present her work on identifying barriers to political participation and recommending potential solutions to address these barriers.

DISCUSSION ITEMS

6. Subcommittee Reports. Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission’s last regular meeting. Current or recent subcommittees include the following:

¹ If more than one item is on Consent, all Consent items will be voted on all at once, unless a Commissioner requests removal of an item from Consent prior to the vote.
a. Campaign Finance Subcommittee – Jonathan Stein (Chair), Lisa Crowfoot, and James Jackson
b. Education and Outreach Subcommittee – Krisida Nishioka (Chair), James Jackson, and Gail Kong
c. Lobbyist Registration Act Subcommittee (temporary ad hoc) – Jodie Smith (Chair) and Lisa Crowfoot

INFORMATION ITEMS


9. Enforcement Program. Deputy Director Milad Dalju provides an update on the Commission’s enforcement work since the last regular Commission meeting. (Attachment 5 – 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 6 – Executive Director’s Report)

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.oaklandnet.com/pec.

4/27/18

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Commissioners: Jonathan Stein (Chair), Jodie Smith (Vice-Chair), Simón Bryce, Lisa Crowfoot, James E.T. Jackson, Gail Kong, Krisida Nishioka

Commission Staff: Whitney Barazoto, Executive Director; Milad Dalju, Deputy Director; Suzanne Doran, Lead Analyst, Civic Engagement; Jelani Killings, Ethics Analyst; Ana Lara-Franco, Commission Assistant; Simon Russell, Investigator

City Attorney Staff: Tricia Hynes, Deputy City Attorney

SPECIAL MEETING MINUTES
Public Ethics Commission

1. Establish a Quorum
The meeting was audio-recorded in compliance with the Sunshine Ordinance.

Meeting was called at 4:00 p.m.

Members present: Commissioner Stein, Smith, Bryce, Crowfoot, Jackson, Kong, and Nishioka.

Staff Present: Whitney Barazoto, Milad Dalju, Suzanne Doran, Jelani Killings, Simon Russell, and Tricia Hynes

2. Open Forum
There were no public speakers.

ACTION ITEMS


The Commission reviewed the annual report of the Commission’s activities in 2017.

Commissioner Kong suggested to add more specifics to certain parts of the text.

Commissioner Kong and Commissioner Nishioka seconded to approve the 2017 annual report with edits to page 9 of the annual report.

Commissioner Stein commended staff for all their work throughout the year.
Motion passed 7-0.

There were no public speakers.

4. **Public Ethics Commission Retreat.**

The Commission convened for its annual retreat to conduct strategic planning, performance, and operational activities:

a. Commissioners introduced themselves and shared their reasons for joining the Commission

b. Executive Director, Whitney Barazoto, provided an overview of the Commission’s Strategic Plan and Performance Measurements for 2017-2020, noting the purpose and goals for the plan document. Commission staff each presented their respective program areas and the key goals in each area for 2017-18. Commissioners provided feedback in each program area.

c. Chair Stein created the following two *ad hoc* subcommittees:
   i. Complaint Procedures subcommittee (*ad hoc*) – Commissioners Bryce (Chair) and Nishioka
   ii. Penalty Guidelines subcommittee (*ad hoc*) Commissioners Crowfoot (Chair), Bryce, and Kong

d. The Commission discussed and provided direction to staff regarding the process for handling complaints received against the Commission. Commissioners agreed with the staff recommendation and requested additional information to be included in dismissal letters provided to complainants to ensure that staff provides them with all the resources available to complainants. Staff noted that they will bring relevant cases to the next Commission meeting pursuant to the process discussed.

e. Ms. Barazoto presented the Commission’s draft Communications Plan and invited feedback on the plan.

The meeting adjourned at 6:57 p.m.
1. **Roll Call and Determination of Quorum.**

   The meeting was called to order at 6:30 p.m.

   Members present: Commissioners Stein, Smith, Crowfoot, Kong, Jackson, and Nishioka. Commissioner Bryce was absent.

   Staff present: Whitney Barazoto, Milad Dalju, and Suzanne Doran.

   City Attorney Staff: Trish Hynes, Deputy City Attorney

2. **Staff and Commission Announcements.**

   There were no announcements.

3. **Open Forum.**

   There were no public speakers.

**CONSENT ITEMS**

4. **Approval of Commission Meeting Draft Minutes.**

   a. February 5, 2018, Regular Meeting Minutes

   Commissioner Nishioka moved and Commissioner Jackson seconded to approve the minutes.

   Motion passed 6-0

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1 If more than one item is on Consent, all Consent items will be voted on all at once, unless a Commissioner requests removal of an item from Consent prior to the vote.
There were no public speakers.

GUEST PRESENTATION


Suzanne Doran, Lead Analyst, presented Tom Dooner, a volunteer with the OpenOakland civic innovation brigade that is part of the Code for America organization. Mr. Dooner presented on the expansion of Open Disclosure, a web-based project to visualize the Commission’s campaign data, for the 2018 election season.

Commissioner Crowfoot and Commissioner Smith thanked the Open Disclosure team for their work on the project.

There were two speakers: Mary Yeh and Judy Cox.

ACTION ITEMS


Commissioners discussed the matter and asked staff to include language in the closure letter to state the purpose and spirit of the law, the optics of what occurred, and public perception of the use of multiple committees.

There were two speakers: Ralph Kanz and Ken Pratt.

Commissioner Smith moved and Commissioner Kong seconded to approve the staff-recommended closure with an advisory letter.

Motion passed 6-0.

7. In the Matter of Michael Colbruno; Case No. 16-01.

Mr. Dalju recommended that the Commission adopt the proposed stipulation, which includes a $2,500 penalty.

Commissioners discussed the matter and asked questions.

There were two speakers: Ralph Kanz and Ken Pratt.
Commissioner Smith moved to reject the stipulation and direct staff to return to renegotiate the amount. Commissioner Crowfoot seconded.

Motion passed 6-0.

DISCUSSION ITEMS

8. Subcommittee Reports.

a. Campaign Finance Subcommittee – Jonathan Stein (Chair), Lisa Crowfoot, and James Jackson

Commissioner Stein shared that the Commission’s graduate student consultant is conducting research and interviews to understand barriers to participation in the political process in Oakland.

b. Education and Outreach Subcommittee – Krisida Nishioka (Chair), James Jackson, and Gail Kong

Commissioner Kong announced that the subcommittee met and reviewed goals for internal and external communications as well as plans for ensuring ethics training reaches all key staff. Commissioner outreach is focused on connecting with organizations that have insight to share on the Commission’s campaign finance review.

Commissioner Nishioka added that she met with a Nigerian delegation, a group of 5 members of the Independent National Electoral Commission.

c. Lobbyist Registration Act Subcommittee (temporary ad hoc) – Jodie Smith (Chair) and Lisa Crowfoot

There were no updates.

INFORMATION ITEMS


Ms. Doran provided a report of recent disclosure and data illumination activities and shared that Open data day at the library went well. Ms. Doran added that she and Commissioner Jackson will present at City Camp on April 21.

There were no public speakers.

10. Education and Engagement Program.
Whitney Barazoto, Executive Director, shared a report on the Commission’s education and outreach activities.

Ms. Barazoto announced a training for candidates and treasurers that the Commission is hosting, along with the Fair Political Practices Commission, to cover state and local campaign finance laws. The training will occur on April 19.

There were no public speakers.

11. Enforcement Program.

Milad Dalju, Deputy Director, provided an update on the Commission’s enforcement work since the last regular Commission meeting.

There were no public speakers.

12. Executive Director’s Report.

Ms. Barazoto thanked Commissioners for their participation at the annual retreat in March, and she expressed her gratitude for Commissioner Nishioka hosting the Nigerian delegation.

There were no public speakers.

The meeting adjourned at 8:23 p.m.
This memorandum provides an update of the Public Ethics Commission’s (PEC or Commission) Disclosure program activities. Commission staff activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting other general PEC data and outreach efforts.

**Filing Officer**

**Campaign disclosure** – The month of April included filing deadlines for two upcoming elections: the first pre-election deadline on April 26 for a measure on the June 5, 2018 Oakland ballot and the first quarter deadline on April 30 for ballot measures seeking qualification for the November 2018 ballot. Reporting obligations for ballot measure committees are triggered when political actors begin raising contributions or spending funds to qualify a measure, such as a petition campaign, long before the measure has an official name or designation for the ballot. Unlike the process for candidates, direct notification to the Public Ethics Commission as filing officer when individuals begin the process is not required and information to notify these individuals of campaign rules and reporting requirements is not readily available. Commission staff is researching the City’s ballot measure process to identify opportunities for collaboration with other City departments, such as the City Clerk and City Attorney’s office, to formalize information sharing and allow timely notice of reporting obligations and filing deadlines to individuals engaged in ballot measure campaigns.

Since the last report, one non-filer came into compliance for the January 31 deadline and has been assessed a $580 late penalty.

In addition to regular deadline notices, our monthly advisory email to campaign subscribers contained a detailed explanation of campaign contribution limits and restrictions.

**Lobbyist disclosure** – The deadline for first quarter lobbyist activity reports is April 30. Since assuming filing officer duties under the Lobbyist Registration Act in January 2018, Commission staff has standardized its filing officer process to include creating a common filing officer
calendar, noticing lobbyist reporting deadlines, tracking non-filers, setting a schedule for enforcement referrals, and uniform records management practices.

Commission staff continues to explore options for implementing a user-friendly online lobbyist filing system in 2019. Towards that effort, staff gained permission to try out San Francisco’s online lobbyist reporting system to see what features could be useful for our Oakland program.

Illuminating Disclosure Data

Open Disclosure – Progress toward the www.OpenDisclosure.io campaign finance app update for the November 2018 election is ongoing. With the 2018 campaign finance data now in the development site, Commission staff is focusing on identifying inaccuracies (bugs) in the app that need to be addressed prior to launch.

CityCamp 2018 – Each year OpenOakland organizes CityCamp, a day-long “unconference” with main sessions and breakout workshops designed to facilitate collaboration among City staff and community members interested in working together to improve City life and government. The Commission is a longtime supporter of the event, and OpenOakland invited the Commission to host one of the sessions at CityCamp on April 21st. Commission staff put together a panel to discuss the Commission’s work, partnerships with OpenOakland and MapLight to tell the stories within our Oakland campaign finance data, and highlight our campaign finance/public participation project. The panel included Commissioner James Jackson, our UC Berkeley student consultant Dyana Mardon for the PEC Campaign Finance project, Elina Rubiliak for OpenDisclosure, and Hamsini Sridharan of MapLight and was moderated by PEC Lead Analyst Suzanne Doran. Our panel was well attended with 25-30 attendees despite competing with three other concurrent workshops. The panel generated a wide-ranging discussion of the Commission’s work, efforts to reduce the influence of money in Oakland politics, insights from the Dyana’s research, and patterns revealed by the OpenDisclosure app and MapLight’s analysis of Oakland data.

Online Engagement and General Outreach

Social Media – Communications in April focused on sharing the Commission’s 2017 accomplishments and annual report, raising awareness of upcoming campaign finance and lobbyist reporting deadlines, outreach for our April 19 training for candidates and treasurers and our PEC-led panel at OpenOakland’s CityCamp event. Engagement with our content has already led to an increase of 109 new followers since January.

Website Redesign – The City of Oakland opened its new content management system (CMS) to City staff mid-April and the new website, www.OaklandCA.gov, went live on April 23rd. The Commission’s administrative, education and disclosure team then began all-out effort to transfer our content into the new system prior to the launch date, while still completing existing commitments. From this point forward, the legacy site, www.oaklandnet.com/pec, will no longer be updated and its content will sunset as the new site reaches completion. The new City website is still a work in progress, and we expect refinements to be an ongoing process. As the legacy site is retired, we will do outreach to our client groups to raise awareness of the new location and highlight improved content. A major feature of the new site is its orientation to maximize the
success of user searches. We encourage everyone to use the search feature to find PEC-content you are interested in, report back your experiences, and let us know what is working and what is not.
TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: April 27, 2018
RE: Education and Outreach Update

This memorandum provides an update of the Public Ethics Commission’s (PEC or Commission) education and outreach efforts as staff continues to develop and expand the Commission’s ethics training and outreach program under the Government Ethics Act. PEC education/outreach program staff has been working on a variety of activities that include the following:

**Campaign Reform Act Education**

On April 19, staff held a candidate and treasurer training in coordination with the FPPC to provide information on both state and local campaign rules. 25 local candidates and/or their campaign representatives (9 were from neighboring jurisdictions) attended the training. The training covered topics such as recordkeeping, campaign forms, advertisement disclaimers, local expenditure ceilings and contributions limits, and the Limited Public Financing Program. Attendees expressed appreciation for the training and that they found it to be very informative. Staff sent a survey to attendees and is collecting feedback and suggestions to improve training efforts.

After the training, several candidates stopped by the PEC main office to ask additional questions in regards to running a campaign in Oakland. Questions ranged from how much money does it take to win a race in Oakland, to what do successful candidates spend their money on? Staff has noticed that many first-time candidates filing to run this year have posed similar questions about the logistics of running a campaign. Staff directed candidates to our Open Disclosure website as a tool to view campaign contributions and expenditures in Oakland races.

Staff continues to assist and provide resources to candidates filing to run in the 2018 election. Upon submittal of their Candidate Intention Statement (Form 501), candidates receive a candidate resource binder that includes a PEC-created campaign checklist, the FPPC’s campaign manual for local elections, FAQ on campaign-related activity, the PEC’s Oakland Campaign Reform Act Guide, and Limited Public Financing Guide. Staff explains the content of the binder with each candidate and has implemented a front-desk customer experience that has been well.
received by candidates. Staff will continue communications with candidates during the election cycle to ensure compliance with local campaign finance laws.

**Ethics Education**

On April 19, staff made an ethics presentation upon request to the newly formed Housing and Infrastructure Bond Oversight Committee. Staff provided committee members with information about the Commission and its services, gave an overview of the Government Ethics Act, and distributed the PEC’s Board and Commission Member Handbook.

**Education/Website**

On April 11, staff attended a content and services design training provided by the City’s Digital Services team to learn about the functions and management of the City’s new website. Staff continues to restructure and enhance learning elements on the PEC website to expand education resources to PEC clients and help users quickly find information about laws under the PEC’s jurisdiction. Staff has increased access to educational information in an easy to understand format by creating new individual ethics education pages for key provisions of the Government Ethics Act as well as revised pages for City staff and officials and board and commission members.

Now that content has been separated out and made searchable by topic, documents, and regulated groups, users can simply input what they are looking for into the website’s search box and quickly access specific information related to their topic of interest such as conflicts of interest, gifts, Lobbyist Registration Act Guide, etc. Also, to increase access to the newly developed training for Form 700 filers and overcome technical glitches with the City’s learning management system, staff is working with the IT Department to make the online training available directly on the Commission’s website.

**Advice and Assistance**

Commission staff continues to receive and track various advice requests received by phone and email. As of the date of this memorandum, staff has responded to roughly 66 requests for information and advice in 2018, primarily in regards to provisions of the Government Ethics and Oakland Campaign Reform Acts such as Form 700 filing requirements when moving to a different position within City, gift restrictions and Form 801 reporting of gifts/payments made to the City, and general questions about campaign rules and NetFile.
TO: Public Ethics Commission  
FROM: Milad Dalju, Deputy Director  
DATE: April 27, 2018  
RE: Enforcement Program Update

Summary of Cases

As of April 27, 2018, the Commission has 34 open enforcement cases, each in various stages: 27 are being investigated, six are being mediated, one is set for an administrative hearing.

Since the last Enforcement Program Update on March 23, 2018, the following status changes occurred:

1. Case No. 14-10; In the Matter of Kaplan for Oakland City Council 2012, Kaplan for Oakland Mayor 2014, and Campaign for Safe Streets and Local Jobs: Staff closed this case with an advisory letter pursuant to the Commission’s decision on April 2, 2018.

2. Complaint No. 14-11; Staff completed its preliminary review of the allegation and referred the complainant to other agencies because the allegation is against the Commission. (Attachment 1.)

3. Complaint No. 14-13; Staff completed its preliminary review of the allegation and dismissed the complaint because there was insufficient evidence to warrant an investigation. (Attachment 2.)

4. Complaint No. 15-11; Staff completed its preliminary review of the allegation and referred the complainant to other agencies because the allegation is against the Commission. (Attachment 3.)

5. Complaint No. 18-12; the Commission received a formal complaint on April 23, 2018, and Staff is conducting a preliminary review of the allegations.

In the Matter of Lynette Gibson McElhaney; Case No. 15-07

Staff is preparing for an administrative hearing set for May 7 and 8, 2018, at the California Office of Administrative Hearings’ Oakland Office.
April 26, 2018

Ralph Kanz

Re: PEC Complaint No. 14-11; Dismissal Letter

Dear Mr. Kanz:

On July 14, 2014, the City of Oakland Public Ethics Commission (Commission) received your complaint alleging that the Commission violated the Oakland Sunshine Ordinance and/or the California Brown Act at its July 7, 2014, meeting.

Because your allegation is against the Commission and there may be perceived bias by Commission Staff and the Commission in making determinations regarding your allegation, we are referring you to other organizations that may have jurisdiction to address your allegation.

The following organizations may have jurisdiction to address your allegation against the Commission:

- The Alameda County District Attorney: http://www.alcoda.org/
- The California Attorney General: https://oag.ca.gov/
- The Alameda County Civil Grand Jury: https://www.acgov.org/grandjury/civil.htm
- A court of competent jurisdiction, including, but limited to, the Superior Court of California, County of Alameda: http://www.alameda.courts.ca.gov/

Additionally, we forwarded your complaint to the Oakland City Attorney for review, and the Oakland City Attorney determined, in a legal opinion, that the Commission did not violate the Oakland Sunshine Ordinance or the California Brown Act. The Oakland City Attorney’s legal opinion is published on the Oakland City Attorney’s website and is attached for reference. The Oakland City Attorney’s legal opinion is being provided to you as a resource and is not meant to discourage you from pursuing your allegation by other means. While the Oakland City Attorney’s Office is an independent agency separate from the Commission, it also serves as the Commission’s legal advisor. Therefore we understand that the same perception of bias regarding this matter may apply to the Oakland City Attorney, which is why we are also referring you to agencies that are not associated with the Commission.
Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Milad Dalju
Deputy Director/Chief of Enforcement

Enclosure
I. INTRODUCTION

You asked whether a Sunshine Act violation occurred at the July 7, 2014, Public Ethics Commission ("PEC") meeting when a Commissioner read into the record a paragraph of the proposed Government Ethics Act that was not in the draft provisions of the Act that were noticed for the meeting.

II. QUESTION AND BRIEF ANSWER

Question

Did the Public Ethics Commission violate the Brown Act and/or the Sunshine Act at its July 7, 2014 meeting when it considered and discussed a written amendment introduced by a Commissioner for the proposed Government Ethics Act, Item 5 on the agenda?

Brief Answer

No. Oakland Municipal Code ("OMC") Sections 2.20.030(A) and 2.20.030(B)(2) allow a member of the local body to introduce 'written amendments or recommendations' that pertain to an agenda item and to agenda related materials that were filed by the Sunshine deadline, so long as the amendment/recommendation is within the scope of the noticed item. This is what occurred during the July 7 meeting. The agenda provided public notice that the Commission would review, comment, consider and approve recommendations for a proposed Ethics Act legislation, and a
Commissioner proposed that the Commission consider and discuss a written amendment and recommendation to the Act in the course of her comments.

III. BACKGROUND

A. July 7, 2014, Public Ethics Commission Meeting

The PEC published its July 7 meeting agenda on June 27, in compliance with the Sunshine Ordinance’s 10-day noticing requirement. The agenda stated the following title for Item No. 5: “Oakland Government Ethics Act. The Commission’s ad hoc Ethics subcommittee will present a draft Oakland Government Ethics Act for review, comment, and consideration of approval by the Commission.” There were five attachments to the agenda for Item No. 5: (1) subcommittee memorandum that described the subcommittee’s recommendations for the draft Act, (2) the proposed draft Ethics Act, (3) staff analysis of the Act, (4) Oakland Ethics and Good Government Working Group Report,¹ and (5) the PEC’s Ethics Resource Guide. The proposed draft Act codified existing state regulations and imposed new regulations on local officials and employees in the areas of conflicts, personal gain, fair process, and leaving public service. The Act further empowered the Commission to investigate and levy fines and penalties for violations of the Act, among other powers.

During the discussion of Item No. 5, PEC Commissioner Whitman informed the body that a provision regarding Charter section 218 enforcement had been inadvertently omitted from the draft legislation in the agenda packet and read the missing provision (one-paragraph, fourteen lines) on the floor and copies of the legislation with the new provision were made available to the public. The PEC discussed the proposed Charter section 218 provision and approved a motion to include it in their recommendations for the draft Act and directed staff to schedule the draft Act to come back in final draft at the next regular meeting on September 2, 2014.

Subsequently, a complaint was filed by a member of the public asserting the Commission violated the Sunshine Act when it discussed Commissioner Whitman’s proposal to add the new section on Charter Section 218 enforcement to the draft ordinance. The complaint does not challenge the validity of the noticing requirements with respect to any other conduct by the Commission.

¹ This Report was authored by the working group assembled by Councilmember Dan Kalb in order to examine strengthening the Ethics Commission and establishing a local Ethics Ordinance. Part II of this Report covers recommendations for enacting an Ethics Ordinance comparable to other local municipal ordinances throughout California, including regulations on campaigns, lobbying, conflicts, biases and leaving public service.
B. Brown Act And Sunshine Ordinance Requirements

The PEC is a “legislative body” under the Brown Act\(^2\) and, therefore, subject to the open meeting rules of the Brown Act and Sunshine Ordinance. (Gov’t Code §54950, et seq. and OMC Chapter 2.20, Articles I and II, respectively). The Brown Act requires 72 hours’ notice for posting the body’s agenda for regular meetings (Gov’t Code §54954.2), however, the Sunshine Act requires the PEC to post its regular meeting agendas with 10 days’ notice. (OMC §2.20.080(A)). The Brown Act and Sunshine Act prohibit local bodies from taking any action on or even discussing/debating an item that does not appear on an agenda absent an emergency or urgency finding\(^3\) as prescribed by those laws, with a few exceptions, including, among other things, directing staff to schedule a matter on a future agenda. (Gov’t Code §54954.2(a)(2) and OMC §2.20.080(F)).\(^4\)

“Posting” under the Brown Act means the agenda contains a brief, general description of the item to be discussed, not to exceed 20 words. (Gov’t Code §54954.2(a)(1)). Similarly, Sunshine requires the agenda to contain, “...a brief, general description of each item of business to be transacted or discussed during the meeting...” (OMC §2.20.030 (A)). The description of an item is adequate, per Sunshine, 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.” (Ibid.)

In addition to 10-day posting and in contrast to the Brown Act, the Sunshine Ordinance further requires that the PEC, “fill[e] a copy of the agenda and all agenda-related materials with the Office of the City Clerk and the Oakland main library no later than ten (10) days before the date of the meeting [ ],” and file a copy on line. (OMC §2.20.080(A)(2-3)).

The Sunshine Ordinance defines “agenda-related materials” as “the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the body, which provide background information or recommendations concerning the subject matter of any agenda item”. (OMC §2.20.030(B)). The definition of “agenda related materials” expressly excludes, among other things, “written amendments or recommendations from a member of the local body pertaining to” an agenda item contained in agenda related materials

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\(^2\) See, Gov’t Code §54952(b).

\(^3\) See, Gov’t Code § 54954.2(b) and OMC §§ 2.20.080.D and E regarding “emergency” and “urgency” exceptions and procedures to discuss and take action on items not appearing on the agenda.

\(^4\) In addition, members of the body may respond to questions posed by the public, ask a question for clarification, make a brief announcement or a brief report on his or her own activity on their own initiative or in response to a question from a member of the public. (Gov’t Code §54954.2(a)(2)). In addition, Section 54954.2(b) allows discussion of items that were posted and continued from a prior meeting that occurred no more than 5 days earlier.
previously filed pursuant to" Sunshine’s provisions for special and regular meetings. (OMC §2.20.030(B)(2).

IV. ANALYSIS

The PEC’s July 7 posting for Item No. 5, the subcommittee’s recommendations and draft Ethics Act, satisfies all requirements of the Brown Act, because the item was properly posted with a brief, general description. The Brown Act does not require the filing of "agenda-related materials." Accordingly, the entire draft Act could have been handed out on the floor. However, Sunshine requires that the PEC publish all agenda-related materials at least 10 days in advance of the meeting and the PEC complied with this requirement to the extent it published the agenda related materials for Item 5 on June 27th, by the 10-day deadline for the July 7th meeting.

The issue is whether Commissioner Whitman’s proposed revisions for the draft Ethics ordinance – i.e., to add a new section regarding Charter section 218 enforcement - could be discussed at the July 7th meeting given that they were not on the agenda packet. The answer is yes. The Sunshine Act expressly excludes ‘written amendments or recommendations’ that pertain to an item contained in properly filed agenda related materials from the “agenda related materials” that must be filed by the agenda deadline. (OMC Section 2.20.030(B)(2)). This allows members of a local body, the PEC in this instance, to introduce ‘written amendments or recommendations’ on the floor provided they pertain to items noticed on the agenda and contained in related agenda materials. That is what occurred during the July 7 meeting. The draft Ethics Act, PEC subcommittee reports and other information regarding the subcommittee’s analysis and recommendations were in the agenda materials that had been timely filed on June 27, 2014. Therefore, the public was on notice that the Commission would consider a draft Ethics Act, review the language, make comments and potentially approve final language to recommend to the City Council. The Commissioner’s proposed recommendation and written amendment were “comments” on what provisions the draft Act should include that were appropriate to the item noticed.

Finally, it should be noted that the section 218 amendment was not a significant material change requiring new Brown Act/Sunshine notice because notice for the item was “sufficiently clear and specific to alert a person of average intelligence and education whose interests” were affected by the proposed Ethics Act that he/she should attend the meeting and seek more information on the item. Therefore, the PEC could have approved their final recommendations with the section 218 provisions at their July 7, 2014, meeting. However, the PEC provided another opportunity for review and public comment directing staff to schedule final recommendations for the next regularly scheduled meeting on September 2, 2014. Therefore, even if the amendment proposed at the July 7th meeting had been a significant material change to the noticed item, the PEC would have complied with Brown Act and Sunshine requirements when it noticed the revised recommendations for the September meeting.
V. CONCLUSION

Cure-and-correct action is not required for the PEC’s discussion of proposed amendments to the Commission’s recommendations for the Ethics Act at the July 7, 2014 meeting. The draft Act and PEC’s analysis and recommendations were properly noticed for the meeting, and both the Brown Act and Sunshine allow Public Ethics Commissioners to introduce “written amendments or recommendations” in connection with properly noticed agenda items agenda related materials. OMC Section 2.20.030(B)(2).

Very truly yours,

BARBARA J. PARKER
City Attorney

Attorney Assigned:
Tricia Hynes

1551336v1
April 26, 2018

Ralph Kanz

RE: PEC Complaint No. 14-13; Dismissal Letter

Dear Mr. Kanz:

On July 14, 2014, the City of Oakland Public Ethics Commission (Commission) received your complaint alleging that Councilmember Dan Kalb violated Section 2.20.080 of the Oakland Sunshine Ordinance by failing to timely file agenda-related materials for Item 6 on the City Council Rules and Legislation Committee’s (Rules Committee) June 19, 2014, regular meeting agenda. After reviewing the allegation in your complaint, discussing the matter with you, and reviewing relevant public records, we have determined that there is insufficient information to warrant an investigation.

The Oakland Sunshine Ordinance requires that the City Council, including any of its standing committees, file a copy of its meeting agendas and all agenda-related materials with the City Clerk no later than 10 days before the date of the meeting.¹ The City Council may amend or supplement a posted agenda or agenda-related materials no later than 72 hours before a regular meeting for several enumerated reasons, including the following: to provide additional information to supplement the agenda-related materials previously filed, provided that the additional information was not known to, or considered relevant by, the person at the time he or she filed the original agenda-related materials;² to consider the recommendations, referrals, minutes, modifications of or any actions taken on any item heard by the Commission, provided that the item has not been materially changed after the Commission considered the item.³

On June 6, 2014, Councilmember Kalb filed an agenda item, including a proposed resolution and a memorandum, for the Rules Committee’s June 19, 2014, regular meeting. (Agenda Item No. 6.) Agenda Item No. 6 was a resolution to submit to the voters an amendment to the City Charter regarding the Commission.

On June 9, 2014, the Commission held a special meeting to review and take action on Councilmember Kalb’s proposed resolution. At the public meeting, the Commission discussed the proposed resolution with Councilmember Kalb, suggested changes to the proposed resolution, and voted to support the proposed resolution with the understanding Councilmember Kalb would consider the Commission’s suggested changes to the proposed resolution.

¹ Oakland Municipal Code (OMC) § 2.20.080(A)(2).
² OMC § 2.20.080(B)(3).
³ OMC § 2.20.080(B)(5).
On June 13, 2014, Councilmember Kalb filed supplemental agenda-related material for Agenda Item No. 6. According the supplemental memorandum filed on June 13, 2014, the purpose of new materials was to incorporate the changes requested by the Commission at its June 9, 2014, meeting.

Neither the aforementioned public records, nor the information included in your complaint, indicate that the agenda related-materials filed on June 6 and June 13, 2014, for Agenda Item No. 6 were in violation of the Oakland Sunshine Ordinance.

During a more recent discussion with Commission Staff, you requested that your allegation be investigated by an agency independent of the Commission. The following organizations may have jurisdiction to address your allegation:

- The California Attorney General: [https://oag.ca.gov/](https://oag.ca.gov/)
- The Alameda County Civil Grand Jury: [https://www.acgov.org/grandjury/civil.htm](https://www.acgov.org/grandjury/civil.htm)
- A court of competent jurisdiction, including, but limited to, the Superior Court of California, County of Alameda: [http://www.alameda.courts.ca.gov/](http://www.alameda.courts.ca.gov/)

Thank you for taking the time to communicate your concerns with us. If you have any questions, please feel free to contact me.

Sincerely,

Milad Dalju
Deputy Director and Chief of Enforcement
City of Oakland Public Ethics Commission

c: Councilmember Dan Kalb
Re: PEC Complaint No. 15-11; Dismissal Letter

Dear Mr. Kanz:

On July 7, 2014, the City of Oakland Public Ethics Commission (Commission) received your complaint alleging that the Commission violated the Oakland Sunshine Ordinance and/or the California Brown Act at its June 1, 2015, meeting by: 1) failing to invite public comment for Items 8 and 9, and; 2) failing to notice verbal comments made by the Commission’s Executive Director.

Because your allegations are against the Commission and there may be perceived bias by Commission Staff and the Commission in making determinations regarding your allegations, we are referring you to other organizations that may have jurisdiction to address your allegations.

The following organizations may have jurisdiction to address your allegation against the Commission:

- The Alameda County District Attorney: http://www.alcoda.org/
- The California Attorney General: https://oag.ca.gov/
- The Alameda County Civil Grand Jury: https://www.acgov.org/grandjury/civil.htm
- A court of competent jurisdiction, including, but limited to, the Superior Court of California, County of Alameda: http://www.alameda.courts.ca.gov/

Additionally, in response to your allegation that the Commission failed to invite public comment for Items 8 and 9 at its June 1, 2015, meeting, the Commission cured and corrected the omissions, pursuant to Section 2.20.270(D) of the Sunshine Ordinance, by placing both items on its September 7, 2015, meeting agenda and inviting public comment for both items at its September 7, 2015, meeting. The Commission’s attempt to cure and correct the omissions is not meant to discourage you from pursuing your allegation by other means.

In response to your allegation that the Commission failed to notice verbal comments made by the Commission’s Executive Director, we sent the allegation to the Oakland City Attorney for review. The Oakland City Attorney determined, in a legal opinion, that the Commission did not violate the Oakland Sunshine Ordinance or the California Brown Act. The Oakland City
Attorney’s legal opinion is published on the Oakland City Attorney’s website and is attached for reference. The Oakland City Attorney’s legal opinion is being provided to you as a resource and is not meant to discourage you from pursuing your allegation by other means. While the Oakland City Attorney’s Office is an independent agency separate from the Commission, it also serves as the Commission’s legal advisor. Therefore we understand that the same perception of bias regarding this matter may apply to the Oakland City Attorney, which is why we are also referring you to agencies that are not associated with the Commission.

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

Sincerely,

Milad Dalju
Deputy Director/Chief of Enforcement

Enclosure
I. INTRODUCTION

The Executive Director of the Public Ethics Commission ("PEC") received a complaint that the PEC staff violated the Sunshine Ordinance (Oakland Municipal Code ("OMC") Chapter 2.20) during the June 1, 2015, PEC meeting. The complaint asserts that the Executive Director responded to a Commissioner’s question with information that was not included in the agenda-related materials. The Executive Director provided the information during the Commission’s consideration of Item 6 on the agenda. You asked that our Office provide an opinion regarding the complaint.

II. QUESTION AND BRIEF ANSWER

Question:

Did the Executive Director violate the Sunshine Ordinance at the PEC’s June 1, 2015 meeting when she responded to a Commissioner’s question with information that was not included in agenda-related materials for Item 6 on the agenda?

Brief Answer:

No. It is not a violation of the Sunshine Ordinance (OMC Chapter 2.20) or the Brown Act (California Government Code §54950 et. seq.) for staff to verbally provide information that was not included in the noticed agenda title or agenda-related materials in response to Commissioners’ questions pertaining to an agenda item. It is customary and indeed consistent with the open meeting laws that Commissioners ask probing questions and elicit additional information to inform their discussions and decisions.
These open meeting laws do not require published agenda-related materials include all information that will be discussed; nor do these laws limit discussion to the information published in the agenda-related materials. The open meeting and sunshine laws require only that the agenda title provide a brief description that is clear enough to inform a person of average intelligence about the item so that s/he may attend the meeting or seek additional information. (See O.M.C. §2.20.030(A) and Government Code §54954.2(a)(1).

The June 1, 2015 agenda complied with open meeting noticing requirements. It provided public notice under Action Items that the Commission would hear and approve or disapprove Item No. 6, a proposed Settlement of a campaign contribution limits case against a 2014 campaign committee. Item 6 was described with enough clarity and sufficiency to put members of the public on notice of what would be discussed to determine whether they wished to attend the meeting.

III. BACKGROUND

A. June 1, 2015, Public Ethics Commission Meeting

The PEC published its June 1 meeting agenda on May 22, in compliance with the Sunshine Ordinance’s 10-day noticing requirement. The agenda stated the following title for Item No. 6:

In the Matter of Libby Schaaf for Oakland Mayor 2014 Committee (PEC #14-25b). PSAI Realty Partners CAC, LLC, PSAI Realty Partners, LLC; PSAI Realty Partners II, LLC; and Peter Sullivan Associates, Inc. made four $700 contributions to the Libby Schaaf for Oakland Mayor 2014 committee as entities that are “owned or controlled by the same majority shareholder or shareholders” and therefore aggregated as one contribution pursuant to the Oakland Campaign Reform Act section 3.12.080. As a result, the Libby Schaaf for Oakland Mayor Committee accepted $2,100 over the contribution limit. Proposed Penalty: $2,100.

There was one attachment to the agenda for Item No. 6: Stipulation and Exhibit. The proposed settlement documents outlined facts regarding the contributions to the Libby Schaaf for Oakland Mayor 2014 Committee, and the staff’s investigation, analysis and recommendation. The staff’s analysis included the following sentence:

There is no evidence that the Libby Schaaf for Oakland Mayor 2014 committee knowingly, willfully, or intentionally violated the law, or that they had any intent to violate the contribution limit.

(June 1, 2015 Agenda, Item No. 6, Attachment No. 4, Exhibit PEC Case #14-25b, Section IV. Analysis, p. 3).
During the discussion of Item No. 6, two Commissioners questioned this statement, and were not satisfied, based on their own knowledge that the committee did not know that accepting the contributions was in violation of OCRA. In response to a direct question from a third Commissioner regarding how staff typically investigates “intent,” the Executive Director responded that with respect to this specific case, she learned that the donor wanted to contribute three additional checks to the committee, but the committee refused to accept these checks, believing that acceptance of these sums would indeed violate OCRA. Accordingly, this convinced the Executive Director that the committee was aware of its obligations under OCRA, and was not knowingly or intentionally violating these obligations.

Subsequently, a member of the public filed a complaint asserting the Executive Director violated the Sunshine Act when she, “... disclosed there were additional attempted contributions by Peter Sullivan Companies. ... The complaint does not challenge the validity of the noticing requirements with respect to any other conduct by staff.

B. Sunshine Ordinance Requirements

The PEC is a “legislative body” under the Brown Act¹ and, therefore, subject to the open meeting rules of the Brown Act and Sunshine Ordinance. (Gov't Code §54950, et seq. and OMC Chapter 2.20, Articles I and II, respectively). The Sunshine Ordinance requires that the PEC post its regular meeting agendas with 10 days' notice. (OMC §2.20.080(A)). The Sunshine Ordinance prohibits local bodies from taking any action on or even discussing/debating an item that does not appear on an agenda absent an emergency or urgency finding² as prescribed by law. There are a few exceptions to the noticing requirements, including, among other things, directing staff to schedule a matter on a future agenda. (OMC §2.20.080(F)).

"Posting" under the Sunshine Ordinance requires the agenda to contain, “... a brief, general description of each item of business to be transacted or discussed during the meeting...” (OMC §2.20.030 (A)). The description of an item is adequate, per Sunshine, 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.” (Ibid.) Agendas meet the requirements of the Brown Act. (OMC §2.20.030(A)). The Brown Act requires that the agenda contain a brief, general description of the item to be discussed, not to exceed 20 words. (Gov't Code §54954.2(a)(1).) Although, it is sometimes necessary to exceed the 20 word limit to include all significant, material

¹ See, Gov't Code §54952(b).
² See, OMC §§ 2.20.080.D and E regarding “emergency” and “urgency” exceptions and procedures to discuss and take action on items not appearing on the agenda.
aspects of a matter, City staff endeavors to stay within the limit of 20 words or close to that.

In addition to 10-day posting, the Sunshine Ordinance further requires that the PEC, "file[e] a copy of the agenda and all agenda-related materials with the Office of the City Clerk and the Oakland main library no later than ten (10) days before the date of the meeting [ ]," and file a copy on line. (OMC §2.20.080(A)(2) and (3)).

IV. ANALYSIS

The PEC’s June 1 posting for Item No. 6 - the proposed settlement of Complaint 14-25b - satisfies all requirements of the Sunshine Ordinance, because the item was properly posted with a brief, general description that included all agenda-related materials at least 10 days in advance of the meeting.

The Item 6 notice and attached materials were sufficiently clear and specific to alert a person of average intelligence and education that the Commission would be discussing whether or not to approve the proposed fine of $2,100 for the alleged OCRA violation by the Libby Schaaf for Oakland Mayor 2014 committee. A person of average intelligence and education would understand that this discussion could include probing questions from the Commission about all aspects of the PEC staff’s investigation, including sufficiency of the evidence and analysis of the evidence supporting the recommended settlement.

Conversely, it would have been a violation of the Sunshine and Brown Act to include all information, questions and answers that could potentially come up during discussion in the agenda title, as this would have generated an unnecessarily lengthy title that was difficult for a person of average intelligence to follow at best, and/or confusing and even potentially misleading at worst. Likewise, the agenda-related materials could not and are not required to anticipate all questions and information that the Commissioners might elicit. In fact, the very purpose of the open meeting laws is to ensure that the PEC discusses in public at its meetings the agenda items and deliberates and makes decisions based on the information in the agenda-related materials as well as additional information provided by PEC staff in response to the Commissioners’ questions.

V. CONCLUSION

The Executive Director’s response to the Commissioners’ questions did not violate the Sunshine Ordinance. The provision of the additional information and explanations regarding the PEC staff’s analysis was wholly consistent with the open meeting laws which require that covered boards and commissions conduct their deliberations in public. Cure-and-correct action is not required for the PEC’s discussion of Agenda Item No. 6, PEC Complaint 14-25b. Item No. 6 was noticed with enough
clarity and sufficiency to allow any member of the public with an interest in the matter to attend. OMC section 2.20.030.

Very truly yours,

BARBARA J. PARKER
City Attorney

Attorney Assigned:
Tricia Hynes

1889065v2
TO: Public Ethics Commission  
FROM: Whitney Barazoto, Executive Director  
DATE: April 27, 2018  
RE: Executive Director’s Report

This memorandum provides an overview of the Public Ethics Commission’s (PEC or Commission) programs and activities for 2017-18 as well as 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 was updated following the Commission’s March 26, 2018, retreat and includes the main goals for 2018-19 for each program area.

A few key projects currently under way by the Executive Director are staff performance evaluations, ticket policy report preparation to bring to City Council, and recruiting a law clerk to assist with Sunshine mediation cases.

A special thanks to Suzanne, Jelani, and Ana for their outstanding teamwork in moving our website content from the existing City platform to the City’s new content management system that was formally launched by the City on April 23, 2018. Staff worked quickly to learn the new system, create new pages, and move just about all of the Commission’s content from one site to another in a matter of a few weeks. Staff will continue to add more content – particularly to the ethics education pages which are being augmented through this process – and make ongoing adjustments to redesign the new content to conform to the new framework requirements and maintain our goal of designing the material around our website users.

Attachment: Commission Programs and Priorities
## PUBLIC ETHICS COMMISSION
Programs and Priorities 2018-19

<table>
<thead>
<tr>
<th>Program</th>
<th>Goal</th>
<th>Desired Outcome</th>
<th>Key Projects for 2018-19</th>
</tr>
</thead>
</table>
| 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 | 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 |
| 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. | 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.)  
3. Public Financing for candidates 2018 (outreach, training/assistance, maximize use of funds, etc.)  
4. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2)  
5. Education materials for people doing business with the City  
6. Web-based ethics materials, html Ethics Training |
| 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. | 1. Outreach to client groups:  
-2018 Candidates  
-Public financing program  
-people doing business with the City  
2. Sustain/enhance general PEC social media outreach  
3. PEC Roadshow – focus on CF project outreach (Commissioners)  
4. PEC website upgrade  
5. Establish Communications Plan √ |
| Disclose/ Illuminate | PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data. | Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format. Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information. | 1. Ongoing: Campaign Filing Officer, E-filing System Management  
2. Campaign Reporting Compliance and Referral program  
3. Open Disclosure 2018 – campaign data visualization project (continued)  
4. Lobbyist Registration – solidify filing officer process, 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 | 1. Proactive investigations focusing on ethics violations  
2. Share prelim review/intake among enforcement team |
| 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. | 1. Address complaints against the PEC  
2. Create manual for Sunshine Complaint Mediation, recruit law clerk  
3. Amend Complaint Procedures  
4. Update Penalty Guidelines  
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. | 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  
4. Staff to create position manuals to establish long-term continuity |