

CITY OF OAKLAND

Public Ethics Commission

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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: November 10, 2014
RE: Charter Amendment Implementation/Transition Plan

With the passage of measure CC, the Public Ethics Commission (PEC or Commission) is planning for its transition of significant growth in the areas of staffing, structure, authority, and responsibilities. This memorandum summarizes the operational changes of the new Charter provisions and outlines the tasks and timeline for implementation of the legislation.

Background

On November 4, 2014, Oakland voters approved ballot measure CC, which strengthens the Public Ethics Commission by creating a new Charter section 603 to expand the Commission's authority, structure, staffing, and independence. The revised Charter section also transfers the collection, maintenance, and storage of campaign finance forms and data from the City Clerk's office to the Public Ethics Commission and imposes requirements upon the Commission to ensure transparency and accountability in its process, operations, and decisions.

Most of the provisions of the new Charter section 603 are effective January 1, 2015, with the exception of the minimum staffing requirement (effective July 1, 2015) and the campaign statement filing officer duties (effective by January 1, 2017).

In addition, the ballot measure amended Charter section 202, to require the Commission to adjust City Councilmember salaries every two years instead of annually.

Note: Most of the changes and tasks of the new City Charter section 603 are effective January 1, 2015; however, the Commission continues to be supported by only two staff, plus one part-time worker until July 2015. This means that some of the changes that are effective in January may not actually occur until later, when and after the Commission has the new, additional staff in place.

Operational Changes and Tasks – Effective January 1, 2015

1. **City Council Salary Adjustment** – The Commission will now bi-annually adjust the salary of Councilmembers by the consumer price index for the preceding two years. The

Commission adjusted the City Councilmember salary in July 2014, so the next adjustment will occur in 2016 and every two years thereafter according to the new Charter section 202.

2. **Commissioner Appointments** – The Charter Amendment alters the appointing authority for three of the Commission’s seven positions. While the PEC retains its own ability to appoint four of the Commission’s members, the three Mayoral-appointed commissioner positions now will be disbursed among the City Attorney, City Auditor, and Mayor, beginning with the City Attorney in January 2015. Staff has communicated with the City Attorney about this appointment and will continue to coordinate with the City Attorney’s office regarding the new process.
3. **Commissioner Terms** – The new law made a number of small changes regarding commissioner service and qualifications, including a rule that new commissioners must attest to having attended at least one Public Ethics Commission meeting prior to appointment, and a commissioner may serve for two consecutive full three-year terms. In addition, no commissioner shall:
 - a. Have an employment or contractual relationship with the City during the member’s tenure and for a period of one year after the date of separation.
 - b. Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member’s tenure and for a period of one year after the date of separation.
 - c. Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, or participate in or contribute to an Oakland municipal campaign.
 - d. Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.
4. **Executive Director Accountability** – Beginning on January 1, 2015, the Executive Director will serve at the pleasure of the Commission instead of the City Administrator. This means that the Commission manages and reviews the performance of the Executive Director, has the authority to terminate the incumbent, and, upon a vacancy, participates in the recruitment and hiring of a new Executive Director by selecting one of three candidates offered by the City Administrator. Commission staff suggests the Commission conduct a performance review in March/April each year to review the prior year’s performance of the Executive Director, beginning in March/April of 2015 for the current Executive Director. Given that the performance review is a personnel-related matter, such a review would be conducted in closed session pursuant to the state Brown Act and the Oakland Sunshine Ordinance.
5. **Confidential Investigations** – Under the new provisions, preliminary review of allegations by Commission staff shall be confidential until either the item is placed on a Commission agenda, one year has passed since the complaint was filed, statute of limitations has expired, or the Executive Director closes the file pursuant to the Commission’s complaint procedures. This will result in a redesigned method of keeping commissioners updated on the status of the Commission’s enforcement caseload in general, and it ultimately will require minor changes to the Commission’s complaint procedures. It also means that Commission staff

cannot divulge information to the press or public, even upon inquiry, regarding pending investigations until each case is no longer confidential.

6. **Penalty Guidelines** – The Charter Amendment requires the Commission to develop a policy setting forth standards for imposing penalties and exercising enforcement discretion. Commission staff believes this task needs to be completed soon; however, given the attention needed to recruit and hire staff, and the ease with which this activity will help a new deputy director get up to speed on enforcement, staff suggests waiting on the creation of this policy until after the summer of 2015.
7. **PEC Website Changes** – There will be many changes that need to be made to the content of the Commission’s website as a result of the Charter amendment. Commission staff will be making updates incrementally over the next six months and beyond to ensure website content is accurate going forward.

Effective July 1, 2015

1. **Commission Staffing** – The Commission is entitled to receive four additional positions effective July 1, 2015. The new positions that will join the existing Executive Director and Program Analyst I are the following: Deputy Director, Ethics Investigator, Program Analyst I, and Administrative Assistant I. In order to make hiring decisions and place staff into these positions by July 2015, Commission staff has begun work with the City’s Human Resources department to create new classifications for the positions that are unique to the PEC, and to develop the job specifications, design the civil service examination process, conduct recruitment, and plan and engage in the examination/interview selection process. This will likely be done on a staggered basis depending on the workload of the Human Resources Department and our own Commission staff. All positions are civil service positions, except for the Deputy Director, but even the latter will be an open recruitment process. Below is a general summary of the positions and duties associated with each position, subject to change as the job specifications are developed.

Minimum Staffing Required by City Charter Section 603, Effective July 1, 2015

Position	Job Description
<p>Executive Director</p> <p><i>Under the new law, this is now an exempt management position that serves at the will of the Public Ethics Commission – the job specs for this will need to be changed.</i></p>	<p>Plan, direct and manage Commission operations and staff, coordinate and manage public meetings, advise the Commission and implement Commission directives, provide staff leadership and development, establish and maintain community partnerships and communications with City staff and the public, and represent the Commission in meetings before elected officials, City staff, the public, press, and other entities.</p>
<p>Deputy Director</p> <p><i>Lawyer preferred Serves at the pleasure of the ED</i></p>	<p>Lead the PEC’s enforcement program, conduct legal and policy research and analysis regarding campaign finance, transparency, lobbying, and ethics laws in consultation with the City Attorney’s office, prepare written legal analyses, draft regulations to implement City ordinances, provide legal advice/trainings, recommend legislative changes to City laws and policies.</p>

<p>Ethics Investigator (Auditor)</p> <p><i>Civil Service/Selective Certification per Civil Service Personnel Manual</i></p>	<p>Conduct PEC investigations including complaint response and routine audits of campaign statements, initiate investigations, gather evidence, interview witnesses, prepare factual case summaries, and recommend case resolution.</p>
<p>Program Analyst I or Operations Support Specialist</p> <p><i>Civil Service/Selective Certification per Civil Service Personnel Manual</i></p>	<p>Coordinate education and communications to promote compliance with state and local campaign finance, lobbying, transparency, and ethics laws; develop educational materials, conduct outreach, coordinate trainings; build and implement the Commission’s communications and public engagement program, manage the Commission’s website and social media platforms; research and respond to requests for information and assistance on matters related to the Commission’s work and laws within the Commission’s jurisdiction; manage technology projects to collect, manage, and publicly share information regarding campaign finance, lobbyist, and conflicts of interest disclosure.</p>
<p>Program Analyst</p> <p><i>Civil Service/Selective Certification per Civil Service Personnel Manual</i></p>	<p>Perform state-required filing officer duties including supplying and collecting campaign finance, conflict of interest, lobbyist registration, and Oakland Campaign Reform Act forms, conducting initial review for compliance, communicate filing deadlines and noncompliance, and ensure online availability of all reports and information related to these disclosure reports; coordinate and implement the Limited Public Financing Program, review and draft policies and guides, train and communicate with candidates and treasurers, process requests for payments of public funds, monitor payments and track funds to ensure payments are made according to legal requirements.</p>
<p>Administrative Assistant I</p> <p><i>Civil Service/Selective Certification per Civil Service Personnel Manual?</i></p>	<p>Conduct administrative duties including purchasing, personnel administration, agenda postings, records retention, file maintenance and database management, document editing, correspondence, assisting the public and receiving filings, copying, filing, responding to public requests for records and information, and managing office supplies and information.</p>

- Office Space and Equipment** – The PEC currently has an office space on the 11th floor of City Hall which is publicly accessible but relatively obscure as it can be accessed by only one elevator and has no front-facing public desk or counter. Given the Commission’s work and expanded duties, the Commission should be in a space that is more welcoming to the public and Commission clients and more easily-accessible. Commission staff is currently exploring options for new office space in coordination with the City Administrator’s office to find a more public-facing office location that will also accommodate the additional staff. In addition to office space, the Commission will be purchasing additional office equipment and furniture, including three computers and workstations, a commercial copier/scanner, and several large filing cabinets (unless transferred from the City Clerk’s office).

Effective January 1, 2017

- Filing Officer Duties** – The Commission will be the filing officer for campaign statements required to be filed with the City beginning on January 1, 2017. Commission staff will be

required to receive campaign forms for the Form 460 deadline on January 31, 2017, at the latest. Once the Commission is fully staffed, staff will develop a plan for transitioning the filing officer duties from the City Clerk's Office to the Commission. The transition plan will need to include the transfer of paper filing duties and records, including multiple file cabinets of filings that will be moved to the PEC's offices, as well as the transfer of all aspects of online filings, including acquiring administrative access and orientation to Netfile (electronic filing platform) and management of the Netfile online filing portal.

Attached is a copy of the text of the new Oakland City Charter Section 202 (Council Salaries) and Section 603 (Public Ethics Commission) for reference.