

## Public Ethics Commission

### ENFORCEMENT PENALTY GUIDELINES

The Public Ethics Commission (PEC) is authorized by the City Charter to impose penalties, remedies, and fines as provided for by local ordinances that are within the PEC's jurisdiction. In accordance with the City Charter, this document outlines principles to guide the PEC and its staff in determining an appropriate penalty in any given case. This policy serves as a guide and does not limit the PEC or its staff from using discretion to deviate from the norm in cases in which atypical or egregious circumstances exist. The guidelines include general principles, factors to consider in determining a penalty, and a tiered approach to penalties based on the level of the violation, which takes into account the overall principles and specific factors.

#### Guiding Principles for Enforcement

The overarching goal of the PEC's enforcement activity is to obtain compliance with ethics rules and provide timely, fair and consistent enforcement that is proportional to the seriousness of the violation. The following principles guide the PEC's compliance activities as part of an effective enforcement program:

- 1. Timeliness** – Compliance should be timely, if possible, to provide the public with needed ethics disclosures, and to mitigate harm that occurred from the violations. Enforcement resolutions should be viewed through this lens to craft a range of penalties and enforcement actions that drive timely compliance and mitigate future harm. For campaign violations, this can mean swift resolution and correction of violations, including before an election. Timely public information is crucial in these cases, as the value of required pre-election disclosure declines significantly after the election. For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed.
- 2. Fairness** – The core of the PEC's work is fairness to ensure that enforcement actions are even-handed and consistent, as well as to ensure due process for those accused of violating the law. An ethics commission frequently investigates and administratively prosecutes public officials, and it is essential that politics and rivalries not become part of these actions. The PEC shall track penalty amounts over time and articulate in each enforcement action its consistency with previous actions. This allows the public, respondents, and future commissioners to see the articulated rationale for the decision and the reasons for any variation. Additionally, effective enforcement of violations leads to fairness in government, as timely enforcement of government ethics rules also shows respect and fairness to those who follow the rules.
- 3. Focus on Serious Violations** – The focus of the PEC's work – both in terms of resources spent as well as the level of penalty imposed – should reflect the seriousness of each violation so that penalties urge compliance to the extent necessary while preserving PEC resources for major violations that may occur. Minor violations should not be ignored, but proportionality in penalties and an ability to take on more significant cases is important to creating a culture of compliance.

### **Specific Factors to Consider in Determining a Penalty**

The PEC will consider all relevant mitigating and aggravating circumstances surrounding the case when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation;
2. The presence or absence of any intention to conceal, deceive or mislead;
3. Whether the violation was deliberate, negligent or inadvertent;
4. Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations;
5. Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure; and
6. The degree to which the respondent cooperated with the PEC's investigation and demonstrated a willingness to remedy any violations.

### **Penalty Options Based on Levels**

To obtain compliance with the law and provide timely and fair enforcement that is proportional to the seriousness of the offense, the PEC institutes a three-tiered approach that is similar to the approach used by the California Fair Political Practices Commission. This approach utilizes warning letters, streamlined stipulations, and more severe penalties based on the level of public harm and the articulated aggravating and mitigating circumstances. This approach aims to provide consistency across similar violations and an expedited way to handle cases according to the level of seriousness so that staff resources are allocated according to the level and significance of the violation.

1. **Warning Letter:** A warning letter is an enforcement option for any minor violations without any aggravating circumstances. It is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of a potential or proven low-level violation. This allows for respondents to be educated about the rules and provides the PEC with a historical list of prior violations for future consideration in enforcement cases. A warning letter may be used to address an offense where the evidence demonstrates one or all of the following to an extent that a monetary penalty is not justified or in the interest of justice. To determine whether a case qualifies for a warning letter, the PEC will consider all relevant circumstances surrounding the case, including, but not limited to, the following:
  - a. Whether there was any intent to commit the violation;
  - b. Whether there are significant mitigating factors;
  - c. Whether the respondent lacked sophistication regarding the relevant law;
  - d. Whether the violation caused an insignificant harm to the public (such as failing to file statements with little or nothing to report);
  - e. Whether the respondent corrected the public harm caused by the violation prior to any actions by the PEC; and

f. Whether the action that caused the violation was a ministerial act.

**2. Streamline Stipulation:** The streamlined stipulation program takes common violations, such as the non-filing of a campaign statement, and provides a scaled-down stipulation document and set penalties. These low-level common cases can be quickly handled with a fine commensurate to the violation, which helps preserve staff time to focus on more serious cases. Under Oakland ethics laws, a streamlined stipulation is an option to resolve the following types of cases:

- a. Form 700 Non-Filer (GEA § 2.25.040);
- b. Form 700 Non-Reporter (GEA § 2.25.040);
- c. Gift Restrictions (GEA § 2.25.060C);
- d. Form 301 Non-Filer (CRA § 3.12.190);
- e. Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340);
- f. Lobbyist Registration Non-Filer (LRA § 3.20.040); and
- g. Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110).

To determine whether a case qualifies for the streamlined stipulation program, the PEC will use similar factors to those used to determine if a case qualifies for a warning letter, as outlined above.

The streamlined stipulation program takes into account that the articulated evidence demonstrates a greater degree of public harm than a case that qualifies for a warning letter and is therefore worthy of a mid-level penalty. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations will be standardized and shortened from higher-level penalty ranges to promote efficiency.

The penalty tiers for streamlined stipulations are as follows:

- a. Form 700 Non-Filer (GEA § 2.25.040):

Tier	Penalty per Form 700 not timely filed <sup>1</sup>
1 – Compliance in response to first PEC contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to administrative hearing.	\$800
4 – Compliance prior to adoption of a Commission decision.	\$1,000

<sup>1</sup> No streamlined program penalty can exceed the statutory limit.

b. Form 700 Non-Reporter (GEA § 2.25.040):

<b>Tier</b>	<b>Penalty per Form 700 that did not include all qualifying economic interests</b>
1 – Compliance in response to first PEC contact.	\$100
2 – Compliance prior to issuance of a probable cause report.	\$200
3 – Compliance prior to administrative hearing.	\$400
4 – Compliance prior to adoption of a Commission decision.	\$800

c. Gift Restrictions (GEA § 2.25.060C):

<b>Tier</b>	<b>Penalty</b>
1 – Compliance in response to first PEC contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to administrative hearing.	\$800
4 – Compliance prior to adoption of a Commission decision.	\$1,000

d. Form 301 Non-Filer (CRA § 3.12.190):

<b>Tier</b>	<b>Penalty</b>
1 – Compliance in response to first PEC contact.	\$200, plus 2% of contributions received over contribution limit prior to filing Form 301.
2 – Compliance prior to issuance of a probable cause report.	\$400, plus 2% of contributions received over contribution limit prior to filing Form 301.
3 – Compliance prior to administrative hearing.	\$800, plus 2% of contributions received over contribution limit prior to filing Form 301.
4 – Compliance prior to adoption of a Commission decision.	\$1,000, plus 2% of contributions received over contribution limit prior to filing Form 301.

e. Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340):

<b>Tier</b>	<b>Penalty per statement/report not timely filed or not including all required disclosure<sup>2</sup></b>
1 – Compliance in response to first PEC contact.	\$200, plus 1% of all financial activity not timely reported.
2 – Compliance prior to issuance of a probable cause report.	\$400, plus 1% of all financial activity not timely reported.
3 – Compliance prior to administrative hearing.	\$800, plus 1% of all financial activity not timely reported.
4 – Compliance prior to adoption of a Commission decision.	\$1,000, plus 1% of all financial activity not timely reported.

f. Lobbyist Registration Non-Filer (LRA § 3.20.040):

<b>Tier</b>	<b>Penalty</b>
1 – Compliance in response to first PEC contact.	\$200
2 – Compliance prior to issuance of a probable cause report.	\$400
3 – Compliance prior to administrative hearing.	\$800
4 – Compliance prior to adoption of a Commission decision.	\$1,000

g. Lobbyist Report Non-Filer and Non-Reporter (LRA § 3.20.110):

<b>Tier</b>	<b>Penalty</b>
1 – Compliance in response to first PEC contact.	\$200, plus 1% of all financial activity not timely reported.
2 – Compliance prior to issuance of a probable cause report.	\$400, plus 1% of all financial activity not timely reported.
3 – Compliance prior to administrative hearing.	\$800, plus 1% of all financial activity not timely reported.
4 – Compliance prior to adoption of a Commission decision.	\$1,000, plus 1% of all financial activity not timely reported.

<sup>2</sup> “Statement” refers to statements pursuant to Sections 84200 and 84200.5 of the California Political Reform Act. “Reports” refers to reports pursuant to Sections 84202.5, 84203, 84203.5, 84204, 84213, and 84511 of the California Political Reform Act.

- 3. Mainline Stipulation.** For more serious violations, the PEC will start with the following “base-level” fine amount and then adjust the fine amount based on mitigating and aggravating factors of the individual case, which will be articulated in the stipulation.

Mainline penalty amounts are as follows:

<b>Violation</b>	<b>Streamline Stipulation Available?</b>	<b>Base-Level Per Violation</b>	<b>Statutory Limit Per Violation</b>
Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.)	Yes.	\$1,000.	\$5,000 or up to three times the amount not timely reported.
Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Revolving Door Provisions. (GEA § 2.25.050.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Misuse of City Resources Provisions. (GEA § 2.25.060A.)	No.	\$2,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Gift Restrictions. (GEA § 2.25.060C.)	Yes.	\$1,000 plus forfeiture of unlawful gift.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Contracting Prohibition. (GEA § 2.25.060D.)	No.	\$2,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Bribery/Payment for Position. (GEA § 2.25.070A-B.)	No.	\$5,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)	No.	\$3,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)	No.	\$1,000.	\$5,000 or up to three times the unlawful amount, whichever is greater.
Contribution Limits. (CRA §§ 3.12.050 -3.12.080.)	No.	Amount of unlawful contribution, plus forfeiture of unlawful contribution.	Three times the amount of the unlawful contribution.

One Bank Account Rule. (CRA § 3.12.110.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Fundraising Notice Requirement. (CRA § 3.12.140P.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Contractor Contribution Prohibition. (CRA § 3.12.140.)	No.	\$2,000.	Three times the amount of the unlawful contribution.
Officeholder Fund Requirements. (CRA § 3.12.150.)	No.	\$2,000.	Three times the amount of the unlawful expenditure.
Form 301 Requirement. (CRA § 3.12.190.)	Yes.	\$1,000.	Three times the amount of unlawful contribution or expenditure.
Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.)	No.	\$1,000.	Three times the amount of the unlawful expenditure.
Campaign Statement/Report Non-Filer and Non-Reporter. (CRA § 3.12.340.)	Yes.	\$1,000.	Three times the amount not properly reported, or \$2,000, whichever is greater.
Public Finance Program Requirements. (LPFA § 3.13.010.)	No.	\$1,000.	\$1,000 and repayment of funds.
Lobbyist Registration Non-Filer. (LRA § 3.20.040.)	Yes.	\$1,000.	\$5,000.
Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)	Yes.	\$1,000.	\$5,000 or up to three times the amount the not timely reported, whichever is greater.

### Application of these Guidelines

While most enforcement matters will likely fall within the penalty structure outlined in this guideline, this document was created merely to assist the PEC in determining an appropriate fine in certain types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty or fine that deviates from this guideline or from the PEC's past practice. Additionally, this guideline is not a comprehensive list of violations for which the PEC has jurisdiction to investigate and impose a fine or penalty, and exclusion of a type of violation from this guideline does not in any way limit the PEC or its staff from investigating and imposing a fine or penalty on any person who commits such a violation.