

# City of Oakland Public Ethics Commission



## Ensuring Ethical and Transparent Distribution of City Tickets

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## EXECUTIVE SUMMARY

Oakland City officials have been receiving thousands of luxury suite tickets from the Oracle Arena and Oakland-Alameda County Coliseum (Oakland Coliseum) each year pursuant to contracts with the Golden State Warriors, Oakland Raiders, and Oakland Athletics (A's) sports teams. These "City tickets" (at least two and sometimes four per event, per official) are given directly to City Councilmembers and the Mayor for their personal use and distribution. In addition, the Oakland Alameda County Coliseum Authority (Coliseum Authority) provides two tickets per event to the City Attorney and the City Administrator and upon request to other City officials, including Councilmembers. Ultimately, over the two-year period between January 2015 and December 2016, over 11,000 tickets were available to City officials.

According to state and local law, tickets to these events are considered gifts to public officials unless the City adopts a written ticket distribution policy that identifies the public purpose served by the distribution of the tickets. The *City of Oakland Policy for Receipt and Distribution of Passes and Tickets*, adopted in May 2009,<sup>1</sup> provides a list of reasons for which a City official or third party may receive and use a ticket for a "governmental purpose," including "oversight" and "review" of facilities and "rewarding" a City employee, community activist, or school/non-profit organization for their work.

News reports in 2016 reflected some elected officials attending many dozens of Golden State Warriors games using City tickets, and claiming they were there each time to "oversee the facilities." The Public Ethics Commission (Commission) used its new authority granted in 2014 to open an investigation in June 2016 to determine whether any laws were broken, and it further decided that the City's policy and process for distributing tickets also needed evaluation. As part of the latter review, the Commission held a public hearing in November 2016 to review the process by which the City receives, tracks, and distributes tickets provided to the City pursuant to agreements with the Coliseum Authority and the Oakland A's, Raiders, and Warriors teams. The Commission gathered information about the ticket distribution process, reviewed the state law that governs the receipt of free tickets and the disclosure of those transactions, discussed the current policy, and identified concerns with the process by which tickets are handed out to public officials and reported online.

While the state gift rule exception was designed to allow for City distribution of tickets that serve a public purpose, the use and distribution of Oakland Coliseum and Oracle Arena tickets here in Oakland raises multiple concerns about whether the public purpose is achieved in the current process, at best, and, at worst, whether receipt and use of these tickets amounts to a conflict of interest, mismanagement and misuse of public resources, or self-dealing. The Commission, in its recent review of the distribution of City and Coliseum Authority tickets, found the following significant problems:

- The City receives and distributes thousands of tickets each year in a manner that is poorly managed, allows tickets to be handed out to officials despite some officials failing to report ticket information as required by law, and permits public officials and other ticket recipients to claim purported reasons for the use of each ticket that is inconsistent with the nature or extent of their ticket use.

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<sup>1</sup> City Council Resolution 82032

- The receipt and use of tickets by City officials who are involved in negotiating, drafting, and approving the contracts under which the tickets are provided to the City presents significant, inherent ethics concerns in the area of conflicts of interest and self-dealing.
- City tickets have been viewed as a perk of office or employment rather than a public asset to be managed and utilized for a public purpose as required by law.
- Form 802 (ticket use) data is incomplete, with several officials failing to file legally-required information; the data also is difficult to find and not provided to the public in an open data format that is searchable and easily consumed by the public.
- Thousands of luxury suite tickets go unused by the City each year, wasting thousands of dollars in City resources, and, due to the design of the distribution process, elected officials have been required to submit hundreds of unnecessary reports of unused tickets.
- The City ticket policy provides vague and questionable reasons for attending events and lacks limitations on the allowable ticket use by officials and distribution to third parties, and the policy lacks express enforcement mechanisms to ensure compliance with the policy and the law.
- Separate from the City's ticket distribution policy and process, the Coliseum Authority's policy, which allows for the distribution and use of hundreds of tickets to certain City and Alameda County officials for facility oversight-related duties, raises many of the same ethical and public purpose concerns as in the City's policy.

The longstanding practice of handing large batches of Oakland Coliseum and Oracle Arena tickets to elected officials under an outdated policy, combined with a cavalier attitude and ineffective system of reporting tickets, results in these tickets being used by City officials and staff as if they were a perk – or tickets going unused or unreported – in contrast to the public purpose for which the gift exemption was intended. Given the history of the use of tickets by elected officials, and the evolution of laws and ethics policies in Oakland and other jurisdictions, the Commission recommends a new approach to both the policy and the process of receiving, distributing, and disclosing information about tickets provided to the City.

This report summarizes the Commission's findings and provides specific recommendations that the Commission urges the Mayor, City Council, and City Administrator to implement in order to ensure that Oakland Coliseum and Oracle Arena tickets provided to the City are used for public purposes and distributed and reported according to state and local law.

## BACKGROUND

### City Officials Receive Thousands of Tickets Each Year

The City of Oakland receives 20 luxury suite tickets to every Oracle Arena event and 18 luxury suite tickets to every Oakland Coliseum event pursuant to contract agreements with the Golden State Warriors, Oakland Raiders, and Oakland A's. Councilmembers and the Mayor each receive two suite tickets, and the Council President receives four suite tickets, to every event at the Oakland Coliseum and Oracle Arena. In addition, City Councilmembers also receive two field tickets (on top of the two or four suite tickets) to every A's game. These "City tickets," in addition to complimentary parking passes, are delivered to City Councilmembers, the City Council President, and the Mayor, resulting in approximately 8,000<sup>2</sup> tickets given to City Councilmembers and the Mayor in 2015 and 2016.

Separate from the above-described "City tickets," certain elected officials each are entitled to receive roughly two luxury suite tickets per event from the Coliseum Authority, a multi-agency joint powers authority that manages the Coliseum Complex on behalf of the City of Oakland and the County of Alameda. These sets of tickets, referred to here as "Authority tickets," are provided to members and other executives who participate on the board or assist in the work of the Coliseum Authority, including the City Attorney, City Administrator, and City Councilmembers who sit on the Authority Board as representatives of the City.<sup>3</sup> City Councilmembers who sit on the Coliseum Authority receive City tickets as well as Authority tickets. Oakland City officials received over 1,100<sup>4</sup> Authority tickets in 2016.

#### Coliseum Complex

The Oakland-Alameda County Coliseum Complex consists of the following two facilities:

**Oracle Arena** is an indoor arena seating up to approximately 19,000 patrons; home of the Golden State Warriors; also hosts many concerts, family shows (ice shows and circus) and other sporting events. The arena contains three clubs and 72 luxury suites.

**Oakland Alameda County Coliseum** is an outdoor stadium that seats up to 63,000 patrons, is home of the Oakland Athletics (A's) and the Oakland Raiders, and host to other sporting events such as soccer, motorsports, and concerts. The Coliseum contains two clubs and 147 luxury suites.

Entity Receiving Tickets	Arena Suite	Coliseum Suite
Coliseum Authority	M-39	L-16
City of Oakland	M-13	L-53
Alameda Co.	M-14	L-54

Oakland Alameda County Coliseum Authority, *About Us*, <http://www.coliseum.com/oacca/about-the-authority>, accessed on November 14, 2016.

### Tickets are Gifts Under State Law, Except for "Public Purpose"

Under state law, event tickets received by public officials (elected officials and staff) generally are considered gifts to the public official and subject to the state gift limits of \$460 (in 2016)<sup>5</sup> per calendar

<sup>2</sup> Most numerical representations for "City tickets" in this report are based on data available through the City's Form 802 database as of January 24, 2017, provided in raw data format by the City's Information Technology Department. This information can be found in piecemeal form on the City Council's website: <http://www2.oaklandnet.com/government/o/CityCouncil/index.htm>, which represents information as it was reported by City officials and confirmed by the Council Assistant. Form 802 data represented in this report may contain duplicate reporting or data entry errors made by persons reporting or confirming the information. Additional data from the Council Assistant's records has been added into this report to compare the raw 802 data with available records showing which tickets were signed out by the Mayor or Councilmembers, or their staff, for the time period of January 1, 2015 through December 31, 2016.

<sup>3</sup> In 2015 and 2016, City Councilmembers Kaplan and Reid represented the City on the Coliseum Authority Board. As of March 2017, City Councilmembers McElhaney and Reid represent the City on the Authority Board.

<sup>4</sup> Numerical representations of data for "Authority tickets" are based on Form 802 data compiled manually from the Coliseum Authority's online Form 802 filings found on the Coliseum Authority's website: <http://www.oraclearena.com/oacca/public-information>.

<sup>5</sup> State gift limits are adjusted by the California Fair Political Practices Commission every odd-numbered year per the California Political Reform Act, FPPC Regulation 18940.2.

year. In Oakland, the gift limit is \$250 per year, or \$50 if the gift-giver is or has recently done business with the City.<sup>6</sup> An exception to the gift rule allows tickets to be received, distributed, and reported by the agency, in lieu of being considered a gift to the official, if that agency has adopted a written policy that identifies the public purpose served in distributing the tickets and the official adheres to the policy.<sup>7</sup>

California Fair Political Practices Commission (FPPC) Regulation 18944.1 outlines the exception to the gift rule for tickets given to an agency and distributed according to a written agency ticket distribution policy. The regulation states that the written policy must be adopted by the legislative body of the agency and must include all of the following:

1. A provision setting forth the public purposes of the agency for which tickets or passes may be distributed;
2. A provision requiring that the distribution of any ticket or pass to, or at the behest of, an agency official accomplishes a stated public purpose of the policy;
3. A provision prohibiting the transfer of any ticket received by an agency official pursuant to the distribution policy except to members of the official's immediate family or no more than one guest solely for their attendance at the event;
4. The policy must be maintained as a public record and is subject to inspection and copying; the agency also must post the policy on its website within 30 days of adoption or amendment and send to the FPPC a link to the website where the policy is posted.<sup>8</sup>

Further, tickets received under this exception must be disclosed on FPPC Form 802 (shown here and attached as Appendix 1) within 45 days of the distribution of the ticket. The regulation requires the following reporting:

1. General use requires the following information to be reported:
  - a. Name of person receiving the ticket or pass;
  - b. Description of the event;
  - c. Date of the event;
  - d. Face value of the ticket or pass;
  - e. Number of tickets or passes provided to each person;
  - f. If the ticket or pass is behested, the name of the official who behested the ticket;

**Agency Report of: Ceremonial Role Events and Ticket/Pass Distributions** Reset Page Print Form

**A Public Document**  
California Form **802**  
For Official Use Only

1. **Agency Name**  
Division, Department, or Region (if applicable)  
Designated Agency Contact (Name, Title)  
Area Code/Phone Number E-mail  
Date of Original Filing: (month, day, year)

2. **Function or Event Information**  
Does the agency have a ticket policy? Yes ☐ No ☐ Face Value of Each Ticket/Pass \$ \_\_\_\_\_  
Event Description: \_\_\_\_\_ Date(s) \_\_\_\_\_  
Ticket(s)/Pass(es) provided by agency? Yes ☐ No ☐ If no: \_\_\_\_\_ Name of Source \_\_\_\_\_  
Was ticket distribution made at the behest of agency official? Yes ☐ No ☐ If yes: \_\_\_\_\_ Official's Name (Last, First)

3. **Recipients**  
• Use Section A to identify the agency's department or unit. • Use Section B to identify an individual. • Use Section C to identify an outside organization.

A. Name of Agency, Department or Unit	Number of Ticket(s)/Passes	Describe the public purpose made pursuant to the agency's policy

B. Name of Individual (Last, First)	Number of Ticket(s)/Passes	Identify one of the following:
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <small>If checking "Ceremonial Role" or "Other" describe below:</small>
		Ceremonial Role <input type="checkbox"/> Other <input type="checkbox"/> Income <input type="checkbox"/> <small>If checking "Ceremonial Role" or "Other" describe below:</small>

C. Name of Outside Organization (include address and description)	Number of Ticket(s)/Passes	Describe the public purpose made pursuant to the agency's policy

4. **Verification**  
I have read and understand FPPC Regulations 18944.1 and 18942. I have verified that the distribution set forth above, is in accordance with the requirements:  
Signature of Agency Head or Designee \_\_\_\_\_ Print Name \_\_\_\_\_ Title \_\_\_\_\_ (month, day, year)  
Comment: \_\_\_\_\_

FPPC Form 802 (2016)  
FPPC Toll-Free Helpline: 866/ASK-FPPC (866/273-3772)

<sup>6</sup> Oakland Government Ethics Act, O.M.C Section 2.25, adopted in December 2014.

<sup>7</sup> California Fair Political Practices Commission, *Reporting Ceremonial Role Events and Ticket/Admission Distribution – Form 802*, <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/reporting-ceremonial-role-events-and-ticket-admission.html>, accessed October 25, 2016

<sup>8</sup> California Fair Political Practices Commission, Regulation 18944.1.



- g. Description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.
2. Tickets provided to an outside organization require the following information to be reported: Name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of reporting the names of each individual as required above.
3. Agency reports on tickets received by the Agency from an outside source or pursuant to a contract with the City, as described in the regulation, may include the name of the department or unit in lieu of reporting the name of the individual employee. Elected officials and members of the legislative or governing body of the agency are not included in this exception.<sup>9</sup>

In sum, state law provides an exception to the gift rules if a local government agency adopts a written policy that identifies the public purpose served in distributing the tickets and the official complies with the policy. Both Oakland and the Coliseum Authority have adopted such policies, and each has instituted a process for distributing tickets according to the policy.

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<sup>9</sup> California Fair Political Practices Commission, Regulation 18944.1.



## CITY OF OAKLAND POLICY AND PROCESS

### Oakland's Ticket Distribution Policy

The distribution of City tickets is governed by the *City of Oakland's Policy for Receipt and Distribution of Passes and Tickets* (Ticket policy) adopted as City Council Resolution 75052 in June 1999 and later revised as City Council Resolution 82032 in May 2009. This policy authorizes the use of tickets, as exceptions to the state gift rules which impose a current limit of \$470<sup>10</sup> on gifts given to a public official, if the use is for a "governmental purpose" as defined by the Ticket policy. Oakland's policy includes as a "governmental purpose" the following list of reasons for which a public official or third party may receive and use a ticket and not have the ticket be subject to the state gift limit:

1. Oversight of facilities or events that have received City funding or support;
2. Oversight of facilities or events that may require City funding or support in the near future;
3. Reviewing a facility's contribution to blight abatement within a Redevelopment Area;
4. Reviewing the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;
5. Reviewing the ability of a facility or its operator to participate in the City's job creation goals or training programs;
6. Reviewing the contribution of a facility or an event to the City's goals for fostering arts and culture opportunities for City residents;
7. Rewarding a City of Oakland employee for his/her exemplary service to the City;
8. Rewarding a community activist for his or her service to the City of Oakland;
9. Rewarding a school or nonprofit organization for its contributions to the community; and
10. Rewarding an Oakland student for outstanding scholastic achievement.

The above reasons limit ticket use in Oakland to oversight of the facilities or the role of the facility or event in City life, or rewarding a person or organization for their work. Unlike other cities that have ticket distribution policies, Oakland does not recognize other public purposes for the distribution of event tickets, such as promoting local economic development; promoting City business, resources, programs, and facilities; and promoting cultural, recreational, and educational programs and events.<sup>11</sup> San Diego takes it a step further, implementing a tiered approach with dozens of public purpose reasons for the allowable use of City tickets organized into three categories with different levels of priority.<sup>12</sup>

Oakland's Ticket Policy has not been significantly updated to reflect the technical changes made to the state regulations on the use and reporting of tickets received under the policy in recent years, as well as the modern views adopted by other cities on the use of such tickets by elected officials, such as specific and narrow limits on the number of tickets that a public official can receive and personally use, or

<sup>10</sup> The state Gift limit of \$460 was in effect for 2015 and 2016; the limit was adjusted to \$470 in 2017 by the FPPC pursuant to the California Political Reform Act. The City of Oakland now has a similar but lower local gift limit per the Oakland Government Ethics Act, passed in 2014, which imposes a \$250 annual gift limit from a single source in a calendar year and a \$50 gift limit from persons doing business with or seeking to do business with the public servant's department.

<sup>11</sup> City of Sacramento. Acceptance, Distribution, Use, and Reporting of Tickets Policy. 2016.

<sup>12</sup> City of San Diego. Ticket Policy for Qualcomm Stadium, Petco Park and Other Tickets Provided to the City for Entertainment Purposes (Policy #700-22). August 18, 2016.

moving the distribution of tickets out of legislative control entirely. These changes have been made over time, as cities recognize that the receipt and distribution of tickets by elected officials invites both legal and public perception concerns of government corruption.

## Ethical Concerns Regarding City Officials Receiving Tickets Pursuant to a Contract that they Negotiated or Approved

City tickets are provided to the City of Oakland pursuant to contracts with each of the respective teams, with language in each of the contracts setting aside certain box seats for the City of Oakland, the County of Alameda, and the Coliseum Authority, as discussed above. The contract agreements are based on the City leasing the property to the teams in exchange for consideration from the teams that includes, among other things, the sets of tickets provided to the City. City Councilmembers approve these contracts and the language contained in them.

State and local ethics laws contain provisions barring the use of public resources for private or campaign purposes and prohibiting an official from making, participating in making, or influencing a decision or contract in which the official receives a personal financial benefit.<sup>13</sup> Here, Oakland Councilmembers who approve the lease agreements that earmark tickets to the City are the direct recipients of the tickets. These Councilmembers then make decisions about how those tickets are to be distributed – many of them being used personally by the Councilmembers to the tune of dozens and sometimes hundreds of times over the course of a two-year period, as described in this report.

The participation of elected officials in the contract approval process in which the officials receive free tickets, creates, at a minimum, a perception of both a personal conflict of interest and misuse of public resources for personal gain.<sup>14</sup> The policy and process must therefore be amended to ensure that all tickets are used or distributed according to a legitimate public purpose and that tickets are not considered to be and used as a perk of office by officials, their family, or their staff.

In addition, the contract arrangement described above means that these tickets are City assets, or “public resources,” that must be managed wisely and

### ***Asset Value of a Luxury Box Suite***

The monetary value of a box suite is difficult to quantify, according to Scott McKibben, Executive Director of the Oakland Alameda County Coliseum Authority, because prices vary depending on the type of package in which the box is provided, such as part of a sponsorship which would include advertising and other costs. Prices are also difficult to pin down for luxury suites because they are not sold on a per-ticket basis, McKibben explained. However, McKibben provided the following as general estimated ranges of the cost of a suite box to give the Commission a sense of the potential value:

- **Golden State Warriors** – between \$150,000 - \$400,000 per season, depending on the location of the suite
- **Oakland Raiders** – \$60,000 - \$75,000 per season, with recent price increases due to the team’s success in the 2016-17 season (suite boxes used to go for as little as \$5,000 per season)
- **Oakland A’s** – \$50,000 - \$150,000 per season (81 games), depending on the location of the suite

McKibben also stated that it is possible for the City to negotiate to give up the suite of tickets to the teams in exchange for an amount certain, such as \$250,000 in additional rent per year. When asked whether sets of tickets to cities and counties are typically included as part of arena deals in his experience in other cities, McKibben said, “No, not to the extent that we have here... not 3 [suite boxes].”

Scott McKibben, Executive Director, Oakland Alameda County Coliseum Authority, Oral testimony to the Public Ethics Commission, November 30, 2016.

<sup>13</sup> Oakland Government Ethics Act, O.M.C. Section 2.25.040 and 2.25.060, and California Government Code Sections 87100 and 1090.

<sup>14</sup> JoAnne Speers, Adjunct Professor, Public and Nonprofit Administration Programs, School of Management, University of San Francisco. Testimony provided to the Public Ethics Commission, November 30, 2016.

may not be used for personal or campaign purposes. As a City asset, these tickets should not be handed to the legislative branch to use and distribute but should instead be presented to the Mayor as the City's chief elective officer,<sup>15</sup> or to the City Administrator who is charged with the duty to "administer the affairs of the City."<sup>16</sup>

Because Councilmembers participate in the contract approval process, and because these tickets amount to a significant City asset that should be managed responsibly, these tickets should be received by and dispersed through the City executive branch as part of City operations, not within the legislative branch that approves the contracts generating the tickets. A centralized system housed within City administration also would resolve additional significant problems with the ticket delivery and reporting process to be discussed in more detail below.

## Ticket Delivery and Reporting Process

Under the current process in which City tickets are delivered directly to City Council, the tickets are brought by Coliseum Authority staff and handed to the Executive Assistant to the Council (Council Assistant). The Council Assistant then distributes the tickets to Councilmembers and the Mayor, requiring only that each office sign for the tickets while they review the tickets available and make decisions about how to distribute them. Some offices keep the tickets and submit the required Form 802. Other offices return the tickets, un-used, to the Council Assistant. Finally, some offices keep the tickets and submit no forms disclosing the tickets' disposition. For those who report the data, they do so through the City's online filing system called Radar, and the Council Assistant later validates the form on behalf of the City. For those who do not report the data, the Council Assistant maintains records that show who signed for the tickets and also who filed Form 802 data for the tickets that were signed out.<sup>17</sup>

## Thousands of Tickets Go Unreported

According to the Council Assistant's records, Councilmembers and the Mayor, to widely varying degrees, failed to report 3,770 tickets in 2015 and 2016. These records indicate that three Councilmembers provided little to no Form 802 information about the receipt, use, or distribution of the vast majority of tickets that were signed out by their office each month. Records indicate that other officials reported on most of the tickets that were signed out, but also had some tickets that went unreported, as shown by the graph on page 12.

This missing Form 802 data results in a total lack of data, and thus lack of transparency for the public, for about one-third of the tickets provided to these officials. Officials who failed to provide the required reports are subject to potential fines from the Commission and the Fair Political Practices Commission, to be determined separate from this report pursuant to the Commission's pending investigation.

Each official is responsible for ensuring that the Form 802 has been filed in order for the ticket to be exempt from the gift rules under the law. While the potential violation falls on the public official who uses the ticket, there is no demand that the Form 802 report be filed before tickets are physically handed to Councilmembers, the Mayor, or their staff. Instead, officials are left to their own choice as to

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<sup>15</sup> Oakland City Charter Section 305.

<sup>16</sup> Oakland City Charter Section 504.

<sup>17</sup> Susan Sanchez, Executive Assistant to the City Council. Statement to the Public Ethics Commission. November 30, 2016, and December 1, 2016.

whether to file the required forms, after having been advised of the requirement by the Council Assistant, a subordinate position to the Council.<sup>18</sup> This is a serious flaw in the ticket distribution system that must be addressed.

### Process Puts Onus on Officials to Distribute Tickets or File “Did not use” Reports

Another flaw in the design of the Council’s process in which hundreds of tickets are handed directly to elected officials over the course of a year is that Councilmembers and the Mayor are put in the position to have to decide whether to use or distribute tickets to others. It is the official or their staff who must reach out and distribute tickets; otherwise, the tickets go unused and wasted. Further, all of these officials must file Form 802 data for any instance in which they “did not use” their tickets. This reporting requirement is unnecessary and burdensome on officials by imposing a duty to report even when they have no interest in taking or distributing tickets. It puts the burden onto each elected official to first find someone to give the set of tickets to, or file a report stating they did not use the tickets, with no alternative option – all because the tickets automatically are given to every Councilmember and the Mayor regardless of whether they requested the tickets.

The result in the two-year period between January 2015 and December 2016 was that elected officials filed 1,040 reports stating that they “did not use” roughly 2,229 tickets they were given. This only includes data for those who actually filed reports – there is no way to know how many of the roughly 3,770 unreported tickets went unused as well. Again, the only reason these “did not use” reports are required is because of the process by which these City tickets are automatically given to the elected official even when they have no interest in the tickets.

### Integrity of the Ticket Report (Form 802) Data

In preparing the analysis of ticket data for this report, it became clear to the Commission that the City has not created an effective system for tracking City ticket data from receipt through distribution of each ticket. The Form 802 data available on the City’s website only shows information about tickets that end up getting properly reported by Councilmembers and the Mayor and confirmed by the Council Assistant.<sup>19</sup> Separate records kept by the Council Assistant merely provide lists of tickets received and signed out by Council offices. There is no single tracking mechanism that allows the public to see ticket data from receipt by the City through use by a recipient. This means that separate records must be consulted in order to put together an overall picture of ticket receipt, use, and reporting, as is done in this report. However, the use of these separate systems, combined with occasional human errors that are evident in the online Form 802 filings, significantly impacts the quality of the data available for this report and made accessible to the public.

Further, as described above, the total failure by some Councilmembers to report Form 802 ticket data means there is no mechanism to track the use or distribution of thousands of dollars in City assets. The purpose of Form 802 reports is to understand the flow of a benefit going to a City official that would otherwise be considered a gift, to show the public purpose for the distribution and also to see who else

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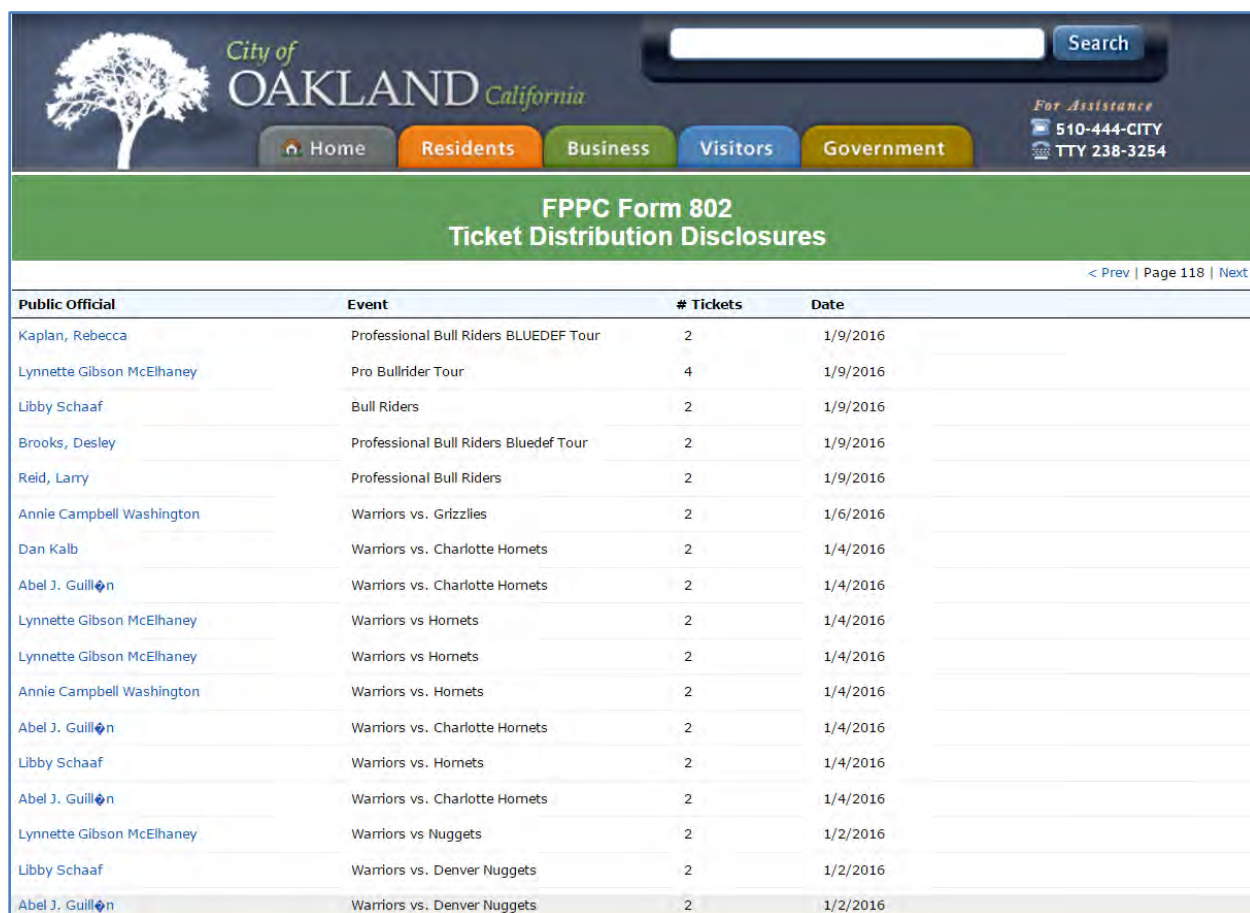
<sup>18</sup> Susan Sanchez, Executive Assistant to the City Council. Statement to the Public Ethics Commission. November 30, 2016, and December 1, 2016.

<sup>19</sup> In 2015 and 2016, there were 227 entries of ticket information submitted by Councilmembers and the Mayor that were not confirmed by the Council Assistant, resulting in discrepancies between records of data submitted by ticket recipients compared with the data that appears on the City Council’s public portal.

may benefit from the distribution of a City asset. For those who fail to submit Form 802 data, basic information is missing for hundreds of tickets for which we have no information about what Councilmembers did with their tickets – whether they personally used the tickets or gave them out to friends or others.

### Disclosure System Needs Upgrade, Better Transparency

Ticket data that is reported into the City's electronic filing system, Radar, is provided to the public at the bottom of the City Council's main webpage as a link to "Form 802: Ticket Distribution Disclosures," where each Form 802 data entry is available for viewing as a separate link, as shown below.



Public Official	Event	# Tickets	Date
Kaplan, Rebecca	Professional Bull Riders BLUEDEF Tour	2	1/9/2016
Lynnette Gibson McElhaney	Pro Bullrider Tour	4	1/9/2016
Libby Schaaf	Bull Riders	2	1/9/2016
Brooks, Desley	Professional Bull Riders Bluedef Tour	2	1/9/2016
Reid, Larry	Professional Bull Riders	2	1/9/2016
Annie Campbell Washington	Warriors vs. Grizzlies	2	1/6/2016
Dan Kalb	Warriors vs. Charlotte Hornets	2	1/4/2016
Abel J. Guillón	Warriors vs. Charlotte Hornets	2	1/4/2016
Lynnette Gibson McElhaney	Warriors vs Hornets	2	1/4/2016
Lynnette Gibson McElhaney	Warriors vs Hornets	2	1/4/2016
Annie Campbell Washington	Warriors vs. Hornets	2	1/4/2016
Abel J. Guillón	Warriors vs. Charlotte Hornets	2	1/4/2016
Libby Schaaf	Warriors vs. Hornets	2	1/4/2016
Abel J. Guillón	Warriors vs. Charlotte Hornets	2	1/4/2016
Lynnette Gibson McElhaney	Warriors vs Nuggets	2	1/2/2016
Libby Schaaf	Warriors vs. Denver Nuggets	2	1/2/2016
Abel J. Guillón	Warriors vs. Denver Nuggets	2	1/2/2016

Even though the data is entered electronically by City staff and maintained in an internal database, the data is not provided to the public in this form and is instead made available to the public online in such a way that requires a citizen to click on a separate link for each entry to view the information on a new page. In other words, the data is not provided in an open and searchable format despite being collected and placed into a database format internally that can be exported in CSV format. As a result, the public does not have immediate access to the comprehensive data set in a manner that is searchable by ticket recipient, organization, or any other data category, ultimately defeating the purpose for which the reports are required. The data for Councilmembers and the Mayor also is not made available regularly on the City's Open Data Portal (Socrata), where many public City datasets are made open and accessible to the public.



The City should make the full ticket data-set available in CSV format on the City Council's website and on the Open Data Portal and should insert controls into the system to ensure that the data is collected in a manner that results in clean data that reduces chances of human error. This may require drop-down fields for items such as the purpose of the ticket use and type of recipient.

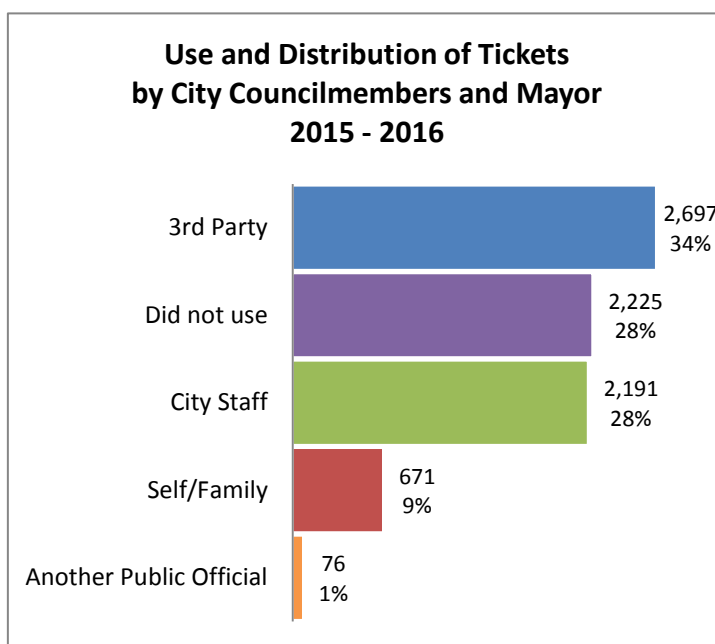
Meanwhile, despite the above data integrity concerns, this report summarizes the available information from the online Form 802 filings as provided in raw data form by the City's Department of Information Technology, along with records maintained by the Council Assistant.

## City Ticket Use and Distribution by Elected Officials

Overall, City records indicate that over 11,000 Oakland Coliseum and Oracle Arena tickets were given to the City and made available to Councilmembers and the Mayor in 2015 and 2016. Of those, approximately 7,860 tickets were reported through the Form 802 filing process. Again, this means roughly 3,770 tickets were used or distributed with no reporting as to what happened to the ticket, such as to whom the ticket was given and for what purpose.

For the 7,860 tickets for which reports were filed, the graph to the right shows the breakdown, by recipient, for all tickets reported by Councilmembers and the Mayor. Roughly one-third of tickets went to a third party, with 28% going to City staff and another 28% reported as not being used, and 9% of all tickets being used by the public official and/or their immediate family.

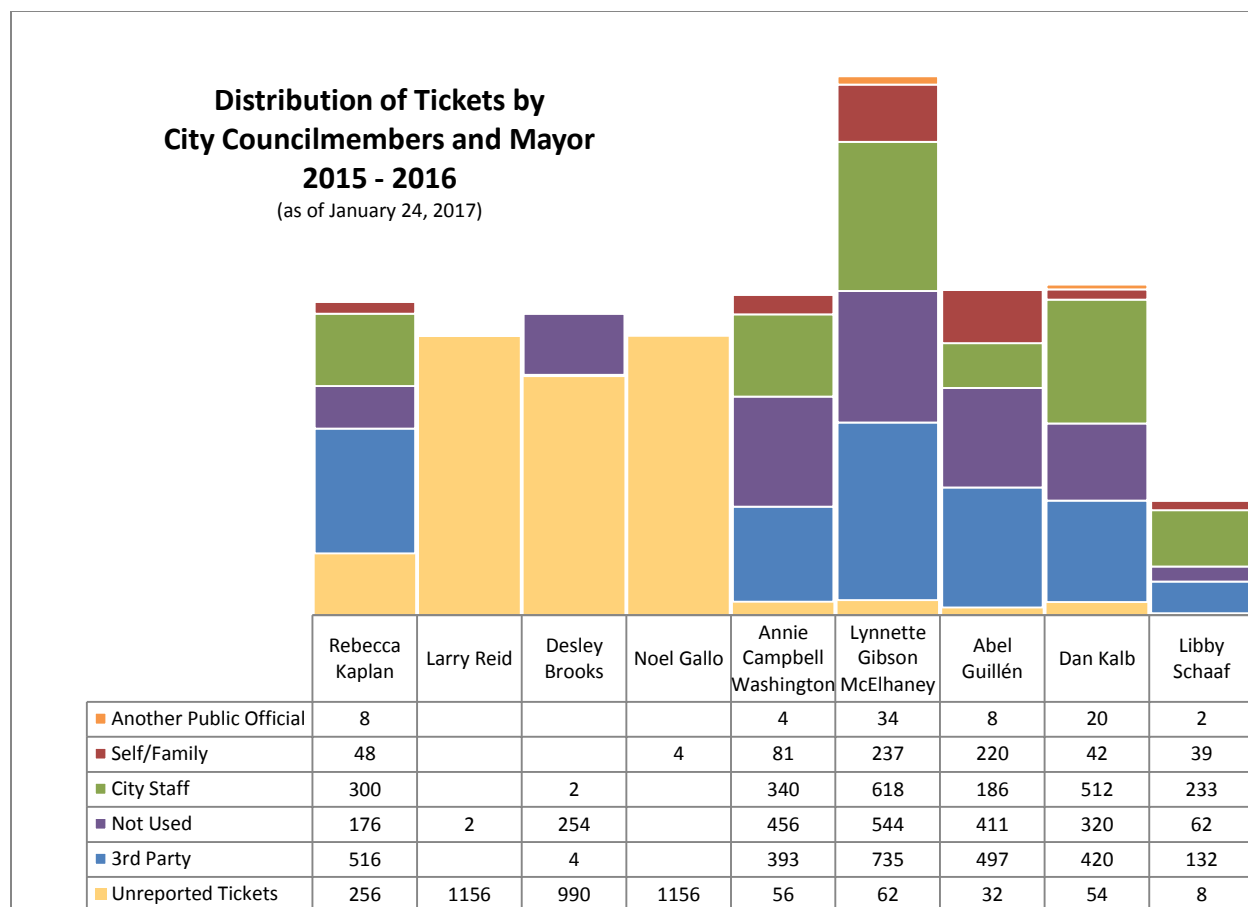
Below is a comprehensive summary of the distribution and reporting of tickets per official, based on Form 802 data combined with Council Assistant records of ticket distribution and reporting to include data on tickets that were signed out but not reported via the City's online filing system.<sup>20 21</sup>



<sup>20</sup> As noted earlier in this report, most numerical representations for "City tickets" in this report are based on data available through the City's Form 802 database as of January 24, 2017, provided in raw data format by the City's Information Technology Department. This information can be found in piecemeal form on the City Council's website: <http://www2.oaklandnet.com/government/o/CityCouncil/index.htm>, which represents information as it was reported by City officials and confirmed by the Council Assistant. Form 802 data represented in this report may contain duplicate reporting or data entry errors made by persons reporting or confirming the information. Additional data from the Council Assistant's records has been added into this report to compare the raw 802 data with available records showing which tickets were signed out by the Mayor or Councilmembers, or their staff, for the time period of January 1, 2015 through December 31, 2016. Submissions received after January 24, 2017, for tickets used between 2009 and 2016 are not included in the data for this report.

<sup>21</sup> Note that Councilmember McElhaney, as Council President in 2015-16, typically received four tickets to every event, rather than the 2 received by every other Councilmember.





Most notable in the above chart is the lack of reporting of tickets,<sup>22</sup> indicated in yellow, based on records provided to the Commission by the Council Assistant who distributes the tickets. This concern has already been discussed in the above sections on ticket delivery and reporting.

The graph also shows that, of the data that was reported, 747 tickets were used personally by Councilmembers and the Mayor or another public official, in 2015 and 2016, as shown in orange and red. Personal use of these tickets, including historical trends of the number of tickets used personally, alongside the value of the tickets that were used, is discussed in detail below.

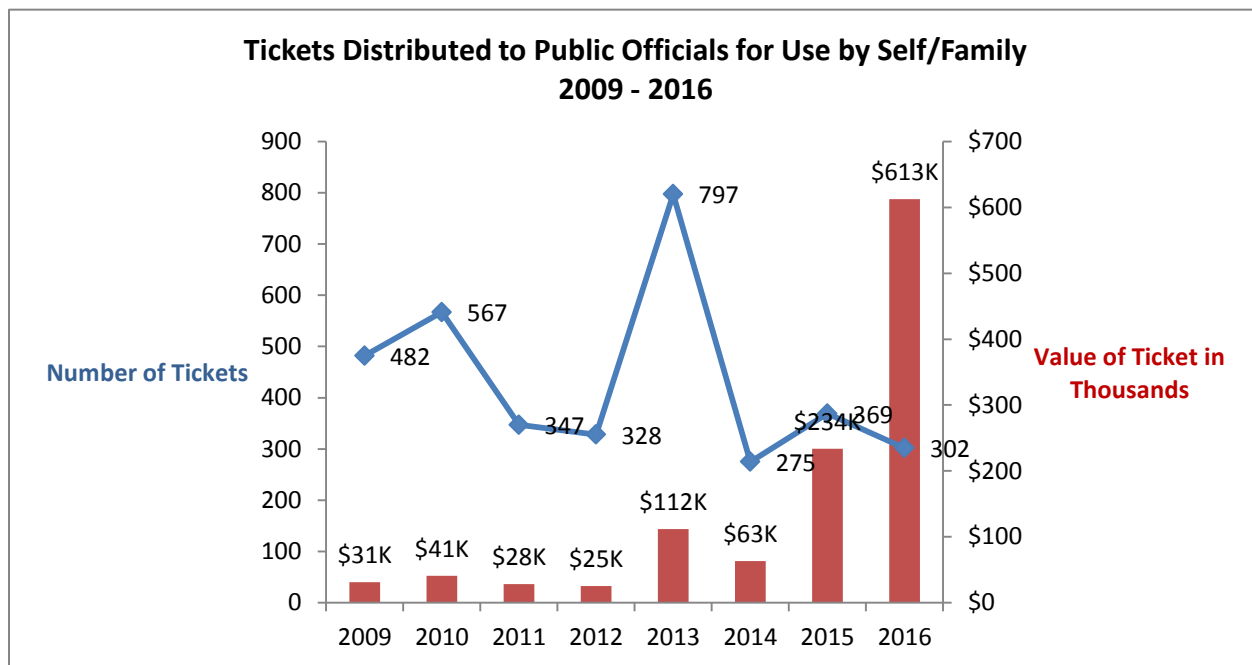
Meanwhile, other notable observations of the above chart are the extent to which tickets are used by City staff (green), the extent to which tickets are left unused (purple), and the number of tickets going to third parties (blue) – all points to be discussed below.

### Value of Tickets Personally Used by Officials

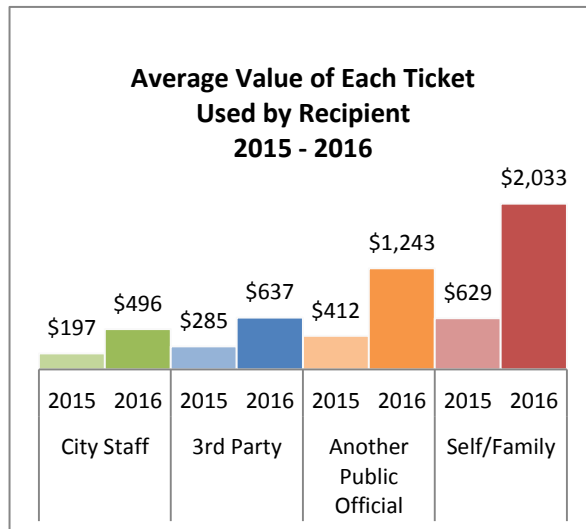
While the data above indicates that Councilmembers and the Mayor, or another public official, used a combined total of 747 tickets in 2015 and 2016, a closer look at the trends of reported information over

<sup>22</sup> In March 2017, after the Commission released a draft of this report, at least one Councilmember returned to the Council Assistant a large number of unused tickets that previously had not been reported in the Form 802 database. Submissions received after January 24, 2017 for tickets used between 2009 and 2016 are not included in the data for this report.

the years shows a general decline in the total number of tickets used by public officials, with the exception of a spike in the year 2013.<sup>23</sup> While there has been an overall decline in the number of tickets personally used, the total reported face value of tickets used by public officials increased dramatically in recent years, seemingly in correlation to the success of the Golden State Warriors and the Oakland Raiders, with some tickets valued at \$5,000 or \$10,000 each.



While the graph above shows the overall decrease in number of tickets being personally used by officials compared with the increase in overall value of tickets they used, we further see that public officials have been the greatest beneficiaries of the higher value tickets in the graph to the right, which displays the breakdown of the value of City tickets used by each type of recipient. Tickets going to elected officials average more than double the face value of tickets going to City staff and third parties in 2015 and 2016. This suggests that public officials have been using the more expensive tickets themselves, for the purpose of “reviewing facilities,” while providing the less expensive tickets to City staff and third party individuals.



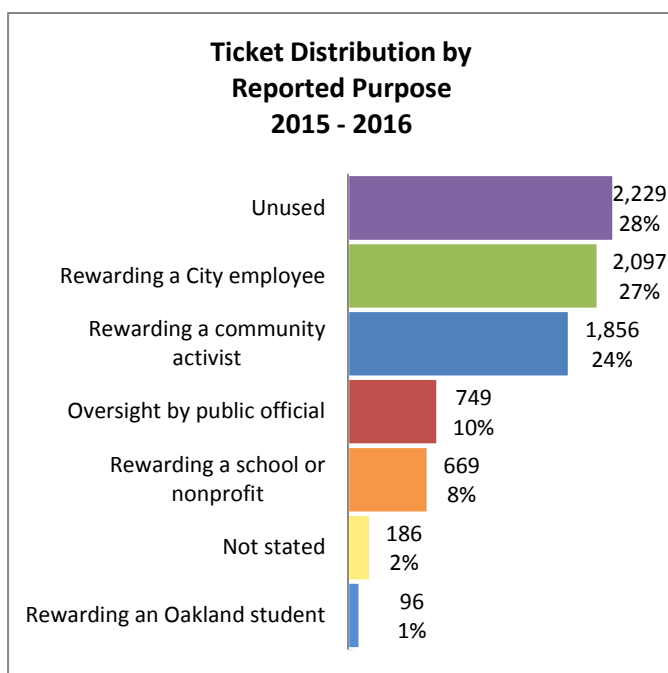
<sup>23</sup> In 2013, roughly 1,000 more A's tickets were provided to the City and reflected in the number of tickets used by elected officials and other recipients alike.

## Reasons for Personal Use by Officials

According to the Form 802 data reported by Councilmembers and the Mayor, all of the 747 tickets that were used by Councilmembers were for oversight-related purposes. Two Councilmembers personally used more than 200 tickets over the two-year period for the purpose of reviewing facilities, with the remaining officials reporting roughly 40 or 80 tickets each for the two-year period.

Although “oversight or review of facilities”<sup>24</sup> was the identified reason for elected official use of City tickets, during the Commission’s review, some public officials commented that they do not attend games and events to oversee facilities or review operations, rather, they go to enjoy the show or they viewed tickets as a perk of office.

Based on its review, the Commission believes that one or two games or events per year, per facility, would be sufficient to enable an official to oversee or review the stadium/arena facility and its operations, and to advance the City’s interests. Furthermore, the Commission does not believe that “reviewing facilities” should be an allowable purpose for using a high-value ticket, such as a playoff game.



Other cities in California, some following newspaper reports of ticket overuse by city officials, have more recently adopted policies limiting the number of tickets given to city officials, requiring that almost all tickets be distributed out for community purposes, expanding the substantive list of reasons for tickets to be used by outside individuals, and providing levels of priority for certain city purposes.<sup>25</sup> Oakland is overdue for a revision to its Ticket Policy in light of the evolution of reforms occurring statewide on this issue, and in light of the abuse of the “reviewing facilities” exception in the City’s policy.

## Distribution to City Staff

As shown in the graph on page 11, ticket data indicates that 2,209 tickets went to City staff in 2015-16. According to reported Form 802 data, the typical reason that tickets are provided to City staff is “rewarding a City of Oakland employee for his/her exemplary service to the City.” However, ticket use

<sup>24</sup> “Oversight or review of facilities” appears in the data in the following different forms: “Oversight of facilities or events that have received City funding or support,” “Oversight of facilities or events that may require City funding or support in the near future,” “Reviewing a facility’s contribution to blight abatement within a Redevelopment Area,” “Reviewing the ability of a facility & its operator & or a local sports team to attract business and contribute to the local economy,” “Reviewing the ability of a facility or its operator to participate in the City’s job creation goals or job training programs,” and “Reviewing the contribution of a facility or an event to the City’s goals for fostering arts and culture opportunities for City Residents.”

<sup>25</sup> See Sacramento, Los Angeles, and San Diego Ticket Policies.

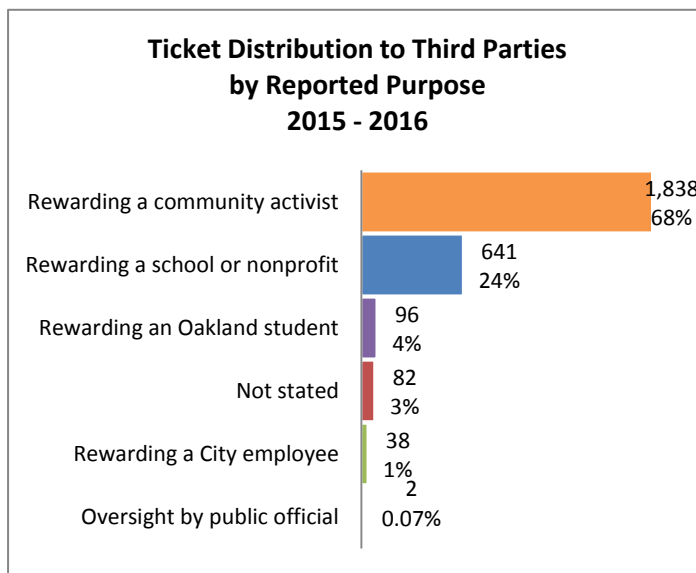
by City staff shows certain staff receiving large numbers of tickets to events – with at least a dozen employees receiving 40 or 50 tickets each, and a few receiving 80 or 90. Two of these top ticket recipients provide direct administrative assistance with the ticket distribution process, and most of the top ticket recipients, other than elected officials, consist of Council or Mayor’s office aides. These individuals are also among the ticket recipients who have received the highest value tickets. Anecdotally, the Commission heard an example that likely occurs across offices: that a Council aide responsible for distributing tickets for their Councilmember may decide to go to a game last-minute because they were unable to find someone to use the tickets. Again, this points to flaws in the system by which Councilmembers receive batches of tickets and are then responsible for distributing them. But it also speaks to the need for express limitations as this level of tickets distribution puts these individuals at risk of violating the public purpose of the City policy and other laws.

Similar to the need for a limit on the personal use of tickets by elected officials, the Commission believes the same is true for tickets provided to staff in reward for their service – one or two tickets per event or facility, per year, would provide plenty of reward for City employee service or to support employee morale. Staffers who are responsible for distributing tickets should not be allowed to distribute tickets to themselves and should not be using tickets to attend events, and certainly not dozens of events, unless they are part of the specific public purpose for which the distribution is made.

### Distribution to Other Third Parties

In addition to City staff, the data shows that 2,697 tickets went to a third party, such as an organization or individual outside of City government. Again, the data is difficult to rely on here due to the variation in how the Form 802 was filed and who the filer considered as a “third party,” which appears to occasionally include City staff as well.

Furthermore, Form 802 information regarding third parties is inconsistent and often lacks detail to show exactly where and why the ticket was distributed to the third party. Sometimes, the data will indicate the organization’s name and description, but most often, only an individual third-party’s name and the reason for the distribution are listed. For tickets going to a third party, the name of the individual ticket recipient, his or her organization, and a description of the organization should be mandatory (name, address, and organization description are required by state law), and tickets should not be provided to any third party without receiving this information.



Under the current system, elected officials, with their batches of tickets they automatically receive and are expected to distribute, are in a position to give many hundreds to thousands of dollars away to friends and family, or persons contributing to their campaigns, or any other third party as a “reward” for their service, achievement, or contributions to the community, leaving a gaping hole for officials to

discretionarily share a City resource with little to no accountability. This bolsters the Commission's view that the distribution of tickets must be centralized within the City executive branch, so that all persons seeking tickets go through the same process Citywide. Better reporting and more centralized, neutral, and consistent management of the distribution of tickets will help resolve some of the issues with distributing tickets to third parties.

### Unused Tickets

The Form 802 data further reveals that 2,229 tickets were left unused during the 2015 and 2016 calendar years, representing a surprising 28% of tickets reported as received by Councilmembers and the Mayor. This number is conservative as it does not include unused tickets that were unreported by officials.

The Commission learned that the Council Assistant distributes tickets every 30 days based on an understanding that the relevant rules and regulations require the City to determine within 30 days of the event where the tickets are going. This distribution schedule applies even if tickets were delivered all at once at the start of the sports team's season. Occasionally, for playoff games or other late-scheduled events, tickets may be delivered the week or day of the event.

Such a distribution schedule, which potentially results in an inefficient use of tickets, is unnecessary. The City policy merely requires that the Form 802 data be submitted within 25 days of the Councilmember *receiving* the ticket (the FPPC allows 45 days to report); it does not prohibit the tickets from being *distributed* sooner than 25 days before the event.

If all season tickets were made available at the start of the season, or as soon as received, presumably the tickets could be more easily and effectively distributed with advance notice to potential ticket recipients in order to maximize the available value to Oaklanders. Providing a catalog of available games as soon as tickets are available, and, more importantly, requiring all Form 802 data to be submitted before any ticket is handed out, could lead to better utilization and reporting outcomes.

Indeed, to avoid wasted tickets when Councilmembers or the Mayor declines to use tickets or do not pick them up, there should be a program in place for alternate distribution of the leftover tickets.

#### ***Mills College Students' Recommendation for the Distribution of Leftover Tickets***

Graduate students enrolled in Professor Betsy Block's Public Policy (PPOL 230) course at Mills College, Lokey School of Business & Public Policy, assisted with the Commission's policy review. One of the Mills College students recommended, among other things, that the Commission consider the Community Access Ticket Service (CATS) as a recipient of unused tickets. According to its website, CATS is a nonprofit organization that aims to strengthen communities by providing positive arts and cultural opportunities to disadvantaged individuals by receiving donated tickets and distributing them to underserved populations. Specifically, CATS is committed to the following:

- Creating a more inclusive community through shared cultural experiences,
- Reducing the rate of recidivism with those clients currently involved with CATS partner agencies, and
- Creating a fan base and future patrons for cultural events throughout the Bay Area.

Community Access Ticket Service. Website accessed January 23, 2017. <http://www.communitytickets.org/index.html>.

The Commission thanks the students in Professor Block's class for their contributions to this report.

## Policy and Process Needs Reform, Enforcement

Given all of the problems described above, the Commission recommends a number of changes to the City's policy and process for distributing City tickets, including the following: revising the City Ticket Distribution policy to more clearly define and limit the use of tickets for public purposes, imposing specific limits on the use of tickets by elected officials, and shifting the receipt and distribution of tickets from the Council offices to the City's executive branch.

Other California cities have instituted changes, restrictions and oversight on the receipt and use of tickets by elected officials, including declining tickets entirely from the local sports arena (Santa Clara), authorizing the local ethics commission to oversee and enforce the ticket distribution policy (Los Angeles), creating a ticket distribution program in the executive branch of City government (Sacramento), setting priorities for how the tickets are to be used (San Diego), and limiting the number of tickets that public officials receive (San Diego and Sacramento).

The City of Oakland is in a position, with its expanded ethics commission and renewed focus on ensuring that effective ethics policies and procedures are in place, to redesign its process for receiving and distributing the thousands of tickets it receives each year so that this City resource is put to its highest and best public purpose and in a manner that complies with state and local law.

While the above sections focus on the process by which City tickets are distributed by the City of Oakland, the next section discusses the process by which the Coliseum Authority distributes its set of tickets to a few Oakland officials pursuant to the Authority's own process and ticket distribution policy.

## COLISEUM AUTHORITY TICKET POLICY AND PROCESS

### Coliseum Authority Distributes Tickets to the City Administrator, City Attorney, and Two Councilmembers

As mentioned above, aside from the tickets the City receives directly pursuant to its contract with the teams, the Coliseum Authority receives its own set of tickets (Suites M-39 and L-16) that are distributed directly through to Authority Board members and other individuals upon request on a first come, first served, basis.

Two City Councilmembers sit on the Coliseum Authority Board as representatives of the City and are eligible to receive 2 suite tickets to every game and event. The Authority tickets received by these two Councilmembers are in addition to the City tickets provided through the large batch given to the City, as described in the earlier section of this report. Thus, these two Councilmembers have the ability to receive double the amount of tickets for each event, albeit the Authority tickets are distributed to the Councilmembers upon request rather than automatically.

In addition, the Authority distributes 2 of its suite tickets to every event to City Administrator Sabrina Landreth and 2 suite tickets to every event to City Attorney Barbara Parker as additional “Authority Officials” who assist in the administration of the Coliseum Authority.

#### **Authority Ticket Recipients**

In 2016, members of the Authority Board included the following individuals:

1. Christopher Dobbins
2. Aaron Goodwin
3. Rebecca Kaplan (Oakland City Councilmember)
4. Scott Haggerty (Alameda County Supervisor)
5. Yui Hay Lee
6. Nate Miley (Alameda County Supervisor)
7. Larry Reid (Oakland City Councilmember)
8. Mary Warren

Other “Authority Officials” who are entitled to receive Authority tickets include the following:

1. City Administrator Sabrina Landreth
2. City Attorney Barbara Parker

Scott McKibben, Executive Director, Oakland Alameda County Coliseum Authority, Oral testimony to the Public Ethics Commission, November 30, 2016.

For all individuals who receive tickets directly from the Authority, the required Form 802 is filed with the Authority and made available to the public on the Authority’s website.<sup>26</sup> Based on this data, Oakland city officials received 1,127 tickets to events in the single year of 2016 (as opposed to the data in the prior section, which reviewed the two-year span of 2015-16).

### Coliseum Authority Policy

Authority tickets are governed by the *Oakland Alameda County Coliseum Authority Policy for the Distribution of Tickets* (Coliseum Authority Policy) which provides the following “public purpose” reasons for the distribution of Authority tickets to “Authority Officials:”

1. To supervise the managing agent,
2. To ensure that all duties of the Licenses are fulfilled,
3. To investigate the efficiencies of the operations of the various sporting and other events that occur at the Coliseum Complex,

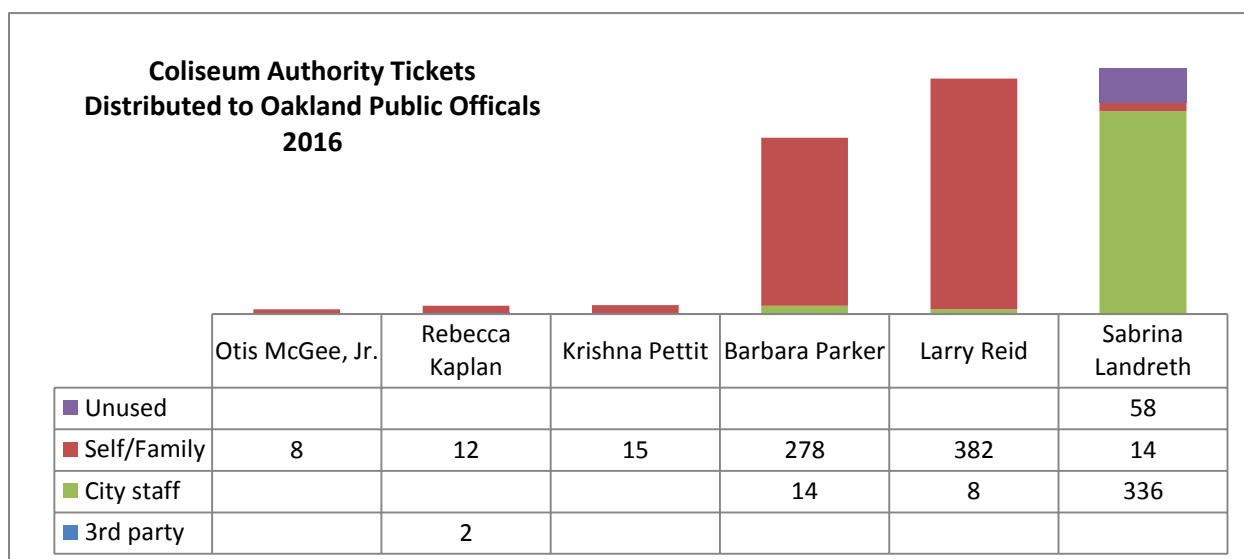
<sup>26</sup> Oakland Alameda County Coliseum Authority, *Public Information*, <http://www.oraclearena.com/oacca/public-information>, accessed on November 14, 2016.

4. To promote the Coliseum Complex for use by the general public and businesses to maximize revenues,
5. To provide opportunities to community groups to utilize the facility,
6. To review the performance of food and beverage concessionaires,
7. To observe the conduct of the managing agents' employees and subcontractors,
8. To provide incentives to City and County employees that provide services to the Authority, and
9. To investigate complaints of the Warriors, the Raiders and the A's about the Complex

A copy of the Coliseum Authority Policy is appended to this report.

## Use and Distribution of Authority Tickets by Oakland Officials

Below is a summary of Coliseum Authority tickets given to City of Oakland staff and officials, based on data reported on Form 802s that are posted on the Coliseum Authority's website.<sup>27</sup>



City Administrator Sabrina Landreth reported receiving 408 tickets in 2016, using 14 tickets herself/family, distributing 336 tickets to City staff, and leaving 58 tickets unused. The City Administrator's office has put a comprehensive program in place to reward City staff for their service, taking nominations from City departments for staff who are deserving of City tickets, and distributing the tickets to these staff, who, according to City Administrator Analyst Serenity Mlay, often are excited and honored to receive the tickets.

According to the Form 802 filings submitted to the Coliseum Authority, the Oakland City Attorney Barbara Parker received 292 tickets in 2016, using 278 herself/family to "investigate the efficiencies of the operations of the various sporting and other events that occur at Coliseum Complex," and distributing the remaining 14 tickets to City staff.

<sup>27</sup> Otis McGee, Jr. and Krishna Pettit are staff in the City Attorney's Office.



Councilmember Larry Reid received 390 tickets in 2016, using 382 for himself/family to “investigate the efficiencies of the operations of the various sporting and other events that occur at the Coliseum Complex” or “to promote the Coliseum Complex for use by the general public and businesses to maximize revenues.” He distributed 8 tickets to City staff.

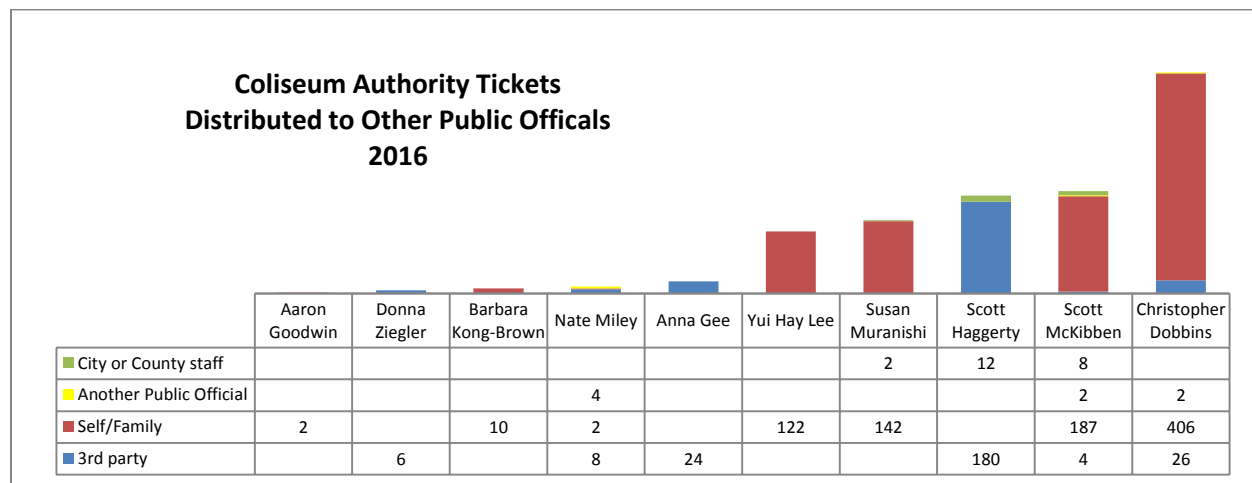
Councilmember Rebecca Kaplan received 14 tickets in 2016, using 12 for herself/family to “promote the coliseum for use by the general public and business to maximize revenues.” She distributed 2 tickets to a third party.

Also included in the above graph are two employees in the City Attorney’s office who received tickets as a result of their assistance on Coliseum Authority business.

Similar to the Commission’s conclusion regarding limits on the personal use of tickets in the prior section, the Commission reiterates its view that one or two games or events per year, per facility, would be sufficient to enable an official to oversee or investigate the stadium/arena facility and its operations, and to promote the Coliseum Complex. Furthermore, the Commission does not believe that “investigating efficiencies of the operations” of the facility should be an allowable purpose for using a high-value ticket, such as a play-off game.

### Commission Concerns Regarding Authority Tickets

Tickets provided by the Authority to Oakland elected officials are not within the purview of the Public Ethics Commission, except to the extent that failure to adhere to the Authority Policy results in an unlawful gift to the public official under the Oakland Government Ethics Act. In addition, the Commission notes that the City, as a partner in the Coliseum Authority, should be aware of the extent of the use of Coliseum Authority tickets. Below is a summary of the data for all recipients of Authority tickets in 2016.



In sum, as part of the process of reviewing the City’s policy and process, the Commission learned about the Coliseum Authority’s process – and its overlap with the City’s process – and makes the following observations to the Mayor, City Administrator, City Attorney, and City Council who are the City’s

representatives in relation to the Coliseum Authority and who are in a position to effect policy changes within the Coliseum Authority:

1. The Form 802 data is buried on the Authority's website, in one large, scanned ".pdf" document for each month; the data is not provided in an open data format that is easily searchable by the public.
2. The Authority's ticket policy does not limit the number of tickets provided to "authority officials," nor does it require any activity by each authority official to conduct a written review or summary of observations made by the authority official attending each event to ensure that they are providing a service to the Authority each time they attend an event with their guest.
3. The Authority's ticket policy should be amended to more clearly articulate the public purpose and limit the number of tickets available to authority officials so that the use of the tickets is for a specific public purpose and not merely as a perk of authority membership.
4. The Coliseum Authority is a joint operation between the City of Oakland and the County of Alameda, partly funded with taxpayer money, so tickets received by the Authority are public resources and should be managed effectively and utilized for the public good.

## CONCLUSION AND RECOMMENDATIONS

The Commission's review of the City's distribution and reporting of tickets received by the Oakland Coliseum and Oracle Arena identified multiple problems that need to be addressed, including the following:

- The City receives and distributes thousands of tickets each year in a manner that is poorly managed, allows tickets to be handed out to officials despite some officials failing to report ticket information as required by law, and permits public officials and other ticket recipients to claim purported reasons for the use of each ticket that is inconsistent with the nature or extent of their ticket use.
- The receipt and use of tickets by City officials who are involved in negotiating, drafting, and approving the contracts under which the tickets are provided to the City presents significant, inherent ethics concerns in the area of conflicts of interest and self-dealing.
- City tickets have been viewed as a perk of office or employment rather than a public asset to be managed and utilized for a public purpose as required by law.
- Form 802 (ticket use) data is incomplete, with several officials failing to file legally-required information; the data also is difficult to find and not provided to the public in an open data format that is searchable and easily consumed by the public.
- Thousands of luxury suite tickets go unused by the City each year, wasting thousands of dollars in City resources, and, due to the design of the distribution process, elected officials have been required to submit hundreds of unnecessary reports of unused tickets.
- The City ticket policy provides vague and questionable reasons for attending events and lacks limitations on the allowable ticket use by officials and distribution to third parties, and the policy lacks an express enforcement mechanism to ensure compliance with the policy and the law.
- Separate from the City's ticket distribution policy and process, the Coliseum Authority's policy, which allows for the distribution and use of hundreds of tickets to certain City and Alameda County officials for facility oversight-related duties, raises many of the same ethical and public purpose concerns as in the City's policy.

The Commission acknowledges that, after the Commission released a draft of this report, Councilmember Kaplan proposed that the City seek to monetize the tickets the City receives through the leases at Oracle Arena and the Oakland Coliseum in lieu of receiving and distributing the tickets. While refusing these tickets would resolve many of the problems raised by this report, it would prohibit the City from distributing tickets that fulfill a public purpose, including staff recognition.

In addition, this report reviewed only tickets provided to the City for events at the Oakland Coliseum and Oracle Arena. It does not include a review of the distribution and reporting of other tickets received or distributed by the City and required to be reported using the Form 802. The revised policy recommended by the Commission in this report must also be designed to address all types of tickets received or distributed by the City and should be in place regardless of what happens with Oakland Coliseum and Oracle Arena tickets.

## Recommendations

To resolve the above concerns, the Commission recommends the following actions:


1. The City Council should adopt a revised ticket distribution policy, enforced by the Public Ethics Commission, to govern all tickets received or distributed by the City.
2. The revised ticket distribution policy should expand and diversify the allowable public purposes to reflect the full array of legitimate City purposes for which City tickets may be distributed, and the policy would limit the number of tickets that can be used by an individual elected official, City employee, or third party.
3. City tickets to Oakland Coliseum and Oracle Arena events should be received by a designated “ticket administrator” within the City’s executive branch. The Mayor or City Administrator should designate a staff person as a “ticket administrator” to receive, control, track and distribute Oakland Coliseum and Oracle Arena tickets according to the ticket policy, and the “ticket administrator” should not release any ticket without first receiving the required Form 802 information from the ticket recipient.
4. The “ticket administrator,” with assistance from the Department of Information Technology and the Public Ethics Commission, should ensure that the Form 802 filing system comports with the policy and provides appropriate drop-down choices and other controls to maximize the quality of the data that is collected by the system. Form 802 data should be provided to the public on the City Council website and on the City’s Open Data Portal (Socrata) in an open, searchable, downloadable, CSV format for easy public access.
5. The City Council, Mayor, and City Administrator should advocate for changes to the Coliseum Authority’s policy and process for distributing the sets of tickets received and distributed separately by the Coliseum Authority so that the Authority policy comports with state law and so that mass numbers of tickets, arguably provided at public expense, are not used by Coliseum Authority officials under the guise of “reviewing facilities” and similar purposes to the extent noted in this report.
6. City officials, including the City Attorney, City Administrator, and City Councilmembers, who also serve as Coliseum Authority members or support staff, should decline to receive tickets provided to them directly from the Coliseum Authority pursuant to the Coliseum Authority’s ticket policy. Instead, these City officials should request tickets solely through the City’s executive branch to ensure that all Oakland officials adhere to the policy, follow City laws, and use tickets for City of Oakland “public purposes,” which differ from the purposes allowable for Coliseum Authority members.

The Commission is committed to ensuring that the above recommendations are considered and implemented. The Commission’s *ad hoc* Ticket Policy subcommittee has already developed an initial draft of a revised ticket distribution policy for the City and is working with City staff and officials to ensure that the policy is properly designed to cover all tickets received and distributed by the City – not just tickets to Oakland Coliseum and Oracle Arena events. The Commission will continue to collaborate with City administrative staff and elected officials to ensure that the ticket distribution policy and process are effective, comply with state and local law, and are appropriately used for legitimate public purposes.

## **APPENDIX 1 – CITY OF OAKLAND TICKET POLICY**



2009 MAY 26 PM 2:11

APPROVED FOR FORM AND LEGALITY  
  
CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION No. 82032 C.M.S.

**RESOLUTION ENACTING A POLICY FOR THE RECEIPT AND  
DISTRIBUTION OF PASSES AND TICKETS BY CITY OF OAKLAND  
OFFICIALS AND REPEALING RESOLUTION NUMBER 75052 C.M.S.,  
ADOPTED JUNE 15, 1999**

WHEREAS, Resolution number 75052 C.M.S. was adopted June 15, 1999, enacting a policy to enable City of Oakland officials to receive certain passes and tickets without these passes and tickets being considered gifts pursuant to the Political Reform Act; and

WHEREAS, the Fair Political Practices Commission amended their regulation upon which the City's existing pass and ticket policy is based; and

WHEREAS, Resolution number 75052 C.M.S. should be repealed to provide for the adoption by new resolution of a revised policy for the receipt and distribution of passes and tickets by public officials that reflects the new regulation; now, therefore be it

RESOLVED: The Council of the City of Oakland hereby repeals Resolution number 75052 C.M.S., and enacts the policy attached hereto as "Attachment A" for the distribution and receipt of passes and tickets pursuant to state law (Gov. Code, 89503 and Cal. Code of Reg., Tit. 2, Div. 6 §§ 18940.2 and 18944.1); and be it

FURTHER RESOLVED: That the Council hereby adopts the City of Oakland Policy for Receipt and Distribution of Passes and Tickets attached hereto as Attachment A, which is incorporated by reference in its entirety in this Resolution as if fully set forth herein.

IN COUNCIL, OAKLAND, CALIFORNIA, **MAY 19 2009**

**PASSED BY THE FOLLOWING VOTE:**

AYES - KERNIGHAN, NADEL, ~~QUAN~~, DE LA FUENTE, ~~REID~~, ~~BROOKS~~, KAPLAN, AND PRESIDENT BRUNNER - 5

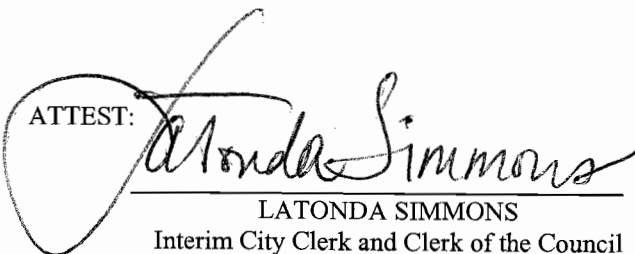
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Quan, Reid, Brooks - 3

ATTEST:

  
LATONDA SIMMONS  
Interim City Clerk and Clerk of the Council  
of the City of Oakland, California

## ATTACHMENT A

### CITY OF OAKLAND POLICY FOR RECEIPT AND DISTRIBUTION OF PASSES AND TICKETS

#### **I. INTRODUCTION**

The purpose of this policy is to describe the “governmental purpose” to be achieved by way of the distribution of tickets or passes to City officials, and to provide the procedures for distribution of tickets to and from the City and its officials, by which those tickets or passes will not be considered gifts under the Political Reform Act.

#### **A. Certain Passes or Tickets Not Gifts**

The Fair Political Practices Commission in interpreting the Political Reform Act has established that, “‘ticket or pass’ means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose,” and that such a ticket or pass that is provided to an agency official **is not a gift to the official whenever** they are received or distributed in compliance with Regulation 18944.1 of the Fair Political Practices Commission, Title 2, Division 6, of the California Code of Regulations.

Passes or tickets received by the City of Oakland (“City”) or City officials may be used under conditions set forth in this policy to comply with Fair Political Practices Commission Regulation 18944.1. All City agencies, offices, departments, boards and commissions affected should appoint an individual responsible for records management and for receipt and distribution of tickets or passes in order to meet the standards of this Fair Political Practices Commission regulation.

#### **B. Political Reform Act Gift Definition**

The Political Reform Act defines a gift, with certain enumerated exceptions as:

**“any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received** and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.” (Gov. Code § 82028 subd. (a).)

The enumerated exceptions to the gift definition of Government Code section 82028, subdivision (a) are found in subdivision (b) and include:

- “(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement of any expenses shall be deemed “informational material.”
- (2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.
- (3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a



gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 of this title.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).”

**C. Political Reform Act Gift Ceiling**

The Political Reform Act places a ceiling on the value of gifts that may be received by certain local officials, including: the Mayor, City Council members, the City Attorney, and the City Auditor, and candidates for those offices; City Manager, City Treasurer, employees who manage public investments and the Planning Commission. All employees, consultants and members of boards or commissions included in the City’s Conflict of Interest Code are subject to the gift ceiling as well.

The cumulative gift ceiling per single source is four hundred twenty dollars (\$420) each calendar year for the period January 1, 2009, through December 31, 2010. The Fair Political Practices Commission effective may adjust the gift ceiling effective January 1, 2011, and annually after that.

**II. EXEMPTIONS**

According to the California Code of Regulations, Title 2, Division 6, Section 18944.1, tickets that are distributed under the following circumstances will not be classified as gifts:

**A. Ticket or pass provided by source other than official's agency - Section 18944.1 (a)**

Where a ticket or pass is provided **directly to the official by a third party**, it will not be considered a gift where the ticket or pass is provided for the official’s admission to an event at which the official performs a ceremonial role or function on behalf of the agency. In this case, the distribution of the ticket or pass is **not required** to be posted on FPPC Form 802 (See Attachment 1) on the agency's website.

**B. Ticket or pass provided to official by official's agency - Section 18944.1 (b)**

A ticket or pass will not be considered a gift to the official when it is provided to the official **from the City of Oakland** (i.e., not from a third party) under the following circumstances:

- (1) Where the official treats the ticket or pass as income consistent with applicable state and federal income tax laws, and the agency reports the distribution of the ticket or pass as income to the official;
- (2) Where the City obtained the ticket or pass pursuant to the terms of a contract for use of public property (such as the Oakland Coliseum);
- (3) Where the City controls the event;
- (4) Where the City purchased the ticket or pass at fair market value;
- (5) Where the City receives the ticket or pass from a third party, and the ticket or pass is not earmarked by the third party for use by a particular official, and the City determines, in its sole discretion<sup>1</sup>, which official may use the ticket or pass.

In all five cases above, the distribution of the ticket or pass must be made in furtherance of a “governmental purpose” listed in Section III herein, and the City must post the ticket distribution

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<sup>1</sup> The “City” for this purpose includes the Mayor, The City Administrator, or the Council President.

information on an FPPC Form 802 (see Attachment 1) in a prominent fashion on the agency's website, within 30 days after the distribution. See Section V herein for the procedures to be followed.

### **III. "GOVERNMENTAL PURPOSE"**

In accordance with FPPC Regulation 18944.1, the distribution of any ticket or pass by the City to one of its officials, or distributed to a third party at the request of one of its officials, must accomplish a "governmental purpose" of that agency. The "governmental purposes" of the City to be accomplished by the distribution of tickets or passes include:

- Oversight of facilities or events that have received City funding or support;
- Oversight of facilities or events that may require City funding or support in the near future;
- Reviewing a facility's contribution to blight abatement within a Redevelopment Area;
- Reviewing the ability of a facility, its operator, or a local sports team to attract business and contribute to the local economy;
- Reviewing the ability of a facility or its operator to participate in the City's job creation goals or job training programs;
- Reviewing the contribution of a facility or an event to the City's goals for fostering arts and culture opportunities for City residents;
- Rewarding a City of Oakland employee for his/her exemplary service to the City;
- Rewarding a community activist for his or her service to the City of Oakland;
- Rewarding a school or nonprofit organization for its contributions to the community; and
- Rewarding an Oakland student for outstanding scholastic achievement.

### **IV. PROHIBITED TRANSFERS**

Once a ticket has been distributed by the City to one of its officials in accordance with FPPC Regulation 18944.1, that official may not transfer that ticket to any other person other than members of the official's immediate family solely for their personal use. If more than one ticket is distributed to the official, the official may use the extra ticket(s) to bring a guest (or guests) to the ticketed event, if the official is also in attendance. Please see Section V(B) below for the procedures by which the City may transfer a ticket to a third party at the request of a City official.

### **V. PROCEDURES AND GUIDELINES**

#### **A. When the City Distributes Tickets to a City Official.**

The following procedures will be followed when the City distributes a ticket or pass to a City official:

- (1) Upon distribution of the ticket or pass on behalf of the City, the public official who receives the ticket or pass ("Recipient Official") will sign for the ticket or pass and acknowledge that the ticket is for use by herself or himself, his or her spouse or immediate family.
- (2) Within twenty-five (25) calendar days of receiving the ticket or pass, the Recipient Official will complete the City's online form that is similar to FPPC Form 802, which may be found at: <http://www.oaklandnet.com>. The completed online form will include all of the following information:
  - (a) the name of the official receiving the ticket or pass;
  - (b) a description of the event;
  - (c) the date of the event;
  - (d) the face value of the ticket or pass;

- (e) the number of tickets or passes provided to each person;
  - (f) a description of the public purpose under which the distribution was made, in accordance with Section III herein, or, alternatively, that the ticket or pass was distributed as income to the official.
- (3) Upon completing the online form, the Recipient Official will submit it to the Executive Assistant to the City Council ("Distributing Official") for his/her approval.
  - (4) Within five (5) days of receiving the completed online form, the Distributing Official will approve the completed form and post it in a prominent fashion on the City's website.

**B. Distributing Tickets to a Third Party on Behalf of a City Official.**

No City official may transfer a ticket or pass distributed to such official pursuant to this policy, to any other person, except to members of the official's immediate family solely for their personal use. However, a ticket or pass may be distributed to any person or organization by the City at the request of a City or Agency official if the distribution of the ticket or pass accomplishes one of the public purposes listed in Section III herein and where the following procedures are followed:

- (1) The City official requesting the distribution ("Requesting Official") will make a written (or emailed) request that the Distributing Official distribute the ticket to a third party.
- (2) The Distributing Official will distribute the ticket or pass to the third party, either in person or by mail.
- (3) Within twenty-five (25) calendar days of making the written request for the distribution of a ticket or pass to a third party, the Requesting Official will complete the City's online form that is similar to FPPC Form 802, which may be found at: <http://www.oaklandnet.com>. The completed online form will include all of the following information:
  - (a) the name of the person to receive the ticket or pass, except that if the ticket or pass is distributed to an organization, the requesting official will provide the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;
  - (b) a description of the event;
  - (c) the date of the event;
  - (d) the face value of the ticket or pass;
  - (e) the number of tickets or passes provided to each person;
  - (f) the name of the official who requested that the ticket or pass be distributed to the third party; and
  - (g) a description of the specific public purpose under which the distribution was made, in accordance with Section III herein.
- (4) Upon completing the online form, the Recipient Official will submit it to the Executive Assistant to the City Council ("Distributing Official") for his/her approval.
- (5) Within five (5) days of receiving the completed online form, the Distributing Official will approve the completed form and post it in a prominent fashion on the City's website.

**VI. TICKETS AND PASSES THAT DO NOT MEET THE STANDARDS OF SECTION 18944.1**

A gift of a tickets or pass which does not meet the standards of section 18944.1 is subject to the disclosure, reporting and disqualification requirements of the Political Reform Act. Such gifts must be declared by a City Official on his or her Annual Statement of Economic Interests. The Political Reform Act limits gifts to elected local officials to a cumulative amount of \$420 from each donor per calendar year. Since 1993, the Fair Political

Practices Commission adjusts the gift limitation on January 1, of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the next nearest ten dollars (\$10). (Gov. Code § 89503.) The Fair Political Practices Commission has adjusted the **annual gift limitation amount to \$420** for the period **January 1, 2009, to December 31, 2010**. (Cal. Code of Reg. Tit 2, Div. 6, §18940.2.)

## **VII. CAVEAT**

These policies and guidelines are not a substitute for legal advice. Only the Fair Political Practices Commission can provide immunity from prosecution for the legal advice that it offers. Please consult the City Attorney's Office if you have questions about reporting, disclosure and disqualification requirements regarding tickets and passes and the City Attorney and his staff can provide advice and assist you in obtaining advice from the Fair Political Practices Commission.

## **APPENDIX 2 – COLISEUM AUTHORITY TICKET POLICY**



## OAKLAND ALAMEDA COUNTY COLISEUM AUTHORITY

### POLICY FOR THE DISTRIBUTION OF TICKETS

ADOPTED IN ACCORDANCE WITH FPPC REGULATION §18944.1

#### **Background**

*Tickets Received by the Authority pursuant to a Contract.* The Oakland Alameda County Coliseum Authority (the "Authority") is the lessor and manager of the Oakland Alameda County Coliseum Complex (the "Complex"). Pursuant to a Management Agreement between the Authority, as lessor under a Master Lease, and the City of Oakland (the "City") and the County of Alameda (the "County"), as joint lessees under the Master Lease and pursuant to license agreements (collectively, the "Licenses"), the Authority licenses the Oracle Arena (the "Arena") located at the Complex to the Golden State Warriors (the "Warriors") and the Stadium located at the Complex to the Oakland Raiders (the "Raiders"). Each of the Licenses excludes three suites used by the City, the County and the Authority and provides that the Raiders, the A's and the Warriors, respectively, will provide tickets of admission in such suites to their respective events and events for which they control the distribution of suite tickets. Additional events are occasionally held at the Coliseum Complex under the control of the Authority for which the Authority's agent provides tickets to the suites. In addition, occasionally promoters provide additional tickets to unsold events to the Authority, the City and the County for distribution.

*Authority Officials.* The Authority is organized pursuant to an Amended and Restated Joint Exercise of Powers Agreement (the "Agreement") between the City and the County. The Agreement establishes a Board of Commissioners as the governing body Authority and names the County Auditor as the Authority Auditor and the City Finance Director (now the Director of Finance and Budget) as the Authority's Secretary and Treasurer. In addition, the Agreement requires that the County Administrator and the City Manager (now City Administrator) provide administrative support to the Authority. The Agreement requires that the City Attorney and the County Counsel act jointly as the legal advisor to the Commissioners. The Authority, under its power to employ or engage other officers, also appoints an Executive Director. For purposes of this policy, the Commissioners, the Auditor, the Secretary/Treasury, the Executive Director, the City Administrator, the County Administrator, the County Counsel and the City Attorney are considered "Authority officials."



FPPC Regulations. Generally, the California Fair Political Practices defines a gift as anything received without equivalent remuneration. Public officials are required to file annually Statement of Economic Interests reporting all gifts over an annual limit. There are exceptions to this general rule, some promulgated by regulation of the Fair Political Practices Commission. Section 18944.1 of the Commission's regulations provides certain exceptions to the rule regarding the receipt of tickets or passes for admission to certain events and entertainment. This section requires that the Authority adopt a policy regarding the distribution of tickets to Authority officials. The rule also requires that the Authority post a form listing the recipients of tickets distributed by the Authority within 30 days of the date of distribution.

**Public Purpose of the Authority is the Operation of the Coliseum Complex.**

Under an Amended Management Agreement, dated as of July 31, 1996 (the "Management Agreement"), among the City of Oakland (the "City"), the County of Alameda (the "County") and the Oakland Alameda County Coliseum Authority (the "Authority"), the Authority contracts with the City of Oakland and the County of Alameda to manage the Coliseum Complex. The Management Agreement requires that the Authority to perform the operations of the Coliseum Complex and under the Licenses. The Authority subcontracts certain operational duties to a managing agent. To fulfill its management responsibility and its public purpose, the Authority has the continuing duty (1) to supervise the managing agent; (2) to insure that all duties of the Licenses are fulfilled; (3) to investigate the efficiencies of the operations of the various sporting and other events that occur at the Coliseum Complex; (4) to promote the Coliseum Complex for use by the general public and businesses to maximize revenues; (5) to provide opportunities to community groups to utilize the facility; (6) to review the performance of food and beverage concessionaires; (7) to observe the conduct of the managing agents' employees and subcontractors; (8) to provide incentives to City and County employees that provide services to the Authority; and (9) to investigate complaints of the Warriors, the Raiders and the A's about the Complex. To the extent the Authority distributes to an Authority official tickets for any of the foregoing purposes, the use of such tickets by such Authority official shall accomplish a public purpose of the Authority.



## **Distribution of Tickets**

The Executive Director or the Authority official designated by the Commissioners shall distribute all tickets received pursuant to the Licenses or in connection with events that the Authority or its agent controls to the Authority officials from time to time as required to accomplish the public purpose of the Authority as described in the preceding paragraph. The Authority officials may request that the Executive Director distribute tickets directly to specific persons or organizations that are not Authority officials provided that such distribution accomplishes the public purpose of the Authority as described in the preceding paragraph.

## **Use of tickets provided to the Authority pursuant to the Licenses or in connection with events the Authority controls**

No Authority official shall transfer any ticket provided to such Authority official to any other person; provided, however, that an Authority official may transfer any ticket provided to such Authority official to any member of such official's immediate family solely for personal use.



## **APPENDIX 3 – PUBLIC ETHICS COMMISSION**



## About the Public Ethics Commission...

The Public Ethics Commission (Commission) fosters transparency, promotes open government, and ensures compliance with ethics laws through a comprehensive approach that emphasizes prevention, enforcement, and collaboration. The Commission consists of seven Oakland residents who volunteer their time to participate on the Commission. Three members are appointed by the Mayor, City Auditor, and City Attorney, subject to City Council veto, and four members are recruited and selected by the Commission itself.

The Commission was created in 1996 with the goal of ensuring "**fairness, openness, honesty and integrity**" in City government and specifically charged with overseeing compliance with the following laws and policies:

- Oakland Government Ethics Act
- Oakland Campaign Reform Act
- Conflict of Interest Code
- City Council Code of Conduct
- Sunshine Ordinance
- Limited Public Financing Act
- Lobbyist Registration Act
- Oakland False Endorsement in Campaign Literature Act

Some of these ordinances grant the Commission specific powers of administration and enforcement. The citizens of Oakland have also entrusted the Commission with the authority to set the salary for Oakland City Council Members and the duty to adjust the salary by the Consumer Price Index annually. The Commission administers compliance programs, educates citizens and City staff on ethics-related issues, and works with City staff to ensure policies are in place and are being followed. The Commission also is authorized to conduct investigations, audits and public hearings, issue subpoenas, and impose fines and penalties to assist with its compliance responsibilities.

Beyond prevention and enforcement, the Public Ethics Commission enhances government integrity through collaborative approaches that leverage the efforts of City and community partners working on similar or overlapping initiatives. A collaborative approach recognizes that lasting results in transparency and accountability are achieved not through enforcement alone, but through a comprehensive strategy that aligns all points in the administration of City government – including clear policies and process, effective management and provision of staff resources, technology that facilitates the process, and public engagement. This policy review is an example of such a collaborative approach.

The Commission meets on the first Monday of every month at 6:30 p.m. in City Hall, and meetings are open to the public and broadcast locally by KTOP, Oakland's cable television station.



## ACKNOWLEDGMENTS

The Commission thanks its staff, including Executive Director Whitney Barazoto, Ethics Analyst Suzanne Doran, and Commission Intern Kelcie Brown, for their work in drafting this report and compiling the supporting data. The Commission also thanks the following individuals for their testimony during the Commission's November 2016 City Ticket Policy hearing: Scott McKibben, Executive Director of Oakland Alameda County Coliseum Authority; Susan Sanchez, Executive Assistant to the Oakland City Council; Serenity Mlay, City Administrator Analyst for the City of Oakland; Sukhi Brar, Senior Commission Counsel for the California Fair Political Practices Commission; and JoAnne Speers, Professor of Ethics and Public Policy at the University of San Francisco.

