

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



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

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

City Attorney Staff: Trish Hynes, Deputy City Attorney

REGULAR MEETING AGENDA

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

ACTION ITEMS

- 4. Approval of Commission Meeting Draft Minutes.**
 - a. March 4, 2019 Regular Meeting Minutes ([Attachment 1 – Minutes](#))
 - b. April 4, 2019 Retreat Meeting Minutes ([Attachment 2 – Minutes](#))
- 5. Council President Kaplan’s Proposed Amendments to the Oakland Campaign Reform Act.** Bobbi Lopez, Policy Director for Council President Rebecca Kaplan, will present Council President Kaplan’s proposed amendments to the Oakland Campaign Reform Act intended to expand disclosure of controlling officers of ballot measure and independent expenditure committees, among others, and require disclosure of campaign contribution solicitations made by City officials to persons doing business with the City or seeking to do business with the City. ([Attachment 3 – Staff Memorandum](#); [Attachment 4 – Council President Kaplan’s Proposed Legislation](#))
- 6. PEC Core Values for Inclusive Engagement.** At the Commission’s annual retreat on April 4, Commissioners engaged in a discussion about inclusive leadership and how to incorporate inclusive practices into its processes. One of the outcomes of that discussion was a suggestion that the Commission identify its own set of values for engaging with each other and with the public throughout the course of the

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Commission's work. Commission staff provides a draft set of values for Commission discussion and possible action. ([Attachment 5 – Draft Statement of Values](#))

7. **In the Matter of 11 West Partners, LLC; Case No. 18-19.** The Commission received a complaint in 2018 alleging that 11 West Partners, LLC, (11 West Partners) and its affiliated entities made multiple campaign contributions to Libby Schaaf's 2018 mayoral campaign in violation of the Oakland Campaign Reform Act (OCRA). Staff completed its investigation and found that 11 West Partners was subject to the contractor ban, and that the LLC and its affiliated entities made multiple contributions to the Libby Schaaf for Mayor 2018 committee in violation of the OCRA. Staff recommends that the Commission adopt the proposed stipulation, which has been signed by the respondent, for a total fine of \$5,600. ([Attachment 6 – Stipulation and Analysis](#))
8. **In the Matter of Amber Todd; Case No. 18-25M.** The Commission received a request for mediation alleging that Amber Todd, Assistant to the Director of Finance Department, failed to respond to a public records request made by the Requester on July 22, 2018. On September 14, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to the Requester's public records request, including a spreadsheet with 25,395 entries. The Requester was satisfied with the records produced during the mediation; thus, Staff recommends that the Commission close this mediation without further action. ([Attachment 7 – Memorandum](#))
9. **In the Matter of Oakland Police Department; Case No. 18-26M.** The Commission received a request for mediation alleging that the Oakland Police Department (OPD) failed to respond to a public records request made by the Requester on July 21, 2017. On September 19, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Although delayed, the OPD Records Division eventually provided documents responsive to Requester's request, and Staff recommends that the Commission now close this mediation without further action. ([Attachment 8 – Memorandum](#))
10. **In the Matter of Amber Todd; Case No. 18-30M.** The Commission received a request for mediation alleging that Amber Todd, Assistant to the Director of the Finance Department, failed to respond to a public records request made by the Requester on September 11, 2018. On October 19, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to the Requester's public records request. Because the Requester was satisfied with the records produced during the mediation, Staff recommends that

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the Commission close this mediation without further action. ([Attachment 9 – Memorandum](#))

DISCUSSION ITEMS

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

INFORMATION ITEMS

- 12. Education and Engagement Program.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Attachment 10 – Disclosure Report](#))
- 13. Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission’s enforcement work since the last regular Commission meeting. ([Attachment 11 – Enforcement Report](#))
- 14. Executive Director’s Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission’s last meeting. ([Attachment 12 – Executive Director’s Report](#))

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

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

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

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4/26/2019

Approved for Distribution

Date



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ATTACHMENT 1

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DRAFT



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

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

City Attorney Staff: Trish Hynes, Deputy City Attorney

REGULAR MEETING MINUTES

1. Roll Call and Determination of Quorum.

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

Members present: Commissioners Smith, Jackson, Crowfoot, Kong, and Maxson. Commissioner Butler was absent.

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, and Simon Russell. Kyle McLean, Intern, was present as well.

City Attorney Staff: Trish Hynes, Deputy City Attorney

2. Staff and Commission Announcements.

Whitney Barazoto, Executive Director, introduced the new Enforcement Chief, Kellie Johnson.

Commissioner Maxson shared there will be a BAYPEC meeting coming up on May 8, 2019 regarding Campaign Finance reform.

The City Auditor's office is recruiting to fill the City Auditor's vacancy on the Public Ethics Commission. The deadline for applicants is March 14, 2019.

Trish Hynes, City Attorney, updated the Commission that OCRA only regulates independent expenditures and not the content on mailers and ads.

3. Open Forum.

There was one public speaker.

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ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

- a. February 4, 2019 Regular Meeting Minutes

Commissioner Kong noted a typo on page 2, Item 5, line 4.

Commissioner Jackson moved and Commissioner Crowfoot seconded to approve the minutes with the update.

The motion passed 5-0.

5. Mediation Program.

Commission staff presented a summary of the Commission's Mediation Program. The Commission's discussed the item and made suggestions for clarification.

Commissioner Crowfoot moved and Commissioner Maxson seconded to approve the Mediation Request Form, giving staff discretion to make amendments to the form that incorporate Commissioners' comments and suggestions.

There was one public speaker.

6. Letter from the Public Ethics Commission.

Commissioners reviewed and discussed a draft letter to the Mayor and City Council articulating the Commission's request for additional positions as part of the City budget development process.

Commissioner Jackson moved and Commissioner Kong seconded to approve the letter with edits from Commissioners.

There were two public speakers.

DISCUSSION ITEMS

7. Reports on Subcommittees and Commissioner Assignments.

- a. **Campaign Finance Subcommittee** – Nayeli Maxson (Chair), Lisa Crowfoot, and James Jackson

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Commissioner Maxson provided an update. Commissioner Maxson and Ms. Barazoto spoke with two staff members from the ACLU of Northern California and are participating in the planning of the May 8 convening by the Bay Area Political Equality Convening (BayPEC).

There were no public speakers.

INFORMATION ITEMS

8. Civic and User Engagement Program.

Suzanne Doran, Lead Analyst, provided a report of recent education, outreach, disclosure and data illumination activities, including activities that previously were included in a separate report from Ethics Analyst Jelani Killings.

There were no public speakers.

9. Enforcement Program.

Simon Russell, Investigator and Acting Enforcement Chief through February 28, reported on the Commission's enforcement work since the last regular Commission meeting.

There were no public speakers.

10. Executive Director's Report.

Executive Director Whitney Barazoto noted that the Fair Political Practices Commission is reviewing and updating its regulation governing ticket distribution and use by elected officials, and FPPC staff reached out to Oakland to hear about the City's experience.

The Commission suspended open session and convened for closed session at 7:55 p.m.

There were no public speakers.

CLOSED SESSION

11. Executive Director Performance.

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

The meeting reconvened for open session at 9:03 p.m. There were no announcements from closed session.

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There were no public speakers.

The meeting adjourned at 9:05 p.m.

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CITY OF OAKLAND
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One Frank Ogawa Plaza (City Hall)
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Hearing Room 4
3:00 p.m.

DRAFT



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

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

City Attorney Staff: Trish Hynes, Deputy City Attorney

SPECIAL MEETING MINUTES

1. Roll Call and Determination of Quorum.

The meeting was called to order at 3:09 p.m.

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

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, Jelani Killings, Kyle McLean, and Simon Russell.

City Attorney Staff: Trish Hynes, Deputy City Attorney

2. Staff and Commission Announcements.

Commissioner Crowfoot announced she will be leaving her Commissioner seat in the summer and has notified the Mayor's Office to appoint a replacement.

Commissioner Smith announced that the League of Women Voters will be holding a Citywide luncheon on April 11.

3. Open Forum.

There were no public speakers.

ACTION ITEMS

4. Public Ethics Commission Annual Report for 2018.

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Executive Director Whitney Barazoto presented the Commission's Annual Report for 2019, noting the Commission's role as filing officer that allowed Commission staff to offer valuable support for candidates and committees at the front end that led to significantly enhanced campaign finance compliance that reduced the need for enforcement overall. This highlights the real benefit of serving as both filing officer/collector of the information as well as enforcer, to both educate and support candidates and committees early in the process to avoid unnecessary enforcement.

Commissioner Jackson moved and Commissioner Maxson seconded to approve annual report.

The motion passed 6-0.

DISCUSSION ITEMS

5. Public Ethics Commission Retreat.

a. Inclusive Leadership Workshop.

Guest facilitator Maria G. Hernandez, President of Impact4Health, led a discussion with the Commission about inclusive leadership, privilege, and organizational values.

b. Strategic Planning: Review Program Area Work and Identify Key Projects for 2019.

Ms. Barazoto introduced the Commission's existing strategic plan document that has been in place since 2017 and extends through 2020. She discussed the process of developing the plan and mentioned that it should be revisited in full in 2020. Meanwhile, the discussion at this meeting will focus on accomplishments for 2018, what remains for 2019-20, challenges to completing our goals, and opportunities that could be leveraged.

Ms. Barazoto started the discussion with a focus on the Commission's main Lead/Collaborate projects and identified accomplishments and next steps for the Campaign Finance project, ticket policy work, and lobbyist registration amendments and filing officer duty. A public speaker participated in this discussion through questions and comments.

Education Analyst Jelani Killings provided an overview of education and advice program accomplishments and next steps, including sunshine training and reviewing whether board/commissions are posting meeting materials online, among others.

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Lead Analyst Suzanne Doran briefly described the Commission's outreach successes for 2018, as well as the PEC website which was a significant area of work for PEC staff this past year.

Dinner Break – Commissioners and staff took about a 15 minute break.

Ms. Doran provided an overview of the PEC's Disclosure program, detailing the different form and data-collection systems used by PEC staff as well as the availability of the data or information to the public. She identified some of the challenges that exist with current systems and shared potential opportunities for partnerships.

Open Oakland volunteers Jesse Woltjer and Colin Kin-Bailey, both of whom assisted with the development of www.OpenDisclosure.io, presented a hypothetical model of possibilities that could be created if data systems are aligned and integrated across government integrity data-sets.

Chair Smith created an ad hoc subcommittee on Partnerships, with Gail Kong, Nayeli Maxson, and Lisa Crowfoot as members.

Enforcement Chief Kellie Johnson shared the Commission's enforcement successes in 2018 as well as her ideas for additional enforcement methods and approaches that could be explored in 2019 to achieve more timely and effective enforcement outcomes. Enforcement staff Simon Russell and Kyle McLean added observations about investigative and mediation work, respectively. Ms. Johnson led Commissioners and staff through a discussion that shared challenges and case priority considerations inherent in the enforcement process. Commissioners, staff, and meeting attendees had the opportunity to weigh in on general enforcement priority considerations.

The meeting adjourned at 8:15 p.m.

ATTACHMENT 3



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: April 26, 2019
RE: Proposed Amendments to the Oakland Campaign Reform Act; Council President Kaplan Proposes Adding Section 3.12.116

Summary

The Public Ethics Commission (PEC or Commission) is reviewing a proposal by Council President Kaplan to amend the Oakland Campaign Reform Act to add disclosure requirements intended to illuminate the names of more controlling officers of certain campaign committees such as ballot measure and independent expenditure committees, and to disclose solicitations made by City officials on behalf of such committees to contributors who also happen to be doing or seeking to do business with the City.

Below is a brief analysis of the proposed amendment, and attached to this memorandum is a copy of Council President Kaplan's proposed legislation.

Overall, Commission staff is supportive of the changes in concept, and is working with the author's office to ensure the provisions are clear, appropriately scoped, and designed for seamless alignment with state law and implementation within existing local filing processes.

Background

The Public Ethics Commission is established in City Charter section 603, as amended by voters in 2014, and is tasked with the duty to ensure compliance with the Oakland Campaign Reform Act (OCRA), among other laws.¹ City Charter section 603 further requires that amendments to any law that the Commission has the power to enforce and that are proposed by a member of City Council must be submitted to the Commission for review and comment prior to passage by the Council.²

The California Political Reform Act governs rules and restrictions related to candidate committees and ballot measure committees. The Oakland Campaign Reform Act (OCRA) was passed by City Council in 1994 to impose additional requirements and restrictions on local candidates. Candidates for City office must comply with both state and local campaign finance rules.

OCRA is intended to limit campaign contributions and expenditures, reduce the pressure on candidates to raise campaign funds, and ensure that all individuals have a fair and equal opportunity to participate in elective and governmental processes.

¹ City Charter Sec. 603(b)(1)(ii).

² City Charter Sec. 603(h).

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Proposed Amendments

The proposed amendments would increase requirements for disclosure of controlling officers of non-candidate controlled committees required to file campaign statements with the City of Oakland. The amendment further adds new requirements that political contributions from donors with financial interests with the City, and City officials that solicit such contributions, be disclosed to the Public Ethics Commission and made available to the public. Specifically, the proposed amendments would add the following new section to OCRA:

3.12.116 – Recipient Committees and Independent committees, disclosure of controlling officers, prohibition of financial conflicts of interest by city personnel.

(a) All committees required to file as a recipient committee or as an independent expenditure committee acting in the City of Oakland, must file a disclosure form, listing the controlling officers of the committee and providing the information for the person(s) having control over the conduct of the committee. Such disclosure must be filed along with each Form 410 filing, on the same deadlines, and covering the same time periods, as each form 460 filing. This disclosure must list not less than one, nor more than five, specific persons who are the person(s) having control over the conduct of the committee. Such document shall be filed with the City of Oakland Public Ethics Commission, and shall be made available to the public.

(b) Any individual that holds a position identified in the City’s Conflict of Interest Code and is required to fill out a Form 700 who solicits anyone doing or seeking business with the city of Oakland (as defined in Section 3.12.140), to contribute to any committee, including committees for candidates, independent expenditure committees, and ballot measure committees, must file a disclosure of such solicitation, within 10 days of such an action at the Ethics Commission using the form approved by the Public Ethics Commission.

The stated goals of the proposed OCRA amendments are to increase transparency regarding entities financing ballot measure campaigns and committees making independent expenditures to influence Oakland election outcomes. The legislation also includes the following additions to the findings and declarations in the ordinance:

- **3.12.020 Findings and declarations** – Adds new section F: “Disclosure of donors who have financial interests with the city of Oakland and also of city officials who solicit contributions safeguards against potential conflicts of interest.”
- **3.12.020 Findings and declarations** – Adds new section G: “For transparency, and to protect our democracy, including from the risk of secretive big money, it is important that the public have a right to know who is paying for, and who is sending, advocacy and campaign communications.”

Analysis

Disclosure of Controlling Officers – Most campaign reporting requirements are set forth by the California Political Reform Act³ (PRA) statutes and regulations adopted by the California Fair Political

³ Government Code Sec. 81000 – 91014.

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Practices Commission (FPPC). Among myriad reporting requirements of campaign committee activities, the PRA requires reporting of up to three “principal officers” on the committee’s statement of organization (FPPC Form 410).⁴

This bill would require reporting of “not less than one, and not more than five, specific persons” having control over the conduct of the committee. According to the author, the change is intended to require more controlling officers to be disclosed by ballot measure and independent expenditure committees acting in the City to ensure greater transparency of the individuals who are involved in leading these committees’ campaign activities.

Commission staff has no concern with requiring more controlling, or “principal officers,” on the statement of organization for ballot measure and independent expenditure committees. These committees already are required to file some of this information under state law, and there already exists a mechanism for the reporting of this information. Commission staff will need to update manuals and add this information to campaign education materials as well as its compliance program work to ensure committees are aware of and following the rule. This would result in minor, absorbable increases in staff activity.

Commission staff has identified minor, technical issues with language of the proposed amendment and has communicated staff’s general concerns to the author’s office. Staff is working to determine the specific technical changes that will be needed and the author’s office has expressed willingness and interest in taking all of staff’s technical amendments.

Disclosure of Solicitations by City Officials (Form 700 Filers) – While the California PRA requires reporting of solicitations made by elected officials who ask that individuals donate money to a nonprofit (aka. Form 803 “behested payments”), there is no state or locally-required disclosure of solicitations by City staff or elected officials who ask individuals or entities for contributions to a ballot measure or other committees.

This bill would require reporting of these solicitations when the person asking for the contribution is a City employee or official who is designated in the City’s Conflict of Interest Code as a required Form 700 (Statement of Economic Interest) filer and when the solicitation is made to a person or entity doing business with or seeking to do business with the City. These designated employees (roughly 1000) are typically employees in job classifications that include some decision-making authority, which is why they are required to report their economic interests such as gifts, income, investments, and real property interests.

This bill would add a new reporting requirement for these Form 700 Filers. The new provision limits the requirement to only those solicitations made by City staff/officials to individuals or entities that are doing business with or seeking to do business with the City. The author’s purpose in requiring this disclosure is likely to ensure transparency of any back-and-forth among City employees working on ballot measures who may also hold a City position in which the employee is in a position to return a favor to a ballot measure contributor with business before the City.

Commission staff sees no problem with requiring this additional disclosure, which likely would apply in relatively narrow circumstances; however, this would be an additional requirement imposed on at least a few City employees that requires an additional form to be completed and submitted to the Commission. Staff has suggested a potential process for this reporting that is consistent with the

⁴ FPPC Regulation 18402.1 Principal Officers.

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reporting required for “behested payments” as described above. Form 803 is a form created by the FPPC for “behested payments” provision under state law, and these Form 803’s are completed and submitted to the Commission (and happen to be in the process of moving toward electronic filing this year). Form 803 reporting requires submission of the information to the agency within 30 days; this bill requires submission of the solicitations within 10 days, likely due to the heightened time constraints of an election season.

Adding this disclosure provision will require Commission staff resources to amend ethics training materials, educate filers, create a form and process and make filing available to Form 700 filers, and ensure compliance with the new requirement. While the provision may only apply to a small number of City employees, staff will need to make sure all Form 700 filers understand the additional disclosure requirement and can submit the necessary information that is then made available to the public. This new duty is estimated to require roughly 5-10% of one FTE (full-time equivalent) staff position, with approximately 10% of one FTE needed in the first year for creation of the filing process and about 3-5% of a position ongoing.

Commission staff also has communicated the need for some technical amendments to the provision and appreciates the author’s changes that have been made thus far as reflected in the version attached to this memorandum. Staff will continue to work with the author’s office on additional potential changes to ensure clarity and appropriate scope of the provision.

Recommendation

Commission staff recommends the Commission support the proposed OCRA amendment, with amendments to be provided by staff, and direct to staff to work with the author’s office on technical amendments to refine the language for clarity and appropriate scope and process, along with a request to bring any substantial, non-technical changes back to the Commission for review prior to Council adoption.

ATTACHMENT 4

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

RESOLUTION AMENDING THE "OAKLAND CAMPAIGN REFORM ACT" ORDINANCE BY AMENDING SECTION 3.12.020 AND ADDING SECTION 3.12.116 TO REQUIRE A DISCLOSURE FORM LISTING THE CONTROLLING OFFICERS OF A COMMITTEE REQUIRED TO FILE AS A RECIPIENT COMMITTEE OR INDEPENDENT EXPENDITURE COMMITTEE AND REQUIRING THAT CITY PERSONNEL ALSO FILE DISCLOSURE FORMS WHEN SOLICITING CONTRIBUTIONS FROM ANY PERSON OR ENTITY DOING OR SEEKING TO DO BUSINESS WITH THE CITY OF OAKLAND

WHEREAS, City government integrity depends upon an election process that is transparent and where political contributions do not unduly influence decisions made by elected officials on matters pertaining to city governance; and

WHEREAS, in a 2016 study, *Money in Exile: Campaign Contributions and Committee Access*, a correlation was found between donations and U.S. Congressional committee membership behavior and that donations were used by corporations and Political Action Committees to acquire political access and favor and gave the appearance of corruption; and

WHEREAS, in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Supreme Court upheld that financial limitations on independent expenditures were unconstitutional thereby expanding the ability of wealthy donors to contribute unlimited amounts of monies towards independent expenditures; and

WHEREAS, Justice Kennedy in his majority opinion in *Citizens United* held that disclosure requirements provide "citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters" and "enables the electorate to make informed decisions and give proper weight to different speakers and messages"; and

WHEREAS, a November 2015 poll by the Associated Press showed that 87% of those polled believe that disclosing donors is effective at reducing the influence of money in politics; and

ATTACHMENT 4

WHEREAS, the California Political Reform Act ("CPRA") established reporting requirements on candidates and committees, including but not limited to required reporting of all campaign contributions and expenditures on state campaign forms and restrictions on the receipt, maintenance, use, and distribution of campaign funds (Government Code Section 81000 et seq.); and

WHEREAS, a Charter City has the constitutional authority to enact local regulations to supplement state ethics laws such as CPRA under the home rule and municipal affairs doctrines; and

WHEREAS, the City of Oakland, as a charter city, passed the Oakland Campaign Reform Act (OCRA) in 1993 with the goal of "reducing the influence of money in local politics" and has amended OCRA on various occasions to strengthen disclosure requirements including in 2016 with Ordinance No. 13399 that required disclosure of the top donors for independent expenditure mailers and television ads; and

WHEREAS, the explicit purpose of the OCRA, according to Section 3.12.030, was to "reduce the influence of large contributors with a specific financial stake in matters under consideration by the City" and "to help restore public trust in governmental and electoral institutions"; and

WHEREAS, the Oakland City Council finds that these amendments further the purposes of OCRA; and

WHEREAS, The City Council of the City of Oakland, in order to ensure clear expectations pertaining to the financing of campaign measures and independent expenditure committees; does hereby amend Chapter 3.12 of the Oakland Municipal Code, the Oakland Campaign Reform Act (hereinafter referred to as the "Act") by modifying Section 3.12.020 and adding Section 3.12.116 as set forth below (chapter and section numbers and titles are indicated in bold type; additions are indicated by underscoring; portions of the regulations not cited or not shown in underscoring or strikethrough type are unchanged;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Chapter 3.12 - THE CITY OF OAKLAND CAMPAIGN REFORM ACT

Article I. - Findings and Purpose

3.12.010-Title.

This chapter shall be known as the city of Oakland Campaign Reform Act, hereinafter "the Act."

(Ord. 12158 (part), 1999)

3.12.020 - Findings and declarations.

The Oakland City Council finds and declares each of the following:

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A. Monetary contributions to political campaigns are a legitimate form of participation in our political process, but the financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.

B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by City government. This has caused the public perception that votes are being improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the governmental process.

C. Candidates are raising less money in small contributions and more money in large individual and organizational contributions. This has created the public impression that the small contributor has an insignificant role to play in political campaigns.

D. High campaign costs are forcing elected City Officials to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting elected City Officials from urgent governmental matters.

E. Elected City Officials are responding to high campaign costs by raising larger amounts of money. This fundraising distracts them from important public matters, encourages contributions, which may have a corrupting influence, and gives incumbents an overwhelming and patently unfair fundraising advantage over potential challengers.

F. Disclosure of donors who have financial interests with the city of Oakland and also of city officials who solicit contributions safeguards against potential conflicts of interest.

G. For transparency, and to protect our democracy, including from the risk of secretive big money, it is important that the public have a right to know who is paying for, and who is sending, advocacy and campaign communications.

F. H. The integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing.

G. I. This Act shall be liberally construed and vigorously enforced to ensure its purposes are fulfilled.

3.12.116 – Recipient Committees and independent committees, disclosure of controlling officers, prohibition of financial conflicts of interest by city personnel.

(a) All committees required to file as a recipient committee or as an independent expenditure committee acting in the City of Oakland, must file a disclosure form, listing the controlling officers of the committee and providing the information for the person(s) having control over the conduct of the committee. Such disclosure must be filed along with each Form 410 filing, on the same deadlines, and covering the same time periods, as each form 460 filing. This disclosure must list not less than one, nor more than five, specific persons who are the person(s) having control over the conduct of the committee. Such document shall be filed

ATTACHMENT 4

with the City of Oakland Public Ethics Commission, and shall be made available to the public.

(b) Any individual that holds a position identified in the City's Conflict of Interest Code and is required to fill out a Form 700 who solicits anyone doing or seeking business with the city of Oakland (as defined in Section 3.12.140), to contribute to any committee, including committees for candidates, independent expenditure committees, and ballot measure committees, must file a disclosure of such solicitation, within 10 days of such an action at the Ethics Commission using the form approved by the Public Ethics Commission.

SECTION 2 Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 3. Effective Date. This ordinance shall become effective commencing with the next required disclosure filing date following the date of adoption if it receives six or more affirmative votes.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the City of Oakland,
California

Date of Attestation: _____

ATTACHMENT 4

NOTICE AND DIGEST

RESOLUTION AMENDING THE "OAKLAND CAMPAIGN REFORM ACT" ORDINANCE BY AMENDING SECTION 3.12.020 AND ADDING SECTION 3.12.116 TO REQUIRE A DISCLOSURE FORM LISTING THE CONTROLLING OFFICERS OF A COMMITTEE REQUIRED TO FILE AS A RECIPIENT COMMITTEE OR INDEPENDENT EXPENDITURE COMMITTEE AND REQUIRING THAT CITY PERSONNEL ALSO FILE DISCLOSURE FORMS WHEN SOLICITING CONTRIBUTIONS FROM ANY PERSON OR ENTITY DOING OR SEEKING TO DO BUSINESS WITH THE CITY OF OAKLAND

All recipient committees and independent expenditure committees acting in the City of Oakland must file a disclosure form, listing the controlling officers of the Committee and providing the information for the person(s) having control over the conduct of the Committee. Any city of Oakland official, staff person, or consultant acting for the city of Oakland, who solicits anyone doing or seeking business with the city of Oakland (as defined in Section 3.12.140), to contribute to any committee, including committees for candidates, independent expenditure committees, and recipient committees, must file a disclosure of such solicitation, on the form and in the manner specified by the Public Ethics Commission.

Public Ethics Commission Core Values for Inclusive Engagement

1. **Collaborative Community** – We collaborate with each other to arrive at solutions through a process that hears every voice and shares power in the discourse around how best to further the Commission’s mission.
2. **Joint Accountability** – We hold ourselves and each other accountable for co-creating a respectful, and productive process.
3. **Open Mindset** – We listen with empathy and curiosity to see beyond ourselves and understand each other’s views, perspectives, and experiences as deeply as possible
4. **Inclusive Design** – We design our process and our communication to ensure that our decisions – often difficult ones – integrate the various inputs we receive.
5. **Proactive Transparency** – We speak honestly, articulate our reasoning for our actions, and proactively share information that will be helpful to the Commission, the public, and the process.

1 Kellie F. Johnson
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7 Petitioner

8
9 BEFORE THE CITY OF OAKLAND

10 PUBLIC ETHICS COMMISSION

11 In the Matter of

) Case No.: 18-19.0

12 11 WEST PARTNERS, LLC,

)
) **STIPULATION, DECISION AND**
) **ORDER**

13 Respondent.

14
15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
17 respondent 11 West Partners, LLC, agree as follows:

- 18 1. This Stipulation will be submitted for consideration by the City of Oakland Public
19 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 20 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
21 the final resolution to this matter without the necessity of holding an administrative
22 hearing to determine the liability of Respondents;
- 23 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
24 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
25 Procedures, including, but not limited to, the right to personally appear at an
26 administrative hearing held in this matter, to be represented by an attorney at their own
27 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
28 testify at the hearing, and to have the matter judicially reviewed;

ATTACHMENT 6

- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. Respondents violated the Oakland Campaign Reform Act by contributing \$2,400 more
6 than the contribution limit of \$800 to *Libby Schaaf For Mayor 2018*, in violation of the
7 Oakland Municipal Code section 3.12.050. (Count 1.)
- 8 6. Respondents violated the Oakland Campaign Reform Act by contributing \$3,200 to
9 *Libby Schaaf For Mayor 2018* at a time when they were subject to the City's ban on
10 contributions from City contractors to candidates, in violation of Oakland Municipal
11 Code section 3.12.140.
- 12 7. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter
13 and is incorporated by reference into this Stipulation;
- 14 8. The Commission will impose upon Respondents a total administrative penalty in the
15 amount of \$5,600;
- 16 9. A cashier's check from Respondents, in said amount, made payable to the "City of
17 Oakland," is submitted with this Stipulation as full payment of the administrative
18 penalty, to be held by the Commission until the Commission issues its decision and
19 order regarding this matter;
- 20 10. In the event the Commission refuses to accept this Stipulation, it shall become null and
21 void, and within fifteen business days after the Commission meeting at which the
22 Stipulation is rejected, all payments tendered by Respondents in connection with this
23 Stipulation will be reimbursed to them; and

24 ///

ATTACHMENT 6

1 11. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
2 the Commission becomes necessary, neither any member of the Commission, nor the
3 Executive Director, shall be disqualified because of prior consideration of this
4 Stipulation.

5
6
7 Dated: _____

Kellie F. Johnson, Enforcement Chief of the City of
Oakland Public Ethics Commission, Petitioner

8
9
10 Dated: _____

Adam Goldenberg, on behalf of
11 West Partners, LLC, Respondent

ATTACHMENT 6

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of 11 West Partners, LLC,” PEC Case No. 18-19.0, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____

Jodie Smith, Chair
City of Oakland Public Ethics Commission

ATTACHMENT 6

INTRODUCTION

In 2018, the City of Oakland Public Ethics Commission (“Commission”) opened an investigation into allegations that 11 West Partners, LLC (“11 West Partners”) and its affiliated business entities made campaign contributions to Libby Schaaf’s 2018 Oakland mayoral campaign that may have violated the provisions of the Oakland Campaign Reform Act (OCRA) concerning the contribution limit and the ban on contributions from City contractors.

The Commission’s investigation found that 11 West Partners directed and controlled the contributions of its affiliated entities, meaning that those contributions should have been considered as coming from a single source and, when added together, exceeded the contribution limit. The investigation also found that 11 West Partners was a City contractor at the time it made these contributions, and was therefore barred from making campaign contributions. The investigation found that 11 West Partners committed these violations inadvertently, and that these contributions did not have any effect on 11 West Partners’ business dealings with the City.

SUMMARY OF THE FACTS

Background

11 West Partners is an asset management firm and consultancy. It is owned by Adam Goldenberg, along with other partners not closely involved in this matter.

Three other entities are also involved in this matter: 11 WGM Property, LP, which was created in 2016 and owns the American Steel complex on Mandela Parkway in West Oakland; 1699 West Grand Property Owner, LP, which was created in 2015 and owns the Gary Steel complex in West Oakland and uses Cushman & Wakefield as a property manager there; and 11 West Ninth Street Property Owner, LP, which was created in 2015 and uses CBRE as a property manager at that site.

According to Goldenberg, 11 West Partners acts as an advisor to the other three entities. Those entities are essentially investment vehicles for real estate development projects, and are created for tax and liability reasons unrelated to campaign finance considerations. Each of those entities has about twenty-five to thirty investors. Goldenberg set up those companies and has a minority ownership stake in each of them, but 11 West Partners as an entity does not have an ownership stake in them.

ATTACHMENT 6

At all relevant times during this matter, Libby Schaaf was the Mayor of Oakland and a candidate for mayor in the 2018 election. Her candidate-controlled committee was *Libby Schaaf For Mayor 2018*. Schaaf accepted the voluntary expenditure ceiling on April 18, 2017, meaning that a single person or entity was prohibited from contributing more than a cumulative total of \$800 to her campaign after that date.

In 2015, 11 West Partners acquired two blocks of privately-owned property in Old Oakland. On October 6, 2016, 11 West Partners sent the City of Oakland a letter of intent, stating the company's willingness to purchase additional property located at 822 Washington Street in Old Oakland for \$1.8 million. At the time, this property was a parking lot owned by the City and adjoining the land acquired by 11 West Partners the previous year.

On December 13, 2016, the Oakland City Council adopted a resolution authorizing the City to negotiate and execute a contract with 11 West Partners for the sale of 822 Washington Street, for not less than \$1.8 million.

The City's standard practice is to provide City contractors with a document called a "Schedule O", which informs the contractor that they are prohibited from making campaign contributions to Oakland candidates and their controlled committees until 180 days after the execution of their contract. (The Schedule O does not create this prohibition, but it does formally put contractors on notice about it). However, at the time of the events in this matter, the City's Department of Real Estate Management was unaware of the need to provide Schedule O's to parties that were negotiating qualifying real estate transactions with the City. As a result, 11 West Partners was never given a Schedule O.

Between the date that 11 West Partners sent its initial proposal to the City and the final execution of the purchase contract, the following took place:

On June 20, 2017, Goldenberg and a fundraiser for the Schaaf campaign had the following e-mail conversation under the subject line "6/30 Invitation to Libby Schaaf fundraising event":

Fundraiser: Hi Adam, I hope all is well with you. Please see attached the attached invitation. I hope you can join us.

Goldenberg: Thanks. We'll be out of town... but very happy to support. Can I buy two host tickets, and send two of my partners...

ATTACHMENT 6

Fundraiser: Of course Adam. This is very kind of you and we will look forward to seeing [your partners].

Attached to the fundraiser's initial e-mail was an invitation to a fundraiser for Libby Schaaf's mayoral campaign, to be held on June 30, 2018. The bottom of the invitation included the following notice:

The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§ 3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District (OMC § 3.12.140, paragraphs A., B., and C.).

On June 28, 2017, Monica Ng of 11 West Partners sent three e-mails to outside entities, concerning contributions to the Schaaf campaign.

The first e-mail was sent to a property manager at Cushman & Wakefield, with Goldenberg cc'd. In it, Ng stated, "Can you please issue a check to Libby Schaaf for Mayor 2018 in the amount of \$800. The attachment contains the relevant details for where to mail the check. Adam will reply to this email with his approval."

The second e-mail was sent to "American Steel Invoices". In it, Ng stated, "Please prepare a check for \$800 to Libby Schaaf for Mayor 2018. The attachment has the details for mailing the check."

The third e-mail was sent to CBRE, with Goldenberg cc'd. In it, Ng Stated, "Can you please issue a check for \$800 to Libby Schaaf for Mayor. The address and information is attached. Adam will reply to this email with his approval."

The Schaaf campaign subsequently reported receiving the following contributions:

Date Rec'd	Contributor	Address	Code	Amount
06/30/2017	11 West Partners, LLC	476 9th Street Oakland, CA 94607	OTH	\$800
07/28/2017	11 WGM Property Owner, LP	2838 Sacramento Street San Francisco, CA 94115-2115	OTH	\$800
07/28/2017	1699 West Grand Property Owner	425 Market Street, Suite 2300	OTH	\$800

ATTACHMENT 6

		San Francisco, CA 94105-5403 ¹		
08/7/2017	11 West Ninth Street Property Owner	4400 West 78th Street, Suite 200 Minneapolis, MN 55435-5443 ²	OTH	\$800

In an interview with the PEC, Goldenberg was asked to describe in more detail the process by which these contributions were made. Goldenberg said that, after confirming with the organizers of the Schaaf fundraiser that he could send other people in his place, he forwarded the invitation to Ng, who he described as his chief of staff who performs administrative work for 11 West Partners. He said that when he forwarded the invitation to Ng, she must have thought that he was asking her to obtain contributions to the fundraiser. He explained that “we” have four large developments in Oakland, and that “we” divide things like charitable donations between those four companies.

When asked who has the authority to tell the other three companies to make a campaign contribution, Goldenberg stated that there is no formal process in place between the companies for making campaign contributions. However, regarding the e-mails from Ng to the other three companies where she asks them to write a check to the Schaaf campaign, Goldenberg said “I would perceive it to be more of an instruction” rather than a discretionary request. He said that for expenditures around \$10,000 or above, there might be more back-and-forth between the companies, but smaller expenses are routinely shared between the four companies.

The subsequent contract between the City and 11 West Partners was dated November 10, 2017. A City of Oakland document lists Goldenberg as one of the parties who negotiated that deal on behalf of 11 West Partners. Goldenberg signed the contract as “Partner” on behalf of 11 West Partners. Escrow apparently closed on or around January 9, 2018.

Based on interviews with City staff who worked on the 822 Washington Street sale, it appears that neither Ms. Schaaf nor her staff were in communication with the City staff assigned to the 822 Washington Street sale.³

SUMMARY OF THE LAW

¹ This address belongs to Cushman & Wakefield.

² This address belongs to CBRE.

³ The PEC spoke to Jinhua Su, Ed Kawamoto, Nguyen Thang, Anthony Reese, and Victoria Chak of the Department of Real Estate, and Patrick Lane and Mark Sawicki of Economic Development.

ATTACHMENT 6

Campaign Contribution Limit & Aggregation Rule

For the November 2018 election, the maximum amount that a person could contribute to a candidate who adopted OCRA's expenditure ceiling was \$800 per election.⁴ A "person" is defined under OCRA as any individual, business entity, or other organization or group of persons acting in concert.⁵ For purposes of determining whether the contribution limit has been reached, the contributions of an entity whose contributions are directed and controlled by any person shall be aggregated with contributions made by any other entity whose contributions are directed and controlled by that same person.⁶

Contractor Contribution Ban

OCRA prohibits contributions to candidates, in any amount, from City contractors.⁷ This prohibition applies to any "person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for," among other things, "purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council."⁸

The prohibition applies from the "commencement of negotiations" until 180 days after the "completion of negotiations."⁹ The "commencement of negotiations" occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any City Official.¹⁰ The "completion of negotiations" occurs when the City executes the contract or amendment.¹¹

VIOLATIONS

Count 1: Making a Campaign Contribution Over the Legal Limit

11 West Partners, 11 WGM Property, LP, 1699 West Grand Property Owner, LP, and 11 West Ninth Street Property Owner, LP, made contributions totaling \$3,200 to *Libby Schaaf For Mayor 2018*, a committee controlled by a candidate for city office who had accepted the voluntary expenditure ceiling for the November 6, 2018, election. Because 11 West Partners, via Adam

⁴ OMC § 3.12.050(B), (F).

⁵ OMC § 3.12.040.

⁶ OMC § 3.12.080(C).

⁷ OMC § 3.12.140.

⁸ See also OMC § 3.12.140(E)(4), which also specifies that "transactions that require approval by the City Council include but are not limited to ... [c]ontracts for the sale or lease of any building or land to or from the City."

⁹ OMC § 3.12.140(A).

¹⁰ OMC § 3.12.140(G).

¹¹ OMC § 3.12.140(K). For the purposes of this analysis, the period of time in which contributions by contractors are prohibited is referred to as the "blackout period."

ATTACHMENT 6

Goldenberg, controlled and directed the contributions for all four entities, all four contributions made by those entities are aggregated for the purposes of the contribution limit. As such, by making contributions totaling \$3,200 to *Libby Schaaf For Mayor 2018*, 11 West Partners contributed \$2,400 in excess of the \$800 contribution limit, in violation of the contribution limit.

Count 2: Violation of the Contractor Contribution Ban

Here, the purchase and sale agreement for 822 Washington Street falls within the contractor contribution ban because it was a contract for the sale of land owned by the City, the value of which required a City Council vote. 11 West Partners was the counterparty to that contract, and as such was subject to OCRA's ban on contributions to candidates from City contractors.

The blackout period for 11 West Partners began on October 6, 2016, when 11 West Partners submitted its proposed sales terms to the City, and continued through May 9, 2018, which was 180 days after the completion of contract negotiations, which took place with the execution of the contract on November 10, 2017.

11 West Partners, LLC contributed \$800 in its own name to *Libby Schaaf for Mayor 2018*, the controlled committee of a City candidate, on June 30, 2017, which was within the blackout period. The contributions from the other three entities, which were directed and controlled by 11 West Partners and therefore should be considered as being made by that company, were made on July 28, 2017 (\$1600) and August 7, 2017 (\$800), which were also within the blackout period. The total amount of contributions made by 11 West Partners to *Libby Schaaf for Mayor 2018* during the blackout period totals \$3,200. Because 11 West Partners was a City Contractor, it therefore contributed \$3,200 in contributions to *Libby Schaaf For Mayor 2018* were in violation of the contractor contribution ban.

CONCLUSION

According to the Enforcement Division's penalty guidelines, the baseline penalty for a violation of the contribution limit is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contribution is \$2,400, which brings the baseline penalty to \$3,400.

The baseline penalty for a violation of the contractor contribution ban is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the

ATTACHMENT 6

unlawful contribution, whichever is greater. Here, the amount of the unlawful contribution is \$3,200, which brings the baseline penalty to \$4,200.

In determining an appropriate final penalty amount, the PEC may consider the following aggravating and mitigating factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

Here, the seriousness of the harm caused by both of these violations was minimal. The amount unlawfully contributed by 11 West Partners and the other three entities represented less than 1% of the total contributions (\$262,193.66) that *Libby Schaaf for Mayor 2018* had raised by the end of 2017. Moreover, there is no evidence that this unlawful contribution affected 11 West Partners' real estate transaction with the City. Staff working on that transaction told the PEC that Mayor Schaaf and her staff had no contact with them regarding that matter. Goldenberg also told the PEC that he did not interact with the mayor or her staff regarding that transaction.

There is likewise no evidence here of any intention to conceal, deceive, or mislead. Goldenberg has stated that the various entities that made the contributions in this case were not created for the purpose of evading the contribution limit, but rather were created for business purposes unrelated to the making of political contributions. This is corroborated by the fact that the various entities have different owners (with Goldenberg being a minority owner) and were created one to two years before the contributions were made. It is also common practice within the real estate industry to create separate business entities as ownership or investment vehicles for particular pieces of real property.

ATTACHMENT 6

There is also no evidence that the violations were committed deliberately. The PEC sought and received documents from 11 West Partners reflecting the decision-making process that led to these contributions. None of the documents reflected an intent to evade the contribution limit or contractor contribution ban. Rather, they show that the decision to make these contributions was made with little apparent discussion within 11 West Partners and its affiliates, and corroborate Goldenberg's statement that these contributions were treated as being similar to other fairly small, joint business expenses, which reflects a negligent or inadvertent rather than an intentional violation.

Regarding Count 2 in particular, the fact that 11 West Partners never received a Schedule O is a significant mitigating factor indicating that they may not have understood their legal obligations. However, even if there was no actual notice regarding the contractor ban, there may have been constructive notice. Goldenberg received an invitation to a fundraiser for the Schaaf campaign on June 18, 2017, that contained the following notice:

The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§ 3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District (OMC § 3.12.140, paragraphs A., B., and C.).

Goldenberg responded to the invitation saying that he would buy two "host" tickets, indicating that he had read the invitation and saw there were multiple ticket options – "host" and "supporter." Presumably, this means that he also saw the notice above. 11 West Partners, which was then negotiating a million-dollar real estate transaction, presumably had the funds to consult an attorney if the notice on the Schaaf invitation was unclear.

11 West Partners and Goldenberg have no previous record of violating OCRA or any other campaign finance law. Goldenberg and Ng cooperated fully with this investigation, voluntarily providing copies of emails and responding expeditiously to commission staff inquiries.

The PEC previously dealt with an aggregation violation in case number 14-25, *In re PSAI Realty Partners CAC, LLC, et al.* In that case, four different entities owned by the same person made contributions totaling \$2,800 to the 2014 Libby Schaaf mayoral campaign, for an average of \$2,100.¹² The PEC began with a baseline fine of \$2,100, which was ultimately reduced to \$1,800 in light of the respondents' cooperation and lack of awareness of the aggregation rule, and the

¹² The contribution limit at the time was \$700 to candidates who had accepted the expenditure ceiling.

ATTACHMENT 6

absence of any evidence that the violation was intentional. Note that this case was decided before the PEC had adopted Penalty Guidelines stating that a \$1,000 penalty shall be added to the improper contribution amount when calculating the baseline fine.

In a previous case involving the contractor contribution ban, *In re Cypress Security, LLC* (PEC case no. 14-26), a contractor made contributions totaling \$1,000 to a candidate-controlled committee. The PEC reduced the respondent's fine to \$600 in light of mitigating factors, including the respondent's cooperation with the PEC and the fact that the respondent had been erroneously informed by the committee that its contributions were legal. Note that this case was decided before the PEC had adopted Penalty Guidelines stating that a \$1,000 penalty shall be added to the improper contribution amount when calculating the baseline fine.

In another previous case involving the contractor contribution ban, *In re ABC Security Services, Inc.* (PEC case no. 14-27), a contractor made contributions totaling \$1,400 to a candidate-controlled committee. The PEC fined the respondent \$3,000, citing as aggravating factors the fact that the respondent had received a Schedule O and had made multiple contributions. Note that this case was decided before the PEC had adopted Penalty Guidelines stating that a \$1,000 penalty shall be added to the improper contribution amount when calculating the baseline fine.

PROPOSED PENALTY

In light of the mitigating factors described above, as well as the PEC's past practice, staff is recommending that the Commission waive the additional \$1,000 penalties for both Count 1 and Count 2, and instead fine 11 West Partners in an amount equal to the unlawful contributions that gave rise to each count: \$2,400 for Count 1 and \$3,200 for Count 2, for a total fine of \$5,600.

ATTACHMENT 7



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: April 18, 2019
RE: *In the Matter of Amber Todd (Case No. 18-25M)*; Mediation Summary

I. INTRODUCTION

On September 11, 2018, the Commission received a request for mediation alleging that Amber Todd (Assistant to the Director of the Finance Department) failed to disclose records in response to a public records request made by the Requester on July 22, 2018. On September 14, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to the Requester's public records request – specifically, one spreadsheet with 25,395 entries.

The Requester notified Staff that they received all of the originally requested records that were the subject of the mediation: therefore, Staff recommends that the Commission close the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

ATTACHMENT 7

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On July 22, 2018, the City received, via NextRequest, the following public records request (No. 18-2066): "The total number of RAP notices sent in 2017 and 2018. A listing of the account and parcel numbers that received the mailing is an acceptable response."⁶

On August 1, 2018, Amber Todd stated the following on NextRequest: "Please provide clarity for the meaning of notices."

Also on August 1, 2018, the Requester uploaded a single document to the request. The link to the document is broken; however, Staff determined through mediation that the document was a notice sent by the Department of Finance to landlords who possibly rented out property without first procuring business tax certificates. The notice informed landlords that it is unlawful to rent or lease their property in the City without procuring a business tax certificate from the Business Tax Office of the Department of Finance.

On August 2, 2018, Todd stated the following on NextRequest: "Due Date changed: 08/17/2018 (was 08/01/2018). Staff needs more time to assemble and review the requested information."

On August 25, 2018, Requester stated the following on NextRequest: "Please provide an update on this request."

On September 11, 2018, the Commission received a complaint alleging that Amber Todd had failed to disclose records in response to public records request No. 18-2066. At the time that the Commission received the Complaint, no responsive records had been produced by the City. Staff notified the Requester that the Sunshine Ordinance requires complaints regarding public records requests undergo mediation before the complaint can be opened, and treated the complaint as a request for mediation.

On September 14, 2018, Staff commenced mediation proceedings and notified Amber Todd that the Commission received a request for mediation concerning records request 18-2066. Staff gave Todd the opportunity to respond to the allegation that the City had not provided records in violation of the Oakland Sunshine Ordinance.

On September 17, 2018, Todd responded to Staff's notification of the request for mediation and stated "We have been having some issues with notifications when requests come in, but we do our best to respond ASAP and check the system regularly. There have been some instances of misrouting and I am unable to see if they do not come directly to my attention."

⁵ Complaint Procedures § IV (C)(5).

⁶ "RAP" stands for Rent Adjustment Program.

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On September 26, 2018, Staff contacted Amber Todd via telephone to obtain an update on the status of the request. Todd informed Staff that a response to the request with the records sought would be uploaded on NextRequest by September 27, 2018.

As of September 28, 2018, no records had been produced by the City in response to the request. Staff emailed Todd seeking an update on the status of the response to the request.

On October 9, 2018, Amber Todd left a voicemail and emailed Staff, informing them that she had been out of the office due to being ill.

On October 10, 2018, Staff and Todd spoke via telephone. Todd informed Staff that she believed the records sought by the request were labelled confidential pursuant to an exemption in Oakland Municipal Code 5.04.140. Staff clarified that the request was not for confidential records, because the request sought a listing of the account and parcel numbers of the businesses that received the tax notice. The request did not seek copies of the actual notices, which would be labelled as confidential by O.M.C. 5.04.140 and exempt from disclosure. Todd did not upload any documents in response to the clarification from Staff.

On November 7, 2018, Staff emailed Juliet Naishorua, the records request liaison for the Finance Department. Naishorua had been on maternity leave up until this time. Staff relayed to Naishorua that the requested information in this request was not labelled as confidential under O.M.C. 5.04.140. Naishorua responded to the email on November 8, 2018, and stated that “Revenue Bureau is in the process of reviewing and ensuring the accuracy of the data and it will be available on Friday November 16th.”

On November 27, 2018, Shahla Azimi, a revenue analyst with the Finance Department, stated the following and closed the records request: “This request is the same as request # 18-2483 and the requested information has been released and available under the above request #. Thank you. We released all of the requested documents.”

On December 19, 2018, Requester notified Staff that the records produced in response to the mediation satisfied the initial public records request.

IV. RECOMMENDATION

Because the Requester received the requested records, Staff recommends that the Commission close the mediation without further action.

ATTACHMENT 8



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: April 18, 2019
RE: *In the Matter of Oakland Police Department (Case No. 18-26M); Mediation Summary*

I. INTRODUCTION

On September 14, 2018, the Commission received a request for mediation alleging that the Oakland Police Department (OPD) failed to respond to a public records request made by the Requester on July 21, 2017. On September 19, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the OPD Records Division, eventually provided all records sought by the Complainant's request.

After making the requester wait several months for responsive documents, OPD eventually disclosed the documents, including criminal reports. OPD never responded to the Requestor's and Staff's attempts to arrange an oral interview. Because the Requester received all of the originally requested records, and because mediation does not encompass interview requests, Staff recommends that the Commission close the mediation.

II. SUMMARY OF LAW

One of the primary purposes of the Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records are open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in the Commission's mediation program.⁴

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

ATTACHMENT 8

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

The Sunshine Ordinance provides that City Agency directors shall designate a person knowledgeable about the affairs of the respective agency to provide oral public information about agency operations, plans, policies, and positions.⁶

III. SUMMARY OF FACTS

On July 21, 2017, the City received, via RecordTrac, the following public records request (No. RT-22162): "all police reports and/or CAD incidents concerning addresses listed on specified dates; any communication of any kind that generated a notice pursuant to Oakland's Nuisance Eviction Ordinance - OMC 8.23, CA Civil Code 3485 or CA Civil Code 3486."

At the time, RecordTrac was the City's online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On July 31, 2017, the Requester emailed the OPD Records Division requesting assistance with a response to the records request.

Also on July 31, 2017, Amber Fuller of the OPD Records Division stated via RecordTrac that the City needed more time to complete the request due to "the Departments limited staffing resources and the numerous public record requests received." Amber Fuller further stated that "[a]ll records that are not exempt will be provided within 30 days."⁷

On August 2, 2017, the Requester emailed Amber Fuller requesting a response to the records request.

On August 15, 2017, the Requester emailed Amber Fuller requesting a response to the records request.

On August 31, 2017, the Requester stated the following via RecordTrac: "Two emails to Amber C. Fuller on 2017-08-02 and 2017-08-15 in regard to this request have not been responded to. My email to the OPD Public records email account on 2017-07-31 was also not responded to. At this point, to my knowledge, no valid California Public Records act extension has been claimed. Furthermore, we have now passed the 30-day period for release promised in the notice on 2017-07-31. Are there any updates on this request?"

On September 6, 2017, the Requester emailed Amber Fuller requesting a response to the records request.

⁵ Complaint Procedures § IV (C)(5).

⁶ O.M.C. § 2.20.200(A)

⁷ The CPRA sets a ten-day response period for responding to a request for a copy of records. A fourteen-day extension may be granted for various reasons. These reasons do not include limited staffing resources or numerous public records requests received. See Gov. Code §6253(d).

ATTACHMENT 8

On September 24, 2017, Amber Fuller emailed the Requester a partial release of records responsive to the request. This is the first time that the public records requested by the Requester in his July 21, 2017 request were released.

On October 16, 2017, Amber Fuller emailed the Requester a partial release of records responsive to the request. The email also stated “I will try to provide you with weekly batches of reports until this request is completed.”

On May 9, 2018, the Requester emailed Amber Fuller requesting a response to the records request. No additional records had been released since the October 16, 2017 email from Amber Fuller.

On June 6, 2018, Amber Fuller released twenty-eight pages of records and stated the following via RecordTrac: “Attached is another batch of crime reports for your request. Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1). Authorized redactions or omissions made pursuant to 6254(f) (2) CGC (Specifies releasable calls for service information), 6254(f) (1) CGC (specifies releasable arrest information) and 6254(f) (investigative records).”

On September 13, 2018, the Requester sent a written request for a response to the records request. The written request also sought an oral interview with an officer of the Oakland Police Department knowledgeable of the Nuisance Eviction Ordinance referral process in addition to the public records request.⁸

On September 14, 2018, the Requester filed a complaint with the Commission. Staff notified the Requester that the Sunshine Ordinance requires complaints regarding public records requests undergo mediation before the complaint can be opened, and treated the complaint as a request for mediation.

On September 18, 2018, the OPD Records Division released fifty-two pages of records and stated via RecordTrac: “I am uploading another batch for your request and the reports are approved - authorized redactions or omissions made pursuant to: 6254(f) (2) CGC (Specifies releasable calls for service information) and 6254(f) (1) CGC (Specifies releasable arrest information). The following reports are missing so therefore can not be provided: 09-043482, 09-063180, 08-094273.”

On September 19, 2018, Staff commenced mediation proceedings and requested a status update and anticipated completion date for the request from the OPD Records Division.

On September 20, 2018, Amber Fuller confirmed to Staff via email that there were additional records to be released for the request and gave an anticipated completion date of September 28, 2018.

Also on September 20, 2018, the OPD Records Division released fifty-three pages of records via NextRequest.

⁸ The Sunshine Ordinance provides the ability for Oakland citizens to make oral requests for public information just as they could make a written request for public information. Staff included the oral interview request as part of the mediation in case this issue could be resolved in conjunction with mediation; however, mediation under the Sunshine Ordinance only includes requests to inspect or copy public records. OPD has not accepted Staff and the Requester’s attempts to set an oral interview.

ATTACHMENT 8

Also on September 20, 2018, the Requester reiterated to OPD Records Division via email that the initial request sought for the records to be produced privately rather than publicly, citing concerns that witnesses or defendants may be identified by the details contained in the police reports being released. Amber Fuller responded on September 27, 2018, and stated that if the Requester did not wish to have future releases in the public view, then he should withdraw his request.⁹

On September 26, 2018, Staff reached out to Amber Fuller seeking to aid the Requester in their request for an oral interview.

Also on September 26, 2018, the OPD Records Division released one hundred and seventy-three pages of records via NextRequest.

On September 27, 2018, the OPD Records Division released two hundred and two pages of records via NextRequest.

On September 28, 2018, the OPD Records Division released forty-five pages of records via NextRequest.

On October 1, 2018, the OPD Records Division released sixty-seven pages of records via NextRequest.

On October 2, 2018, Amber Fuller responded to Staff's request for an oral interview on behalf on the Requester by referring the request to the OPD Public Information Department.

Also on October 2, 2018, the OPD Public Information Department stated to Staff: "we believe there may be ongoing litigation regarding this topic. We have included the City Attorney on this request."

On October 3, 2018, the OPD Records Division released fifty-six pages of records via NextRequest.

On October 4, 2018, the OPD Records Division released forty-six pages of records via NextRequest.

On October 5, 2018, the OPD Records Division released fifty-six pages of records, closed the request, and stated the following via NextRequest: "We have released the final documents for this request. Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1). Authorized redactions or omissions made pursuant to 6254(f) (2) CGC (Specifies releasable calls for service information) and 6254(f) (investigative records)."

On October 5, 2018, Staff responded to the OPD Public Information Department and reiterated that the interview requested by the Requester concerned general policy on how the OPD chooses an incident to forward to the City Attorney's Nuisance Abatement Division. Staff also noted that the request did not pertain to specific incidents or cases, but rather general policy, and sought

⁹ The OPD Records Division has the discretion to release the requested records publicly or privately. However, Staff noted that Amber Fuller had previously privately released documents to the requester on September 24, 2017 and October 16, 2017. Additionally, the Requester provided examples from September 2018 where Amber Fuller posted responses to other record requests privately at the wish of other requesters. Amber Fuller did not respond to inquiries by Staff as to why this was not possible in this case.

ATTACHMENT 8

confirmation from the OPD Public Information Department that there was ongoing litigation concerning this general policy of the OPD. Staff followed up on October 17, 2018 and November 7, 2018 to confirm the subject of the litigation referenced but received no response from OPD.

On October 10, 2018, the Requester confirmed to Staff that all documents sought by the public records request had been released by the OPD Records Division.

On December 19, 2018, Staff notified the Requester that further mediation efforts were unlikely to result in an oral interview being granted. Since all documents sought in the request had been released publicly, Staff notified to the Requester that Staff will recommend closure of the mediation as the Requester had asked.

IV. RECOMMENDATION

Although the OPD Records Division did not respond to the Requester's request for an oral interview, because the OPD Records Division provided the documents responsive to Complainant's request for records, Staff recommends that the Commission close this mediation without further action.

ATTACHMENT 9



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
Kyle McLean, Mediation Coordinator
DATE: April 18, 2019
RE: *In the Matter of Amber Todd (Case No. 18-30M); Mediation Summary*

I. INTRODUCTION

On September 25, 2018, the Commission received a request for mediation alleging that Amber Todd (Assistant to the Director of the Finance Department) failed to disclose records in response to a public records request made by the Requester on September 11, 2018. On October 19, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to the Requester's public records request – specifically, one spreadsheet with 24,371 entries.

Because the Requester notified Staff that they received all of the originally requested records produced that were the subject of the mediation, Staff recommends that the Commission close the mediation without further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

¹ Oakland Municipal Code § 2.20.010(C); California Government Code § 6250 et seq.

² Government Code § 6253(b).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

ATTACHMENT 9

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On September 11, 2018, the City received, via NextRequest, the following public records request (Public Record Request No. 18-2960):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be held by your agency in electronic form:

1. All account numbers maintained in an electronic database by the Rent Adjustment Program (RAP)
2. All parcel numbers associated with those account numbers
3. All mailing addresses associated with those account numbers
4. All phone number associated with those account numbers
5. All email addresses associated with those account numbers
6. The total number of units per Alameda County Records associated with those account numbers
7. The total number of exemptions claimed and which exemption
8. Total due in 2018
9. Total paid in 2018

I ask for an immediate determination on this request, given that you can make that determination without having to review the record[s] in question.

Please note that Government Code Section 6253 requires these records to be open to inspection.

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

⁵ Complaint Procedures § IV (C)(5).

ATTACHMENT 9

On September 18, 2018, Amber Todd stated the following on NextRequest: “Due Date changed: 10/05/2018 (was 09/21/2018). Due to the nature and volume of the request, staff needs more time to research and assemble the requested information.”

On September 19, 2018, Amber Todd stated the following on NextRequest: “Due Date changed: 10/19/2018 (was 10/05/2018). Staff is requesting more time as this request is large and they require additional time to assemble the responsive information.”

On September 25, 2018, the Requester stated the following on NextRequest: “Please note that you are in violation of the California Public Records Law. Upon information and belief, these records are stored in a SQL database on the Amazon Government Cloud and can be retrieved by typing a series of commands into the command line.”

Also on September 25, 2018, the Commission received a complaint alleging that Amber Todd had failed to disclose records in response to public records request No. 18-2960. At the time that the Commission received the Complaint, no records had been produced by the City. Since the Sunshine Ordinance requires mediation to be completed before a complaint can be accepted, Commission Staff treated the complaint as a request for mediation.

On October 10, 2018, Staff and Amber Todd spoke via telephone during mediation proceedings for a separate and unrelated request for mediation filed by the same Requester against Todd. Todd informed Staff that she believed the records sought by the request were labelled confidential pursuant to an exemption in Oakland Municipal Code 5.04.140. Staff clarified that the request was not for confidential records, because the request sought a listing of the account and parcel numbers (among other fields) of the businesses that received the tax notice. The request did not seek copies of the actual notices, which would be labelled as confidential by O.M.C. 5.04.140 and exempt from disclosure. Todd did not upload any documents in response to the clarification from Staff.

On October 19, 2018, Staff commenced mediation proceedings and notified Amber Todd that the Commission received a request for mediation concerning records request No. 18-2960. Staff gave Todd the opportunity to respond to the allegation that the City had not provided records in violation of the Oakland Sunshine Ordinance. Todd did not respond to Staff.

On November 7, 2018, Staff emailed Juliet Naishorua, the records request liaison for the Finance Department. Naishorua had been on maternity leave up until this time. Staff relayed to Naishorua that the requested information in this request was not labelled as confidential under O.M.C. 5.04.140. Naishorua responded to the email on November 8, 2018, and stated that “Revenue Bureau is in the process of reviewing and ensuring the accuracy of the data and it will be available on Friday November 16th.”

On November 27, 2018, Shahla Azimi (a revenue analyst with the Finance Department) stated the following and closed the records request: “Dear requester: The requested information has been released and attached to this request. Thank you.” Azimi added a record to the request, but (likely erroneously) did not release the record.

Also on November 27, 2018, Requester stated the following on NextRequest: “This are no documents attached to this request and you are in violation of the California Public Records Law.”

ATTACHMENT 9

On November 30, 2018, Azimi released the record that she added on November 27, 2018 – one Excel spreadsheet with 24,371 fields – via NextRequest.

On December 19, 2018, Requester notified Staff that the record produced in response to the mediation satisfied the initial public records request.

IV. RECOMMENDATION

Because the Requester received all of the requested records, Staff recommends that the Commission close the mediation without further action.

ATTACHMENT 10



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: April 26, 2019
RE: Disclosure and Engagement Report

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

Disclosure Compliance

Campaign disclosure – Commission completed surface review of the semi-annual campaign statements submitted in late January and identified four statements requiring amendments due to missing or incomplete information. All four filers came into compliance without need for enforcement action. After review of campaign contribution data, staff issued notices of non-compliance to six major donors for failure to e-file end-of-year statements and two candidate-controlled committees reporting outstanding debts exceeding OCRA contribution limits. Staff referred three committees to enforcement for failure to file campaign statements after repeated notices and contacts with staff.

Statements of Economic Interests – April 2 marked the deadline for City officials and designated employees within the City's Conflict of Interest Code to file their annual statement of economic interests (Form 700). Staff conducted an initial compliance check of elected officials to confirm that their Form 700 were filed. All 11 officials filed their statements on time. Staff continues to work with the Department of Human Resources Management (DHRM) to obtain an accurate list of all designated employees required to file Form 700 and is developing a compliance practice for these forms modeled on the process developed for campaign finance compliance.

In conjunction with Form 700 compliance, over the next several months PEC staff plans to work closely with board and commission support staff to ensure all City board and commission members understand their responsibilities and requirements under local ethics and transparency laws. As PEC staff conducts these discussions, a primary focus will be ensuring board and commission members are complying with Form 700 filing and online training requirements.

Improving Filing Tools and Illuminating Disclosure Data

Lobbyist and behested payment disclosure – Development of an online system to allow Oakland lobbyists to quickly and easily register and submit their quarterly reports and public officials to file their behested payment reports (FPPC Form 803) is a major program goal for 2019 – 2020. Modernizing paper-based filing processes will improve efficiency by reducing paper and streamlining processes, promote better compliance by providing user-centered filing tools, and allow greater access to and usability of disclosure information for PEC staff and the public.

Over the past month, Commission staff created e-filing prototypes for lobbyist registration and quarterly reports as well as FPPC Form 803 Behested Payment reports utilizing the FormStack platform being piloted by City Digital Services. In collaboration with Digital Services personnel, we are now refining the forms and data structures in preparation for testing. Staff anticipates completing testing and starting a pilot e-filing program in time for the third quarter lobbyist activity report deadline in October.

Meanwhile, staff is exploring options for publishing e-filed lobbyist and behested payment data online by building a user-friendly platform to access the various sources for ethics-related data as they are digitized.

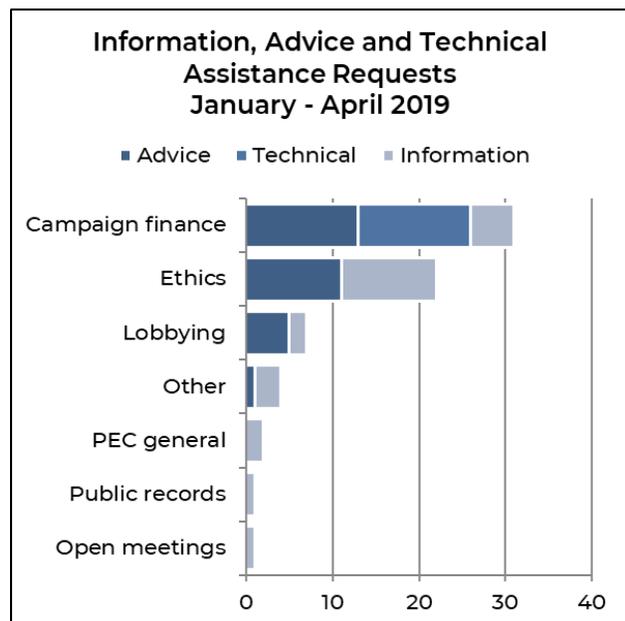
At present, members of the public can access a list of [registered lobbyists](#) on the PEC website and all lobbyist disclosure and behested payment reports are searchable by the filer’s name on our [Public Portal for Campaign Finance and Lobbyist Disclosure](#), where copies are available in PDF file format.

OpenOakland Day of Service 2019 – Our community partner OpenOakland is hosting a [Day of Service](#) on May 11, from 8:30 AM to 5:30 PM at City Hall. The event brings together Oakland residents, young people, community leaders, City staff and officials, artists, developers, designers and journalists to volunteer their skills and time on community projects addressing the challenges faced by participating organizations. As a sponsoring organization, the Commission designed two projects focused on illuminating lobbyist and behested payment disclosure by digitizing data from past paper filings. The resulting datasets will be published and utilized for analysis and assisting with the design of the Commission’s future platform for ethics-related data. Day of Service 2019 is free and open to the public. We hope to see you there!

Engagement and Outreach

Advice and Technical Assistance – Commission staff fielded 30 requests for information, informal legal advice, or technical assistance in March and April.

Education and Training – Staff continued conducting trainings at the City’s monthly New Employee Orientations (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act. On April



17, 35 new employees received training on GEA provisions.

On April 18, staff met with Councilmember Taylor and his senior staff for an ethics check-in. Councilmember Taylor was provided with an ethics resource binder that included guides and fact sheets relating to the Government Ethics Act, conflicts of interests, gift restrictions, non-interference provision, and the City's ticket distribution policy. The informal meeting allowed PEC staff to better understand the support needs of councilmembers and staff in complying with local ethics laws. Ethics check-ins with elected officials and staff members will continue throughout the year.

General Outreach – On March 27, Commissioner Jackson and Commission staff participated in a joint community roundtable discussion with the City Auditor at the Dimond branch library. Commissioner Jackson shared background information about the PEC and informed attendees about the Commission's key accomplishments and current projects. Commissioner Jackson and PEC staff fielded questions and participated in a lively discussion covering government accountability, campaign financing, our disclosure and education programs, and enforcement activities.

Social Media – Each month, Commission staff selects focus areas to promote in posts to the Commission's social media accounts. March and April focused on raising awareness of the deadline for Form 700 filing, the Commission's accomplishments in 2018, promoting our Annual Report and newsletter, and publicizing outreach events.

ATTACHMENT 11



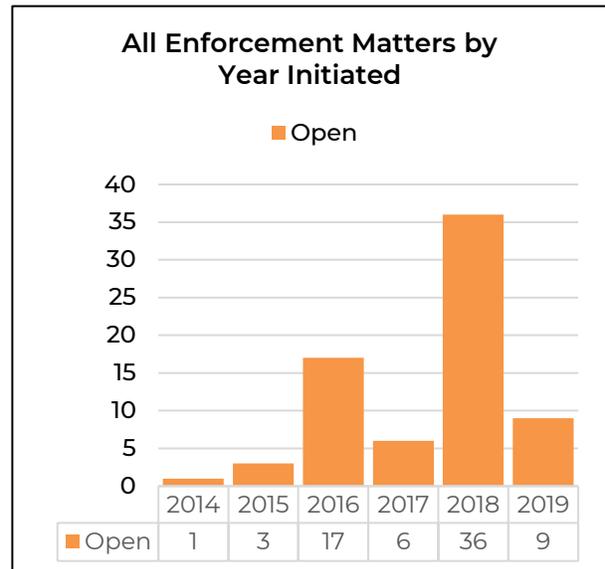
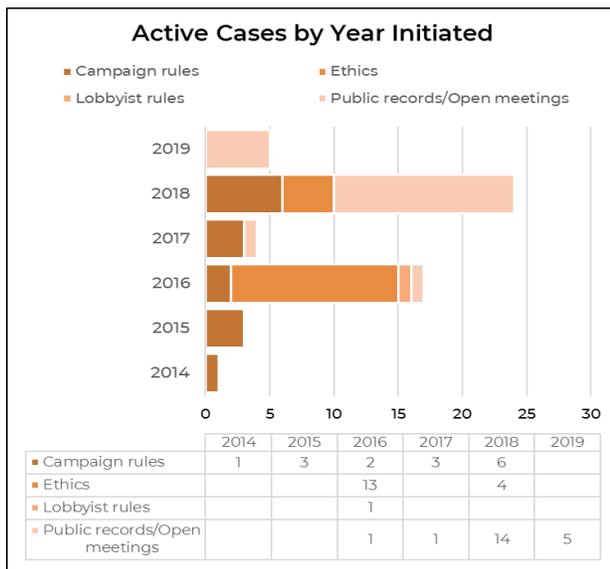
Jodie Smith, Chair
 James E.T. Jackson, Vice-Chair
 Jill Butler
 Lisa Crowfoot
 Gail Kong
 Nayeli Maxson
 Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Kellie Johnson, Enforcement Chief
 DATE: April 18, 2019
 RE: Enforcement Program Update

Current Enforcement Activities:

Since the last Enforcement Program Update on March 4, 2019, Commission staff received 4 formal complaints. Enforcement staff dismissed 2 complaints after determining that the allegations did not warrant a PEC investigation. This brings the total Enforcement caseload to 14 matters in the intake or preliminary review stage, 9 matters under active investigation, 19 matters under post-investigation analysis, and 6 matters in settlement negotiations or awaiting an administrative hearing. Enforcement’s caseload also includes 21 ongoing records request mediations. Enforcement staff also issued three requests for documents or information, conducted two witness interviews, and informally advised one former City employee who was suspected of violating GEA’s rules on post-City employment.



Enforcement currently delineates complaints into all enforcement matters vs. active cases. An enforcement matter is any complaint (formal/informal), including allegations that are pending preliminary review by staff, active cases (cases referred for investigation), mediations, and cases in final resolution (settlement, awaiting a hearing, or pending review by the Commission). An active case

is a case in which the preliminary review and intake has been completed and the case has been referred for formal investigation.

Enforcement staff has prioritized the processing of intake matters, particularly incoming complaints that have been in preliminary review for many months, in order to move cases more quickly into immediate resolution or investigation. Staff also prioritized mediations in light of the influx of new mediation requests in the past 6 months and the onboarding of former law clerk Kyle McLean as a part-time Mediation Coordinator. In addition, Enforcement staff is focused on high priority cases such as recent campaign-related matters and GEA cases, as well as the one remaining case from 2014 and three remaining cases from 2015. Finally, Enforcement staff continues its active investigations and has re-initiated settlement discussions in four cases, the result of which is the stipulation in Case No. 18-19 on today's Agenda.

Current Enforcement Priorities:

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

Since the last Enforcement Program Update on March 4, 2019, the following status changes occurred:

1. *In the Matter of Dan Kalb* (Complaint No. 18-40): This complaint was dismissed after staff determined that the allegations in the complaint do not constitute a violation of any of the laws under the PEC's jurisdiction. (Attachment 1).
2. *In the Matter of Almaz Yihdego* (Complaint No. 16-04): This complaint was dismissed after staff determined that the Complaint had insufficient evidence to establish a violation of any laws under the PEC's jurisdiction. Enforcement staff, however, included advisory information in the dismissal letter issued to the respondent and closed this matter with no further action (Attachment 2).
3. *In the Matter of Lynette McElhaney-Gibson* (Complaint No. 18-12): This complaint was withdrawn by the complainant. Staff issued notice of the withdrawal to the respondent and closed this matter with no further action. (Attachment 3)
4. *In the Matter of Ginale Harris* (Complaint No. 19-03): This complaint was dismissed after staff determined that the allegations in the complaint do not constitute a violation of any of the laws under the PEC's jurisdiction. (Attachment 4)
5. *In the Matter of Dena Shupe* (Complaint No. 18-51): This complaint was withdrawn by the complainant. Staff issued notice of the withdrawal to the respondent and closed this matter with no further action. (Attachment 5)
6. *In the Matter of Jose Dorado* (Complaint No. 19-04): This complaint was dismissed after staff determined that the Complaint had insufficient evidence to establish a violation of any laws under the PEC's jurisdiction. Enforcement staff, however, included advisory information in the dismissal letter issued to the respondent and closed this matter with no further action (Attachment 6, Attachment 7).

7. *In the Matter of Pauletta Bruder* (Complaint No. 19-04): This complaint was dismissed after staff determined that the subject of the complaint does not fall within the PEC's enforcement jurisdiction (Attachment 8).
8. *In the Matter of Amber Todd* (Complaint No. 18-31M): This request for mediation was dismissed after Staff determined that the complaint did not allege any violation of any laws under the PEC's enforcement jurisdiction (Attachment 9).
9. *In the Matter of 11 West Partners, LLC* (Complaint No. 18-19): Staff received this informal complaint on July 13, 2018, conducted a preliminary review, intake, investigation and settlement discussions. Stipulation, Decision and Order was signed by the respondent on April 4, 2019.
10. *In the matter of Oakland for Better Choices: No on AA, W and Y* (Complaint No. 18-44): Staff completed the preliminary review, opened an investigation and the matter was referred to the California Fair Political Practices Commission (FPPC) for review of the allegations.
11. Complaint 19-05: Staff received this complaint on April 17, 2019, and is conducting a preliminary review of the allegations.

ATTACHMENT 11



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

April 12, 2019

Alvaro Illan-Fernandez



Re: PEC Complaint No. 18-40; Dismissal Letter

To Alvaro Illan-Fernandez:

On October 24, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (#18-40) alleging that Councilmember Dan Kalb's office claimed to have administrative discretion over a "worst streets fund" for street repairs, and was not responding to your requests for further information about the operation of the fund or your application for your street to be repaired under it.

The PEC conducted a preliminary review of your allegations, specifically to determine whether Councilmember Kalb was in violation of the Government Ethics Act (GEA) prohibition on Councilmembers interfering in the City's administrative affairs.¹ What we found was the following:

The Oakland Department of Transportation ("OakDOT") is the City agency responsible for street paving. Normally, OakDOT uses a computer program called "Streetsaver" to determine which City streets need to be repaved; Streetsaver uses a formula to assign a numerical value to the condition of every road in Oakland between 0 and 100. The "Worst Streets Fund" ("WSP") was created to ensure that certain streets are not overlooked by factors outside of the Streetsaver calculation. A percentage of the City's general paving fund is set aside for the WSP, and it is also administered by OakDOT.

¹ Oakland Municipal Code section 2.25.070(E).

ATTACHMENT 11

PEC Complaint No. 18-40; Dismissal Letter

Under the WSP, the OakDOT Director, Assistant Director, Division Manager, and Paving Program Manager meet with individual City Councilmembers. OakDOT staff informs the Councilmember of the dollar amount that has been set aside for their district under by the WSP, and the Councilmember then provides a recommendation on which streets should be repaved based on interactions with the community they represent. The Councilmembers' input is advisory, though OakDOT staff told the PEC that they accord it considerable weight when determining which streets to repave under the WSP. The input from the Councilmember is supplemented with analysis of the pavement condition through Streetsaver.

These WSP-related meetings between Councilmembers and OakDOT happen on an ad hoc basis. The frequency varies among the Council districts, because the running funds balance available under the WSP varies across the districts. The records of how WSP monies are spent during each budget cycle are maintained by OakDOT.

Given these facts, PEC staff has determined that the involvement of Councilmembers in the decision-making process concerning the WSP does not constitute a violation of the GEA. Specifically, because OakDOT staff are affirmatively seeking the Councilmembers' non-binding input on WSP allocations, we do not believe this constitutes prohibited "interference" by Councilmembers in the administrative affairs of OakDOT.

Regarding your allegation that Councilmember Kalb's office has been non-responsive to your request for information about the operation of the WSP and your application under it, the Oakland Sunshine Act does not require public officials to respond to requests for oral information within a definite period of time; it only requires that each department appoint a liaison to handle public requests for oral information, and requires that person to handle those requests in a timely manner.² The City Council's public records liaison is Susan Sanchez, and her contact information is (510) 238-6917 or sasanchez@oaklandca.gov.

In addition, in order to help you learn more about disbursements from the WSP, the PEC has pro-actively sought records on WSP disbursements from OakDOT. We shared those records with you via email on April 8, 2019.

Because the allegations in your complaint do not constitute a violation of any of the laws under the PEC's jurisdiction, we are dismissing your complaint.

² Oakland Municipal Code section 2.20.200.

ATTACHMENT 11

PEC Complaint No. 18-40; Dismissal Letter

We are required to inform the PEC of the resolution of this matter at its next public meeting as part of our regular monthly update on Enforcement actions. That meeting will take place on May 6, 2019, at 6:30 p.m. in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

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

Sincerely,

Kellie Johnson

Chief of Enforcement, City of Oakland Public Ethics Commission

ATTACHMENT 11



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Public Ethics Commission
Enforcement Unit

(510) 238-3593
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TDD (510) 238-3254

April 9, 2019

Almaz Yihdego



Re: PEC Complaint No. 16-04; Notice of Dismissal

Dear Ms. Yihdego:

The City of Oakland Public Ethics Commission (PEC) previously informed you that it had opened an investigation into a complaint it received against you alleging violations of the City's Government Ethics Act (GEA). The purpose of this letter is to inform you that we have closed that investigation for insufficient evidence.

As you will recall, the complaint we received (#16-04) alleged that you violated the GEA by failing to disclose Mical Free's freelance graphic design business as a source of income or business position on your annual Statement of Economic Interests (Form 700) that you filed with the City in 2015 and 2016. We were also investigating whether you, in your capacity as a member of the Citizen's Police Review Board (CPRB), violated GEA by influencing the CPRB's decision to contract with Free for the production of a banner.

We have investigated the matter and determined that there is insufficient evidence that you committed any of the alleged violations. Specifically, we found that you assisted Mr. Free in operating his business, but we did not find evidence that you received any income from doing so. As such, you did not need to report Mr. Free as a source of income on your Form 700, nor did your relationship with him constitute a business position. That relationship also therefore did not give rise to a conflict of interest.

In the future, you should disclose any personal or professional relationships you might have with contractors whose services you recommend to the City in order to avoid

ATTACHMENT 11

PEC Complaint No. 16-04; Notice of Dismissal
Page 2

confusion or the appearance of impropriety. Such disclosures can be made informally to the person(s) to whom you are making the recommendation, and do not need to be disclosed on a Form 700 unless you are receiving income from the contractor or have a formal position or investment in their business.

We also note that you did not file a Form 700 when you left the CPRB in 2016. Failure to file a “leaving office” Form 700 is a violation of state and local law.¹ I have attached a blank Form 700 to this letter; you should report any applicable economic interests that you had between January 1, 2016, and the date that you left the CPRB. You must submit the completed “leaving office” Form 700 to the City Clerk and provide a date-stamped copy to the PEC by April 30, in order to avoid monetary penalties.

We are required to inform the PEC of the resolution of this matter at its next public meeting as part of our regular monthly update on Enforcement actions. That meeting will take place on May 6, 2019, at 6:30 p.m. in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for your cooperation in this matter. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson
Chief of Enforcement
City of Oakland, Public Ethics Commission

¹ Specifically, section 87204 of the California Government Code and section 2.25.040(B) of the Oakland Municipal Code.



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April 08, 2019

Theresa Coleman



Via e-mail

Re: PEC Complaint No. 18-12; Notice of Withdrawn Complaint

Dear Ms. Coleman:

The City of Oakland Public Ethics Commission would like to notify you that it is closing your complaint (#18-12) alleging Oakland Government Ethics Act violations. This is in response to our telephone conversation on April 08, 2019, in which you stated that, although you had concerns about what occurred at that Acorn Tenant Association meeting on March 6, 2018, you wanted to withdraw your complaint against Ms. McElhaney-Gibson.

Thank you for bringing this matter to our attention. If you have any questions, you can reach me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Enforcement Chief
City of Oakland Public Ethics Commission

ATTACHMENT 11



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Public Ethics Commission
Enforcement Unit

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April 18, 2019



Re: PEC Complaint No. 19-03; Dismissal Letter

Dear Mr. Lee:

On January 17, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that Oakland Police Commissioner Ginale Harris (“Commissioner”) violated the Government Ethics Act (GEA) by: 1) disclosing confidential information; 2) using her position or power or authority of her office or position, in a manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or any other person; and 3) bringing a non-Community Police Review Agency (CPRA) employee or staff into CPRA workspace. After a review of your complaint, we have determined that none of the alleged conduct violates GEA or any other laws within the PEC’s enforcement jurisdiction, and we are therefore dismissing your complaint.

GEA requires a Public Servant to refrain from willfully and knowingly disclosing for pecuniary gain, personal advantage or private interest, to any other person, confidential information acquired by him or her in the course of his or her official duties.¹ Your complaint alleged that Commissioner Ginale visited the CPRA offices with her Sherriff’s Office intern, to meet with Complaint Investigators Joan Saupe (“Saupe”) and Karen Tom (“Tom”). During this meeting, the Commissioner and her intern may have been privy to confidential CPRA information or cases because there were files and documents on various work desks in the area of the meeting. The Complaint lacked evidence to established that the Commissioner or her intern had, in fact, viewed or handled confidential CPRA files or information.

The Complaint also alleged that the Commissioner may have discussed confidential cases within that closed-door meeting. The Complaint did not provide any details about what case or information was discussed. I contacted you to get more specifics about the conversation and what you believed you overheard, but you could not provide any additional details.

GEA also requires a Public Servant or candidate for City Office to refrain from using his or her position or prospective position, or the power or authority of his or her office or position, in any

¹ O.M.C. Government Ethics Act 2.25.040 (D)

ATTACHMENT 11

PEC Complaint No. 19-03; Dismissal Letter
Page 2

manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.² In this case, it is alleged that the Commissioner may have used her position to gain access to or get information from CPRA staff/employees about confidential cases. The Complaint did not provide any specifics about how or if the Commissioner induced or coerced CPRA staff to disclose confidential information, nor did it provide any evidence that the Commissioner gained any benefit, advantage or economic gain.

Commission staff reached out to CPRA Investigator, Saupe who confirmed that the meeting took place but explained that the Commissioner met with them to introduce herself, explain her motivation for being on the Commission and assure them that she wanted to build a good relationship with the CPRA. Saupe was unequivocal that they did not discuss or disclose any confidential cases or files to the Commissioner or her intern.

The Complaint further alleged that after meeting with Saupe and Tom, Commissioner Harris had an arguably negative exchange with the complainant when she was questioned about the closed-door meeting. The Commissioner was described as taking a “snippy, threatening tone” with the complainant. If true, this allegation does not constitute a violation within our enforcement jurisdiction.

Because none of the alleged conduct in your complaint is a violation of GEA or any other laws within the PEC’s enforcement jurisdiction, we are dismissing the complaint pursuant to the PEC’s Complaint Procedures.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on May 6, 2019, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for taking the time to communicate your concerns with us. If you have any questions, please feel free to contact me at (510) 238-4976 or kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Enforcement Chief
City of Oakland Public Ethics Commission

cc: Commissioner Harris

² O.M.C. Government Ethics Act 2.25.030 (D) (2)



CITY OF OAKLAND

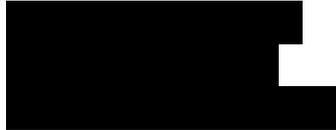
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Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
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March 21, 2018

E.A. Cox



Via e-mail

Re: PEC Complaint No. 18-51; Notice of Withdrawn Complaint

Dear Ms. Cox:

The City of Oakland Public Ethics Commission would like to notify you that it is withdrawing your complaint (#18-51) for alleged Sunshine Act violations against Dana Shupe, and considering this matter resolved. This is in response to our telephone conversation on March 6, 2019, in which you stated that you wanted to withdraw your complaint because you want to focus on pursuing a different public records request.

Thank you for bringing this matter to our attention. If you have any questions, you can reach me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Enforcement Chief
City of Oakland Public Ethics Commission

ATTACHMENT 11



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Enforcement Unit

(510) 238-3593
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April 22, 2019

[REDACTED]

Re: PEC Complaint No. 19-04; Dismissal Letter

Dear Ms. Sidebotham:

On January 30, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#19-04) alleging that Jose Dorado, a member of the Oakland Police Commission (“OPC”) (“Commissioner”), may have violated the Oakland Government Ethics Act (GEA) and/or his partner, a non-City employee, Pauletta Bruder, in asserting undue political influence to prevent a person from securing a nomination or vote.

The PEC conducted a preliminary review of your allegations, specifically to determine whether the Commissioner, in violation of the Government Ethics Act (GEA) prohibition on “Public Servants,” used his position/title through corrupt political influence to induce or coerce any person to provide a private advantage or to use their position as a Public Servant to gain a private advantage in return for consideration or quid pro quo.¹ What we found was the following:

On or between October 21, 2018 and November 10, 2018, the Commissioner used NextDoor, an online social network service, to arguably make disparaging remarks about then Oakland Councilmember, Ms. Desley Brooks. The Commissioner posted statements to the networking site that advocated against Ms. Brooks campaign for re-election to the City Council.

¹ A Public Servant is defined by section 2.25.030 (D) of the Oakland Government Ethics Act as:

1. Any elected or appointed officeholder of the City of Oakland, including any such officeholder elected but not yet sworn in, and not including Oakland School Board Directors, and
2. Any City board or commission member, including the Board of Port Commissioners, and
3. Any full-time or part-time employee of the City, and
4. Any consultant of the City who is required to file a Form 700 Statement of Economic Interests pursuant to the City of Oakland Conflict of Interest Code and the California Political Reform Act.

Around November 3, 2018, after receiving several counter responses to his post(s) about Ms. Brooks, the Commissioner posted, "...The Police Commission meeting last night rant until almost midnight... I am equally privileged and humbled to be a member of the Oakland Police Commission, having been selected unanimously by the Community Selection Panel, not appointed by the Mayor... it is no coincidence that I have worked diligently to unseat a council person who's seat I have vied for previously."

Public Servants do not surrender all of their political or First Amendment rights, particularly their speech rights, merely because they are employed by or serve the City government. Public Servants have a First Amendment right to engage in political activities while off duty and outside of City owned or controlled property.² However, the speech or political activities of a Public Servant can be subject to certain restrictions by the government, because it has a different—and more significant—interest in regulating the speech of its Public Servants than the general public.

Mr. Dorado's OPC statements neither used City resources, nor involved coercion or inducement of anyone to provide Dorado with a private advantage exchange or anything of value for a vote against Ms. Brooks. The facts, as presented in the complaint, do not establish that the Commissioner used his title or authority to coerce or induce any specific person to provide a personal benefit or economic gain to another person. Moreover, there is no evidence to suggest that Commissioner Dorado used his position to procure a vote against Ms. Brooks in exchange for a promise of a City job or any other thing of value. However, Mr. Dorado's mention of his title as an OPC Commissioner in a campaign context, unrelated to his service as a Commissioner, could understandably be perceived as a misuse of his position and is something the Public Ethics Commission staff advises against doing. We have communicated this concern to Mr. Dorado.

Because the complaint did not establish any evidence that the Commissioner violated the Oakland Government Ethics Act, we are dismissing this matter and the case will be closed.

We have also determined that the complaint does not allege any violation of any laws within the jurisdiction of the PEC regarding Ms. Pauletta Bruder. Ms. Bruder is not an Oakland "Public Servant" as defined by the GEA, nor is she a City employee. Because the PEC lacks jurisdiction over a matter involving a non-Public Servant, we must dismiss your complaint pursuant to our Complaint Procedures. The PEC's Complaint Procedures are available on the PEC's website, and a copy has been included with this letter for your reference.

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

² Cal. Gov. Code § 3203 protects the political activities of public employees/servants from all but legally required restrictions.

ATTACHMENT 11

PEC Complaint No. 19-04; Dismissal Letter
Page 2

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

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

Sincerely,

Kellie F. Johnson, Chief of Enforcement

ATTACHMENT 11



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Public Ethics Commission
Enforcement Unit

(510) 238-3593
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TDD (510) 238-3254

April 22, 2019

Oakland Police Commissioner Jose Dorado



Re: PEC Complaint No. 19-04; Notice of Dismissed Complaint

Commissioner Dorado:

This letter is in response to an informal complaint received by the City of Oakland Public Ethics Commission (PEC) on January 3, 2019, alleging that you and your spouse/partner Pauletta Bruder violated the Government Ethics Act (“GEA”) by using your position/title through corrupt political influence to induce or coerce any person to provide a private advantage or to use their position as a Public Servant to gain a private advantage in return for consideration or quid pro quo. We have reviewed the allegations in the Complaint and are dismissing the Complaint because the allegations, if true, do not constitute any violation of the Oakland Government Ethics Act.

A copy of the Complaint and the dismissal letter are attached. Though we did not find the allegations warranted opening an investigation into the allegations conduct such as using an official title/position for non-City purpose while engaged in a political activity could be viewed as a misuse of one’s City position from a public perception standpoint and we advise against such a practice. While the text of OMC 2.25.060 (A)(2) Misuse of City Position for Private Gain and OMC 2.25.060(2) Prohibitions Related to Political Activity of Public Servant’s and Employees requires more than just the passing use of a position title, the purpose of these provisions is to ensure that Public Servants, including City board and commission members, use the privilege of their City positions only for City purposes and not for any unrelated gainful purpose.

We are required to inform the full Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. This is purely informational, and no action will be taken by the Commission regarding this matter (because staff has already dismissed the complaint). You are welcome to attend that meeting and/or give public comment if you wish, but not required to do so. You may also submit written comments to be considered by the Commission, so long as they are received before the meeting begins.

ATTACHMENT 11

PEC Complaint No. 19-04; Notice of Dismissed Complaint
Page 2

The next PEC meeting will take place on May 6, 2019, at 6:30 PM in Hearing Room 1 of City Hall (1 Frank Ogawa Plaza).

If you have any questions, you can reach me at (510) 238-4976 or kjohnson3@oaklandca.gov.

Sincerely,

Kellie Johnson
Chief of Enforcement,
City of Oakland Public Ethics Commission



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Public Ethics Commission
Enforcement Unit

(510) 238-5239
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TDD (510) 238-3254

April 22, 2019

Pauletta Bruder



Re: PEC Complaint No. 19-04; Dismissal Letter

Dear Ms. Bruder:

On January 3, 2019, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that you violated the Oakland Government Ethics Act by assisting Jose Dorado, a Commissioner with the Oakland Police Commission, in misusing his position for personal gain/non-City purposes or for campaign purposes. We have reviewed the complaint and are dismissing it because the alleged conduct, if true, do not constitute a violation of law within the PEC's enforcement jurisdiction.

A copy of the dismissal letter is attached. If you have any questions regarding this matter, please feel free to contact me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Chief of Enforcement
City of Oakland Public Ethics Commission

Enclosure

ATTACHMENT 11



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Public Ethics Commission
Enforcement Unit

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April 22, 2019

E. A. Cox



Re: PEC Complaint No. 18-31M; Dismissal Letter

Dear Ms. Cox:

On September 26, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (18-31M) alleging that Public Records Request 18-1939 was never fulfilled in violation of the Oakland Sunshine Act. The Oakland Sunshine Ordinance requires mediation of disputes regarding public records requests take place before a formal complaint can be filed. Therefore, we treated your complaint as a request for mediation.

We have reviewed your request for mediation and determined that it does not allege any violation of the laws within the jurisdiction of the PEC. The reason is that the records sought by your request are labelled as confidential under Oakland Municipal Code (O.M.C.) section 5.04.140. Under this section, “statements filed pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to public inspection... Any officer or employee who shall willfully violate any provision of this section shall be deemed guilty of an infraction, and such violation shall be cause for discharge from the city’s service.” O.M.C. section 5.04.090 provides that a “statement” for purposes of this exemption is defined as “a form prescribed by the Business Tax Section and shall include a declaration substantially as follows: I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct.”

Since the Rent Adjustment Renewal forms requested are prescribed by the Business Tax Section and include the declaration outlined in O.M.C. section 5.04.090, they are confidential under O.M.C. section 5.04.140.

Because the response to your public records request is not a violation of the Oakland Sunshine Ordinance, we are dismissing your request for mediation.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will

ATTACHMENT 11

PEC Complaint No. 18-31; Dismissal Letter
Page 2 of 2

take place on May 6, 2019, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

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

Sincerely,

Kellie Johnson
Enforcement Chief

cc: *Amber Danielle-Rose Todd*

ATTACHMENT 12



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

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: April 25, 2019
RE: Executive Director's Report

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities since the Commission's last regular meeting that are not otherwise covered by staff program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and activities for 2019-20 for each program area.

New Commissioner

On April 12, 2019, City Auditor Courtney Ruby appointed Jerett Yan as our newest Commissioner for a three-year term through January 22, 2022. Commissioner Yan is an active member of the Oakland community, providing pro bono immigration advice and referral counseling to people in the Bay area, tutoring Burmese refugee students, and petitioning local government agencies on issues such as tenants rights and equitable investment in infrastructure. He is an attorney with Hanson Bridgett, LLP, providing legal services to cities, transit agencies, and water districts regarding ethics, elections, open government, public contracting and related laws, and he has experience working on equity matters. He has a B.A. in history and legal studies from Northwestern University and a J.D. from UC Berkeley, School of Law. Commissioner Yan will be sworn in and seated for the Commission's May 6 meeting.

Limited Public Financing Program

The City Auditor's Office is in the process of finalizing its statutorily-mandated audit of the candidates participating in the 2018 Limiting Public Financing (LPF) Program as administered by the Public Ethics Commission. Commission staff has been meeting and working with the City Auditor's Office to provide LPF records and assist in completion of the required audit, which is anticipated for completion in May. The LPF program provides District-City Council candidates with public funds via reimbursements for eligible campaign-related expenses, and the Public Ethics Commission is responsible for the implementation of the program and the distribution of public funds.

Commission Retreat

The Commission held its annual retreat on April 4, 2019, providing an opportunity to review program goals and accomplishments and refine ongoing program plans for the remainder of the 2017-2020 Strategic Plan period. Commissioners also engaged in a discussion of inclusive leadership with guest speaker Maria Hernandez, who volunteered her time to facilitate this important conversation. Commission staff prepared a draft set of core values for discussion at its May 6 meeting in follow up to the Commission's retreat discussion.

Attachment: Commission Programs and Priorities

ATTACHMENT 12

PUBLIC ETHICS COMMISSION Programs and Priorities 2018-19

Program	Goal	Desired Outcome	Key Projects for 2019-20
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Adoption of PEC-drafted City Ticket Distribution policy and process changes 2. Campaign Finance/Public Financing Act Project to expand participation in the campaign process 3. Government Integrity Data partnership
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Online ethics training for Form 700 filers – ensure training delivered to a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Board/Commission member/liaison support/guidance 3. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2) 4. Sunshine and Lobbyist education materials
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Outreach to client groups: -City staff/officials -people doing business with the City 2. Sustain/enhance general PEC social media outreach 3. PEC Roadshow – focus on CF project outreach (Commissioners) 4. Engage Boards/Commissions regarding Sunshine requirements (agenda postings online)
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Lobbyist Registration – pilot new e-filing system, create online open data format for public accessibility 2. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility 3. Initiate/develop project plan to establish contractor database 4. Open Disclosure 2020 – campaign data visualization project 5. Government Integrity Data Project planning and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Focus on ethics violations, proactive investigations 2. Conduct complaint intakes within 2 weeks 3. Collaborate with other government law enforcement agencies

ATTACHMENT 12

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	4. Conduct audits to identify common, across-the-board compliance issues
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct hearings on two cases 2. Complete City ticket cases 3. Expedite Sunshine Mediations 4. Amend Complaint Procedures 5. Resolve all 2014 and 2015 cases 6. Streamline and expand enforcement systems to incorporate broader tools
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Publish performance goals and data on PEC website – dashboards 2. Review data to adjust activities throughout the year 3. Ongoing: professional development and staff reviews