

**CITY OF OAKLAND**  
**PUBLIC ETHICS COMMISSION**  
One Frank Ogawa Plaza (City Hall)  
Regular Commission Meeting  
Monday, June 3, 2019  
Hearing Room 1  
6:30 p.m.



Commissioners: Jodie Smith (Chair), James E.T. Jackson (Vice-Chair), Jill Butler, 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. May 6, 2019 Regular Meeting Minutes ([Attachment 1 – Minutes](#))
- 5. Limited Public Financing Program Audit for the 2018 Election.** The City Auditor’s office conducted an audit of the Public Ethics Commission’s administration of the Limited Public Financing Act Program for the November 2018 election. Attached is a copy of the City Auditor’s report issued this month. Assistant City Auditor Mike Edmonds and Performance Auditor Jennifer Lim will present the Auditor’s report. ([Attachment 2 – Audit Report](#))
- 6. Mediation Case No. 18-02M.** The commission received a request for mediation alleging that the Mayor’s Office and the Oakland Police Department (OPD), after making the Requester wait several months, failed to respond to a public records request made by the Requester on November 15, 2017. On July 26, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Mayor’s Office provided two additional records responsive to the Requester’s public records request, and the OPD Records Division produced eleven responsive records. The Requester was satisfied with the records produced during the mediation; thus, Staff recommends that

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- the Commission close this mediation without further action. ([Attachment 3 – Memorandum](#))
7. **Mediation Case No. 18-06M.** The commission received a request for mediation alleging that the City Administrator’s Office and the Department of Planning & Building failed to respond to a public records request made by the Requester on August 7, 2017. On July 27, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance, In response, the City Administrator’s Office released one record (19 pages) and the Department of Planning & Building released five records (2,417 pages) responsive to the Requester’s request in September 2018, one year after the City had received the request. Although delayed, the Requester received all of the responsive documents. Staff recommends that the Commission close this mediation without further action. ([Attachment 4 – Memorandum](#))
  8. **Mediation Case No. 18-24M.** The commission received a request for mediation alleging that the Assistant to the Director of the Finance Department failed to disclose records in response to four public records requests made by the Requester on August 14, 2018. Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance on September 14, 2018. In response, the Finance Department provided three spreadsheets, each with 25,000 to 26,000 entries. Councilman Kalb’s Office provided one responsive record. The Requester notified Staff that they received all of the originally requested records that were the subject of the mediation: thus, Staff recommends that the Commission close the mediation without further action. ([Attachment 5 – Memorandum](#))
  9. **Mediation Case No. 18-39M.** The commission received a request for mediation alleging that the Deputy Chief of Staff in the Mayor’s Office failed to respond to a public records request made by the Requester on September 29, 2018. On November 5, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response to the mediation efforts the Mayor’s Office produced one responsive record and the City Administrator’s Office produced one responsive record. Since all responsive records were produced in response to the mediation, Staff recommends that the Commission close the mediation without further action. ([Attachment 6 – Memorandum](#))
  10. **Mediation Case No. M2019-03.** On February 19, 2019, the Commission received a request for mediation alleging that the Legislative Recorder for the City Clerk failed to disclose records in response to a public records request made by the Requester on February 2, 2019. On April 19, 2019, Staff initiated its mediation program pursuant to the Oakland

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Sunshine Ordinance. In response, the Requester stated that the City had produced all responsive records after the mediation request had been filed. Therefore, Staff recommends that the Commission close the mediation without further action. ([Attachment 7 – Memorandum](#))

11. **Mediation Case No. M2019-10.** On May 8, 2019, the Commission received a request for mediation alleging that the Human Resources Department failed to disclose records in response to a public records request made by the Requester on November 19, 2018. On May 16, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the City produced thirteen responsive records. Since the City provided all of the originally requested records, Staff recommends that the Commission close the mediation without further action. ([Attachment 8 – Memorandum](#))
12. **PEC Core Values for Inclusive Engagement.** At the Commission’s May 6 meeting, Commissioners discussed creation of a set of values for inclusive engagement following an earlier discussion at its April 4 retreat about inclusive leadership and how to incorporate inclusive practices into its processes. Commissioners provided input on the draft at the May meeting, and staff now provides a revised set of values for Commission consideration and potential approval. ([Attachment 9 – PEC Statement of Values](#))

### **DISCUSSION ITEMS**

13. **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) and James Jackson
  - b. **Subcommittee on Partnerships** (ad hoc) – Gail Kong and Nayeli Maxson

### **INFORMATION ITEMS**

14. **Education and Engagement Program.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Attachment 10 – Disclosure Report](#))

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- 15. Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Attachment 11 – Enforcement Report](#))
- 16. 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](http://www.oaklandca.gov/pec).

5/24/2019

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Approved for Distribution

Date



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# ATTACHMENT 1

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.

DRAFT



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 MINUTES**

### **1. Roll Call and Determination of Quorum.**

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

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

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, and Kyle McLean.

City Attorney Staff: Trish Hynes, Deputy City Attorney

### **2. Staff and Commission Announcements.**

Chair Smith welcomed the new commissioner, Jerett Yan, appointed by the City Auditor.

Commissioner Crowfoot announced this was her last meeting and has submitted her resignation.

### **3. Open Forum.**

There were no public speakers.

## **ACTION ITEMS**

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

- a. March 4, 2019 Regular Meeting Minutes

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## b. April 4, 2019 Retreat Meeting Minutes

Commissioner Crowfoot moved, and Commissioner Kong seconded to approve the March 4, 2019 Regular Meeting Minutes.

The motion passed 5-0. Commissioner Yan abstained since he was not present at that meeting.

Commissioner Kong moved to approve the April 4, 2019 Retreat Meeting Minutes with an amendment to Item 4, page 2. Commissioner Maxson seconded the motion.

There were no public speakers.

Chair Smith noticed that she had not taken public comment for the March 4, 2019 minutes and asked if there was any public comment.

There were no public speakers.

Chair Smith returned to the motion on the April 4, 2019 Minutes.

The motion passed 5-0. Commissioner Yan abstained since he was not a commissioner at that meeting.

Chair Smith recalled Item 4, the March 4, 2019 minutes for public comment.

There were no public speakers.

Commissioner Crowfoot moved and Commissioner Maxson seconded to approve the March 4, 2019 minutes.

There were no public speakers.

The motion passed 5-0. Commissioner Yan abstained since he was not present at that meeting.

## 5. Council President Kaplan's Proposed Amendments to the Oakland Campaign Reform Act.

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Bobbi Lopez, Policy Director for Council President Rebecca Kaplan, presented Council President Kaplan's proposed amendments to the Oakland Campaign Reform Act.

Commissioners discussed the proposal.

Commissioner Crowfoot moved, and Commissioner Kong seconded to express support for the amendments as described, contingent upon future edits between the PEC staff and Council staff.

There were no public speakers.

The motion passed 6-0.

## **6. PEC Core Values for Inclusive Engagement.**

Commission staff provided a document with a list of proposed core values for Commissioners to adopt to create a framework for engaging with each other and with the public throughout the course of the Commission's work. The proposed values were suggested at the Commission's April 4 retreat during a discussion about inclusive leadership.

Commissioners and staff discussed the proposed core values. Commissioner Maxson moved and Commissioner Crowfoot asked for staff to bring it back after incorporating ideas and changes offered by Commissioners.

There was one public speaker.

The motion passed 6-0.

## **7. In the Matter of 11 West Partners, LLC; Case No. 18-19.**

Kellie Johnson, Enforcement Chief, presented a recommendation that the Commission adopt the proposed stipulation, which has been signed by the respondent, for a total fine of \$5,600.

Commissioner Butler moved and Commissioner Maxson seconded to accept the recommendation by staff.

There were no public speakers.

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The motion passed 6-0.

## **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.

Staff recommended that the Commission close this mediation without further action.

Commissioner Kong moved and Commissioner Butler seconded to approve the recommendation.

There were no public speakers.

The motion passed 6-0.

## **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.

Staff recommended that the Commission close this mediation without further action.

Commissioner Maxson moved, and Commissioner Crowfoot seconded to approve the recommendation.

There were no public speakers.

The motion passed 6-0.

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## 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 recommended that the Commission close this mediation without further action.

Commissioner Maxson moved, and Commissioner Crowfoot seconded to approve the recommendation.

There were no public speakers.

The motion passed 6-0.

## **DISCUSSION ITEMS**

### 11. Reports on Subcommittees and Commissioner Assignments.

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

Commissioner Maxson shared that Commissioner Smith will present on campaign financing at the League of Women Voters event on May 22, 2019 and Commissioner Maxson on May 15, 2019.

Commissioners discussed options for how to move forward on the work of reforming campaign finance and public financing laws.

There was one public speaker.

Commissioner Crowfoot gave an update on the *ad hoc* Partnerships subcommittee.

There were no public speakers.

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## **INFORMATION ITEMS**

### **12. Education and Engagement Program.**

Suzanne Doran, Lead Analyst, provided a report of recent education, outreach, disclosure and data illumination activities.

Ms. Doran also shared that Open Oakland will be sponsoring a day of service on May 11, 2019 at City Hall.

There were no public speakers.

### **13. Enforcement Program.**

Kellie Johnson, Enforcement Chief, reported on the Commission's enforcement work since the last regular Commission meeting.

There were no public speakers.

### **14. Executive Director's Report.**

Whitney Barazoto, Executive Director, provided an update on the Commission's proposed budget released by the Mayor. While the Public Ethics Commission did not receive any of the requested additional staff positions, the proposal did include a one-time allocation of \$100,000 for the 2020-21 fiscal year for election related expenses.

There were no public speakers.

The meeting adjourned at 9:11 p.m.

# ATTACHMENT 2



CITY OF OAKLAND  
Office of the City Auditor

## PERFORMANCE AUDIT



CITY AUDITOR  
**Courtney A. Ruby,**  
CPA

### AUDIT TEAM

**Alessia Dempsey**  
CIA  
Performance Audit  
Manager

**Jennifer Lim**  
Performance Auditor

Limited Public Financing Act  
November 2018 Election

May 22, 2019

# ATTACHMENT 2

Oakland's City Auditor is an elected official and works for, and reports to, the residents of Oakland. The Auditor's job is to provide oversight to the City's activities. The Auditor has the authority to access City financial and administrative records, plus the policies and procedures of all City agencies and departments.

To make sure this work is done objectively and without bias, the City Auditor is not connected to any other City department and has no day-to-day financial or accounting duties for the City of Oakland. This autonomy allows for independent analyses, ensuring tax dollars and other resources serve the public interest.

## Audit Reports

Copies of audit reports are available at: [www.OaklandAuditor.com](http://www.OaklandAuditor.com)

Alternate formats available upon request.

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Copias de nuestros informes de auditoría están disponibles en: [www.OaklandAuditor.com](http://www.OaklandAuditor.com)

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# ATTACHMENT 2

CITY OF OAKLAND



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Office of the City Auditor  
Courtney A. Ruby, CPA  
City Auditor

(510) 238-3378  
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TDD (510) 238-3254  
[www.oaklandauditor.com](http://www.oaklandauditor.com)

May 22, 2019

Whitney Barazoto, Executive Director  
Public Ethics Commission  
City of Oakland  
1 Frank Ogawa Plaza, 11<sup>TH</sup> Floor  
Oakland, California 94612

## RE: LIMITED PUBLIC FINANCING ACT (LPFA) – NOVEMBER 2018 ELECTION AUDIT

Dear Director Barazoto:

The Office of the City Auditor completed an audit of the Limited Public Financing Program (Program) as mandated by the Oakland Municipal Code (Municipal Code). The objective of the audit was to determine whether candidates who received public financing during the November 2018 election cycle complied with the objectives established in Municipal Code Section 3.13 (LPFA).

The PEC's overall systems and internal controls are adequate to ensure proper administration of the Program. All candidates were properly deemed eligible for the Program and all expenditure reimbursements were appropriate. The audit identified minor issues related to candidates' calculating surplus funds and depositing reimbursement checks. The PEC can address these findings with simple updates to the training materials, campaign e-filing system, and its quality assurance program.

I want to express our appreciation to the Public Ethics Commission's management and staff for their cooperation during this audit and their commitment to fully implementing all the recommendations.

Sincerely,

A handwritten signature in red ink, appearing to read 'CARuby', written over the typed name of Courtney A. Ruby, CPA.

COURTNEY A. RUBY, CPA  
City Auditor

# ATTACHMENT 2

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## Executive Summary

<b>OVERVIEW</b>	The Office of the City Auditor conducted a mandated post-election audit of the Limited Public Financing Act (LPFA, Act or Program) administered by the Public Ethics Commission (PEC).
<b>BACKGROUND</b>	<p>The PEC, through its City administrative staff, manages and administers the City's LPFA Program. The PEC is a governance board, composed of Oakland residents, that oversees compliance with the Act.</p> <p>The Act provides funding for district city council campaigns. For the November 2018 election, participants received \$176,489 in public financing.</p>
<b>OBJECTIVE</b>	The objective of the audit was to determine whether candidates who received public financing during the November 2018 election cycle complied with the objectives established in Municipal Code Section 3.13 (LPFA).
<b>WHY THIS AUDIT MATTERS</b>	The audit provides reasonable assurance that taxpayer dollars are being spent as intended by the voters, and recommends ways to strengthen the PEC's internal control environment.
<b>KEY FINDINGS</b>	<ol style="list-style-type: none"><li>1. Minor changes can improve controls for calculating a campaign's surplus funds.</li><li>2. Three candidates did not deposit reimbursement checks within the three-day timeframe required by the Act.</li></ol>
<b>RECOMMENDATIONS</b>	<p>PEC staff/management should:</p> <ol style="list-style-type: none"><li>1. Highlight the importance of reconciling campaign financial statements as part of the Program training and provide instructions on how to reconcile periodic statements to the final statements.</li></ol>

# ATTACHMENT 2

## Executive Summary

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2. Work with the City's campaign e-filing vendor to create a system control that automatically adds up each numerical field in the campaign financial statement and verifies it against the final campaign statement.
3. Verify and document the surplus fund calculation in the participant's file when candidates do not submit the form.
4. Recommend that City Council amend the LPFA to provide candidates more time to deposit reimbursement checks.

# ATTACHMENT 2

## Introduction and Background

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### Introduction

The Office of the City Auditor conducted a post-election mandated audit of the Limited Public Financing Act (LPFA, Act or Program). The objective of the audit was to determine whether candidates who received public financing during the November 2018 election cycle complied with the objectives established in Municipal Code Section 3.13 (LPFA).

The PEC's City staff manages and administers the Program. The PEC board oversees compliance of the LPFA. The board is composed of seven Oakland residents (also known as Commissioners); the Mayor, City Attorney, and City Auditor each appoint one Commissioner, and the remaining four are selected by the PEC through a public recruitment process.

For the November 2018 election, \$183,459 was available to participants<sup>1</sup>, of which \$176,489 was claimed. Oakland City Council (Council) appropriated \$155,000 to the November 2018 Election Campaign Fund, and an additional \$43,335 was carried over from the previous election. The PEC received 7.5%, or \$11,625, of funds appropriated for administrative costs.

Fifteen candidates ran for Council and qualified to appear on the ballot, but only ten qualified for public campaign financing, each eligible to receive up to \$18,345. Of the five candidates who did not receive public campaign financing, two chose not to participate, and three were deemed ineligible.

### Background

Council adopted the LPFA in December 1999 to provide public campaign funding for elected city offices. The Act provides funding for campaigns to:

- Ensure equal opportunity to participate,
- Even the funding base among participants,
- Encourage competition in elections,
- Allow candidates to spend less time on fundraising,
- Reduce the pressure on candidates to raise enough money to effectively communicate with voters,
- Promote public discussion of important issues, and
- Help preserve public trust in government and elections.

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<sup>1</sup> Participants are City Council candidates who have opted into the LPFA Program.

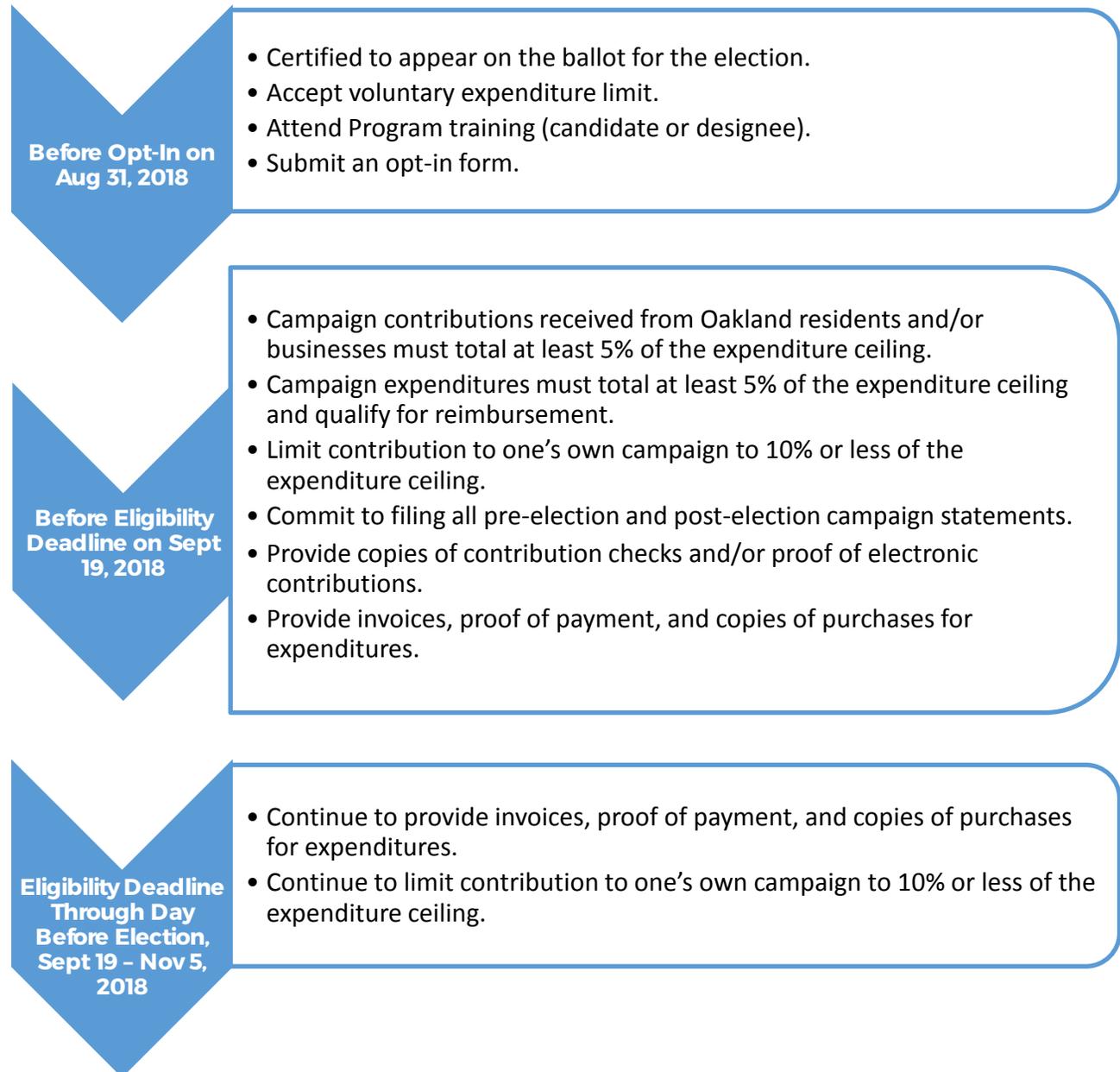
# ATTACHMENT 2

## Introduction and Background

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### Requirements

Candidates must meet multiple requirements to participate and qualify for Program funding. These requirements include accepting the voluntary expenditure ceiling (expenditure ceiling) early in the campaign season, adhering to timelines, and providing required documentation. Expenditure ceilings vary slightly depending on a candidate's district (see Appendix A). The following exhibit outlines Program requirements and their respective deadlines:



## Audit Results

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The PEC's overall systems and internal controls are adequate to ensure proper administration of the Program. All candidates were properly deemed eligible for the Program, and all expenditure reimbursements were appropriate. The audit identified minor issues related to candidates' calculating surplus funds and depositing reimbursement checks. The PEC can address these findings with simple updates to the training materials, campaign e-filing system, and its quality assurance program.

### **Finding 1. Minor changes can improve controls for calculating a campaign's surplus funds**

Throughout the election, candidates are required by the State of California (State) to submit campaign financial statements to meet financial disclosure obligations. After the election, candidates also use these statements to calculate the campaign's surplus funds, if any.

A surplus fund exists if the total amount of contributions (excluding the amount of public financing) exceeds the total financial obligations of the candidate's campaign committee<sup>2</sup>.

The audit found campaign financial statements were not reconciled by candidates as expected, and surplus fund calculations were not always submitted to the PEC in accordance with Program requirements.

#### Campaign financial statements do not reconcile

Monetary contributions for each statement period should reconcile to the total contributions received on the last statement to ensure all figures are correct. However, 6 out of 10 candidates submitted financial statements in which the total of the periodic statements did not reconcile to the final statement. Discrepancies ranged from \$100 - \$4,550.

As a result, one participant incorrectly calculated and overpaid the City by approximately \$150, by basing the calculation off an inaccurate total contribution amount. PEC staff notified the participant and is working to resolve this issue.

Accurate financial statements are not only important for calculating surplus funds, but also because the State has the right to audit a candidate's statements and may recommend enforcement action.

The candidates are responsible for submitting their campaign financial statements to the State. The PEC is not responsible for ensuring that financial statements are accurate.

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<sup>2</sup> If the amount calculated is positive, the participant must return a portion of the surplus funds; if negative, participants do not owe money to the City.

## Audit Results

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### Four Program participants did not submit a surplus fund calculation form

After the election, participants are required to calculate their campaign's surplus funds; however, 4 out of 10 participants did not submit a surplus fund calculation form. Although these participants did not owe any money to the City, the participants should perform the calculation using the provided form, and submit it to the PEC for verification.

Although the participants are not penalized for not submitting a surplus fund calculation, it does create additional work for PEC staff.

According to the PEC, staff performed the calculation for the four participants who did not submit a surplus calculation form, but the calculation was not documented in the participant's file.

### **Recommendations 1-3:**

PEC staff should:

1. Highlight the importance of reconciling campaign financial statements as part of the Program training and provide instructions on how to reconcile periodic statements to the final statements.
2. Work with the vendor for the City's campaign e-filing system to create a system control that automatically adds up each numerical field in the campaign financial statement and verifies it against the final campaign statement.
3. Verify and document the surplus fund calculation in the participant's file when the candidates do not submit the form.

### **Finding 2. Three participants did not deposit reimbursement checks within the three-day timeframe required by the Act**

The Act requires candidates to deposit reimbursement checks into the campaign's checking account within three days of receiving them. However, 3 out of 10 candidates did not deposit the checks in the required three-day timeframe. The candidates deposited these checks between 5 and 17 days after receipt.

Although candidates should deposit their reimbursement checks within a reasonable timeframe, the three-day time frame does not seem reasonable.

### **Recommendation 4:**

PEC management should recommend that City Council amend the LPFA to provide candidates more time to deposit reimbursement checks.

# ATTACHMENT 2

## Conclusion

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The audit recommends PEC staff and management: (1) highlight the importance of reconciling financial statements as part of the Program training, (2) work with the City's campaign e-filing system vendor to create a system control that automatically calculates numerical fields, (3) document surplus fund calculations and (4) recommend City Council change the three-day deposit requirement for reimbursement checks.

PEC staff has acknowledged these findings and recommendations, and has a plan to implement procedural improvements.

# ATTACHMENT 2

## Audit Objective, Scope and Methodology

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### Objective

The objective of the audit was to determine whether candidates who received public financing during the November 2018 election cycle complied with the objectives established in Municipal Code 3.13 (LPFA).

### Scope

The scope of this audit included all candidates that received public financing for the November 6, 2018 City Council elections (Appendix A).

### Methodology

In conducting the audit, we:

- Reviewed the requirements of the Act,
- Performed a walkthrough of Program procedures and interviewed PEC staff to identify risks and key internal controls to assess whether the PEC properly administered the Program,
- Tested and reported on the adequacy of internal controls,
- Reviewed and assessed the PEC staff's policies and procedures, and the candidate handbook,
- Reviewed and tested candidates' records to determine whether candidates complied with eligibility, reimbursement, and close out requirements of the Act to validate the adequacy of the overall internal control environment, and
- Reviewed and assessed whether PEC staff addressed the recommendations from the 2016 post-election audit issued in 2017.

# **ATTACHMENT 2**

## **Statement of Compliance with Auditing Standards**

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We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the audit's findings and conclusions based on the audit's objectives. We believe that the evidence obtained provides a reasonable basis for the audit's findings and conclusions based on the audit objectives.

# ATTACHMENT 2

## Appendix A

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The following are the Voluntary Expenditure Ceilings for 2018 by district:

- District 2 - \$142,000
  - District 4 - \$136,000
  - District 6 - \$136,000
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List of candidates participating in the Limited Public Financing Program for the November 2018 election:

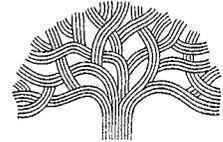
- Nikki Fortunato Bas, District 2
- Abel Guillen, District 2
- Pamela Harris, District 4
- Francis Matt Hummel, District 4
- Nayeli Maxson, District 4
- Charlie Michelson, District 4
- Joseph Tanios, District 4
- Sheng Thao, District 4
- Natasha Middleton, District 6
- Loren Taylor, District 6

# ATTACHMENT 2



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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • SUITE 104 • OAKLAND, CALIFORNIA 94612

Public Ethics Commission

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

May 8, 2019

Courtney A. Ruby  
City Auditor  
City of Oakland  
1 Frank Ogawa Plaza, 4<sup>th</sup> Floor  
Oakland, CA 94612

Dear Auditor Ruby,

Thank you for your audit of the Public Ethics Commission's administration of the Limited Public Financing Act (LPFA) program for the 2018 election.

As always, we appreciate your review and recommendations for how we can improve our administration of the LPFA program. We are pleased that the results of the audit indicate that "the PEC's overall systems and internal controls are adequate to ensure proper administration of the Program. All candidates were properly deemed eligible for the Program, and all expenditure reimbursements were appropriate." Thanks to your office's recommendations over the years, Commission staff has made ongoing adjustments to the program to maintain strict controls over the distribution of public funds and to maximize candidate utilization of the program and available funds. We further appreciate your additional suggestions for minor updates to program training materials, the campaign e-filing system, and documentation, and we will incorporate these into our program work going forward.

Upon the public release of your report, the full Commission will review the audit. We invite you to join us at a public meeting to present your findings and engage in discussion with Commissioners. Our next public meeting is scheduled for Monday, June 3, beginning at 6:30 p.m. in Hearing Room 1.

Many thanks to you and your office for your continued support of the Commission's efforts to administer and improve the Limited Public Financing Act program.

Sincerely,

Whitney Barazoto  
Executive Director

	City Auditor’s Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
1	Highlight the importance of reconciling campaign financial statements as part of the Program training and provide instructions on how to reconcile periodic statements to the final statements.	PEC staff will add this item to the LPFA training in August 2020.	Jelani Killings	Aug. 1, 2020
2	Work with the City’s campaign e-filing vendor to create a system control that automatically adds up each numerical field in the campaign financial statement and verifies it against the final campaign statement.	The City’s campaign e-filing vendor, Netfile, already automates the calculation of total monetary contributions received across multiple filings in a comprehensive database for each filer. However, if a campaign enters changes into the database after the form for the relevant reporting period has been filed, and they fail to file an amendment with the PEC to reflect the change, then the statements available to the public appear to not reconcile. Instead, PEC staff will incorporate a process to review each statement filed by participating LPF candidates to determine whether the current statement being filed reconciles with the prior statement. If the subsequent statement does not reconcile to the prior one, staff will request amendments by the campaign committee at that time, rather than at the end of the year for multiple statements.	Jelani Killings	Aug. 1, 2020 through January 31, 2021



<b>3</b>	Verify and document the surplus fund calculation in the participant's file when candidates do not submit the form.	PEC staff will make a note of staff's review and determination as to whether any surplus funds exist for each participating campaign committee. The target date provided here is the first day following the relevant campaign reporting deadline.	<b>Jelani Killings</b>	<b>Feb. 1, 2021</b>
<b>4</b>	Recommend that City Council amend the LPFA to provide candidates more time to deposit reimbursement checks.	Upon the next set of amendments proposed to Council for changes to the LPFA, staff will include this recommendation.	<b>Whitney Barazoto</b>	<b>Dec. 31, 2019</b>



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 16, 2019  
RE: *In the Matter of City of Oakland (Case No. 18-02M); Mediation Summary*

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## I. INTRODUCTION

On January 22, 2018, the Commission received a request for mediation alleging that the Mayor's Office and the Oakland Police Department (OPD) failed to respond to a public records request made by the Requester on November 15, 2017. On July 26, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. After making the Requester wait several months for responsive records, the Mayor's Office produced two responsive records and the OPD Records Division produced eleven responsive records.

Because the Requester received all of the originally requested records, and because the Requester notified Staff that they were satisfied with the response and wished to end mediation efforts, 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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

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<sup>1</sup> Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.<sup>5</sup>

### III. SUMMARY OF FACTS

On November 15, 2017, the City received, via RecordTrac, the following records request (RT-24085): “Please provide all communication records and documents related to the 2016 COPS grant and all communications and documents between the DOJ and the City of Oakland, the Mayor or the Police Chief.”

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 December 8, 2017, Requester stated the following via RecordTrac: “Please advise when you will be responding to this request.”

On December 15, 2017, Requester stated the following via RecordTrac: “It's been a month now. Where are the documents?”

On January 2, 2018, the Requester emailed Amber Todd (public record request liaison for the Finance Department) and asked for an update on the response to their request. The Requester did not receive an answer.

On January 19, 2018, approximately two months after the request had been received by the City Administrator, Alex Katz (Chief of Staff at the City Attorney’s Office) stated the following via RecordTrac: “Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).”

On January 22, 2018, the Requester filed a request for mediation with the Commission; the City had produced no responsive records at the time.

On March 16, 2018, the City relocated its online portal for public records requests from RecordTrac to NextRequest.

On July 26, 2018, Staff initiated mediation efforts. Mediation did not commence sooner due to limited staffing and many simultaneous ongoing investigations.

Staff noted that the records request had been received by the City Administrator instead of the Mayor’s Office or OPD. It is unclear whether the Requester mistakenly directed the records request to the City Administrator when making the request, or if the request was erroneously forwarded to the City Administrator when the City relocated its online portal for public records requests from RecordTrac to NextRequest. Richard Luna (public record request liaison for the City Administrator) confirmed on July 31, 2018 that the City Administrator’s Office was unaware of this records request before Staff commenced mediation proceedings.

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<sup>5</sup> Complaint Procedures § IV (C)(5).

# ATTACHMENT 3

The Requester indicated that they were unsatisfied with the response to this records request because no records had been produced in eight months. Despite extending the request response time in January 2018 due to the need to examine a large number of records, the City Attorney's Office posted no responsive records to the request.

On August 3, 2018, Selina Jones (Police Records Specialist for the OPD Records Division) released eleven records and stated the following via NextRequest: "The Oakland Police Department has provided responsive records in our possession to the requester and this signifies the completion of our portion of this request. The other departments within the City will respond separately."

On September 12, 2018, Joanne Karchmer (Deputy Chief of Staff for the Mayor's Office) confirmed to Staff via email that the Mayor's Office had possible responsive records in its possession.

On September 19, 2018, Michael Sze (Special Assistant to the Mayor) released two records and stated the following via NextRequest: "The Mayor's Office has provided responsive documents to the request."

Also on September 19, 2018, Richard Luna of the City Administrator's Office closed the request and stated the following via RecordTrac: "We released all of the requested documents."

Also on September 19, 2018, the Requester informed Staff they had no outstanding issues or concerns regarding the records produced in response to the request and asked that Staff close the mediation. The Requester reiterated concerns about the timeliness of the City's response and noted that the final responsive records were released ten months after the City received the request.

#### IV. RECOMMENDATION

Because additional documents were produced in response to the mediation, and because Requester has no issues with the response to the request, Staff recommends that the Commission close the mediation without further action.



# ATTACHMENT 4



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 16, 2019  
RE: *In the Matter of City of Oakland (Case No. 18-06M); Mediation Summary*

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## I. INTRODUCTION

On February 13, 2018, the Commission received a request for mediation alleging that the City Administrator's Office and the Department of Planning & Building failed to respond to a public records request made by the Requester on August 7, 2017. On July 27, 2018, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the City Administrator's Office released one record (19 pages total) and the Department of Planning & Building released five records (2,417 pages total) responsive to Requester's request in September 2018 - over one year after the City had received the request.

Because the City uploaded records in response to the mediation and the Requester was satisfied with the City's response, Commission Staff recommends that the Commission close this matter without further action.

## 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. The CPRA requires each agency to make public records promptly available to any person upon request.

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. 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.

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.

# ATTACHMENT 4

## III. SUMMARY OF FACTS

On August 7, 2017, the City received, via RecordTrac, the following public records request (RT-22445): “All emails authored by Sabrina Landreth to, from, or regarding John Protopappas, Rachel Flynn, Rich Fielding, Tim Lowe, Gene Martinelli, 1919 Market St., 1919 Bayside, Danny Haber, Negev, Market Holdings LLC, Madison Park, or Joy Newhart.”

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 August 7, 2017, the Requester stated the following: “Beginning January 2015 to present.”

On February 13, 2018, the Requester filed a complaint with the Commission. Attached to the complaint was a December 18, 2017 email from the Requester to Councilmember Kaplan requesting assistance with a response; a January 5, 2018 email from the Requester to Online Records Custodian Amber Todd requesting assistance with a response; and a February 9, 2018 email from the Requester to Sabrina Landreth (City Administrator), Karen Boyd (Citywide Communications Director for the City Administrator’s Office), and Richard Luna (public record request liaison for the City Administrator’s Office) requesting compliance with her records request. As of February 13, 2018, the City had not provided any records in response to the request.

On April 17, 2018, the Department of Planning & Building and the City Administrator’s Office were added as points of contact on NextRequest by Amber Todd.

On May 4, 2018, the Department of Planning & Building sent a request to the City’s IT Department for the records requested by the Requester. On May 23, 2018, Mariko Highsmith of the Department of Planning & Building messaged the Requester via NextRequest and stated “This request was sent to our IT department on 5/4/18 and is still being processed. Thank you for your patience.”

On July 27, 2018, Commission Staff initiated its mediation efforts by contacting the Department of Planning & Building and the City Administrator’s Office regarding Requester’s public records request.

On July 30, 2018, Mariko Highsmith (public record request liaison for the Planning & Building Department) responded to Staff’s initiation of mediation efforts and stated that the email search sent to the IT Department on May 4, 2018 was still being processed. Highsmith further stated that the IT Department was unable to give them a timeframe regarding providing the responsive records. Highsmith acknowledged that the request was assigned to the Department, albeit extremely overdue, after the City switched from RecordTrac to NextRequest as its public record request platform.

On July 31, 2018, Richard Luna of the City Administrator’s Office responded to Staff and stated that the email records for Sabrina Landreth were with the City Attorney’s Office for review.

On August 1, 2018, Staff reached out to the Requester and informed them that the records had been retrieved by the IT Department and were being reviewed by the City Attorney’s Office.

On August 8, 2018, Staff reached out to the City Administrator’s Office and asked if the City Attorney’s Office had provided an update on the records. Richard Luna responded the same day and stated that the records were still with the City Attorney’s Office.

# ATTACHMENT 4

On August 22, 2018, Staff reached out to the City Administrator's Office and asked if the City Attorney's Office had provided an update on the records. Richard Luna responded that there had still been no update from the City Attorney's Office.

On September 11, 2018, the City Administrator's Office uploaded nineteen pages of records via NextRequest.

On September 13, 2018, Mariko Highsmith notified Staff that the Planning & Building Department received the IT results at the end of August and that all records were being sent to the City Attorney's Office for review and redaction before being uploaded on NextRequest.

On September 21, 2018, the Planning & Building Department uploaded two thousand, four hundred and seventeen (2,417) pages of records via NextRequest, stated the following message, and closed the request: "William Gilchrist, Director of Planning and Building, Mariko Highsmith, Account Clerk III, and Peter Spoerl, Sr Deputy Attorney has reviewed records and has not provided documents covered by the attorney-client privilege pursuant to Section 6254(k) of the Public Records Act which states that "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c)."

On September 24, 2018, Commission Staff reached out to the Requester and notified them that the Planning & Building Department and City Administrator's Office had confirmed that they released all responsive records at the time. On September 27, 2018, the Requester confirmed they were satisfied with the records produced in response to the request, but reiterated dissatisfaction with the timeliness of the City's response.

#### **IV. RECOMMENDATION**

Because the Requester received all of the originally requested records and confirmed that all responsive records had been provided, Commission Staff recommends that the Commission close this matter without further action.



# ATTACHMENT 5



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 20, 2019  
RE: *In the Matter of Amber Todd (Case No. 18-24M); Mediation Summary*

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## I. INTRODUCTION

On September 11, 2018, the Commission received a complaint alleging that Amber Todd (Assistant to the Director of the Finance Department) failed to disclose records in response to four public records requests made by the Requester on August 14, 2018: 18-2482, 18-2483, 18-2484, and 18-2485. On September 14, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Finance Department provided three spreadsheets, each with 25,000 to 26,000 entries; Councilmember Kalb's Office provided one responsive record after the Finance Department refused to.

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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

# ATTACHMENT 5

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.<sup>5</sup>

### III. SUMMARY OF FACTS

#### Requests 18-2482, 18-2483, and 18-2484

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2482):

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: Information from all the 2018 Rent Adjustment Form mailed to property owners requesting annual payment of the RAP free. I am requesting information from the following fields contained on the form as mapped to the information held in the city's database. Please note that if the information is available in electronic form, I am request that it be provided in electronic form and in PDF. If the information is available in CVS format or Excel, I am requesting it be provided in either CVS or Excel. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 8: Total number of units per Alameda County Records. I am also requesting information from the following fields provided by property owners who returned RAP forms. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 9 Exemptions claimed for 2018 a-f; Field Total Number of Exempt Units claimed.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question.

If you determine that any or all or the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested.

In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2483):

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

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<sup>5</sup> Complaint Procedures § IV (C)(5).

# ATTACHMENT 5

held by your agency: Information from all the **2017** Rent Adjustment Form mailed to property owners requesting annual payment of the RAP free. I am requesting information from the following fields contained on the form as mapped to the information held in the city's database. Please note that if the information is available in electronic form, I am request that it be provided in electronic form and in PDF. If the information is available in CVS format or Excel, I am requesting it be provided in either CVS or Excel. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 8: Total number of units per Alameda County Records. I am also requesting information from the following fields provided by property owners who returned **2017** RAP forms. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 9 Exemptions claimed for 2018 a-f; Field Total Number of Exempt Units claimed . . .

On August 27, 2018, the Requester stated the following via NextRequest: “The purpose of this email is to inform the city that the ten-day period for providing these records has elapsed and the city is now in violation of the California Public Records law.”

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2484):

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: Information from all the **2015** Rent Adjustment Form mailed to property owners requesting annual payment of the RAP free. I am requesting information from the following fields contained on the form as mapped to the information held in the city's database. Please note that if the information is available in electronic form, I am request that it be provided in electronic form and in PDF. If the information is available in CVS format or Excel, I am requesting it be provided in either CVS or Excel. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 8: Total number of units per Alameda County Records. I am also requesting information from the following fields provided by property owners who returned **2015** RAP forms. Field 2. Parcel; Field 3 Rental location; Field 5 Mailing address; Field 9 Exemptions claimed for 2018 a-f; Field Total Number of Exempt Units claimed.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question . . .

On August 27, 2018, the Requester stated the following via NextRequest: “The purpose of this email is to inform the city that the ten-day period for providing these records has elapsed and the city is now in violation of the California Public Records law.”

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. 18-2482, 18-2483, 18-2484, and 18-2485. At the time that the Commission received the Complaint, the Finance Department had not responded to the record requests in any way.

On September 14, 2018, Staff notified the Requester that the Sunshine Ordinance requires public records requesters first undergo mediation before a complaint can be opened with the PEC. In

# ATTACHMENT 5

response, the Requester asked Staff to regard the complaint as a request for mediation. Staff commenced mediation proceedings and notified Amber Todd that the Commission received a request for mediation concerning the above referenced records request. 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."

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 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 26, 2018, in response to request 18-2484 Shahla Azimi (revenue analyst for the Finance Department) released one excel spreadsheet with approximately 26,000 entries, closed the records request, and stated the following: "We have released the information requested except there is no accurate data available regarding the claim of exemptions. Thank you."

On November 27, 2018, in response to request 18-2482 Shahla Azimi closed the records request and stated the following: "This request is the same as request # 18-2960 and the requested information can be obtained from the above request #. Thank you." On November 30, 2018 Shahla Azimi released one record in response to 18-2960 – an excel spreadsheet with approximately 25,000 fields.

Also on November 27, 2018, in response to request 18-2483 Shahla Azimi closed the records request and stated the following: "We have released the information requested except there is no accurate

# ATTACHMENT 5

data available regarding the claim of exemptions. Thank you.” On November 30, 2018 Shahla Azimi released one record in response to 18-2483 – an excel spreadsheet with approximately 25,000 fields.

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

## Request 18-2485

On August 14, 2018, the Finance Department received, via NextRequest, the following public records request (No. 18-2485):

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: The original public records request 18-1801. I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

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. 18-2482, 18-2483, 18-2484, and 18-2485. At the time that the Commission received the Complaint, the Finance Department had not responded to the record requests in any way.

On September 14, 2018, Staff notified the Requester that the Sunshine Ordinance requires public records requesters first undergo mediation before a complaint can be opened with the PEC. In response, the Requester asked Staff to regard the complaint as a request for mediation. Staff contacted the Requester and clarified that the request sought the personal information of the individual who filed request No. 18-1801. When the City receives public record requests, the requests are public records. Individuals who submit a request via NextRequest are warned “Personal information is visible only to staff by default, but requests are part of the public record and requester information may be released in response to a public records request.”

On September 17, 2018, Amber Todd changed the due date for the request on NextRequest and posted the following: “Due Date Changed 09/28/2018 (was 08/24/2018). staff needs more time to assemble and review the requested information due to the volume of requests to this Unit. We apologize for the delay.”

On November 7, 2018, Staff emailed Juliet Naishorua (records request liaison for the Finance Department) and asked for the Finance Department to respond to 18-2485 with the personal information of the requester for 18-1801.

# ATTACHMENT 5

On November 8, 2018, Shahla Azimi rerouted request No. 18-2485 to Councilmember Kalb's Office via NextRequest, assigned Susan Sanchez (Executive Assistant to City Council) as the point of contact, and removed the Finance Department and its staff from the request. Request No. 18-1801 had been received by Councilmember Kalb's Office, although all staff with NextRequest credentials can see the personal information of requesters.

On December 17, 2018, after it became apparent that the Finance Department would not provide the information to the Requester, Staff contacted Susan Sanchez and asked her to provide the requested information. Staff did not receive a response.

On January 11, 2019, Staff followed up and contacted Susan Sanchez again. Sanchez called Staff the same day and refused to respond to the request, stating that she was uncomfortable with posting personal information. Staff reiterated that the information was public and the City was bound by law to disclose the information but Sanchez repeated that she would not post the information.

On April 18, 2019, Staff contacted Oliver Luby (public record request liaison for Councilmember Kalb's Office) and asked for Councilmember Kalb's office to release the information since it was not listed as the point of contact on the request. The same day Oliver Luby posted the information sought by the Requester via NextRequest and closed the request.

Also on April 18, 2019, the Requester confirmed that there were no outstanding issues with the City's response to all four requests and asked Staff to close mediation proceedings.

## **IV. RECOMMENDATION**

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

# ATTACHMENT 6



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 20, 2019  
RE: *In the Matter of Joanne Karchmer (Case No. 18-39M); Mediation Summary*

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## I. INTRODUCTION

On October 23, 2018, the Commission received a complaint alleging that Joanne Karchmer (Deputy Chief of Staff Mayor's Office) failed to respond to a public records request made by the Requester on September 29, 2018. On November 5, 2018, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response to mediation efforts the Mayor's Office produced one responsive record and the City Administrator's Office produced one responsive record.

Because all responsive records were produced in response to the mediation, Staff recommends that the Commission close the mediation without further action.

## 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup> Under the CPRA no local agency shall post the home address or telephone number of any elected or appointed official, including the Mayor, without first obtaining the written permission of that individual.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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

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<sup>1</sup> Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> Government Code § 6254.21.

<sup>4</sup> O.M.C. § 2.20.270(C)(1).

<sup>5</sup> O.M.C. § 2.20.270(F).

# ATTACHMENT 6

efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.<sup>6</sup>

### III. SUMMARY OF FACTS

On September 29, 2018, the City received, via RecordTrac, the following records request (No. 18-3281): “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: All reports and emails sent to the Mayor or the City Administrator regarding the need for or the results of the 2015 Noncompliant Rental Project.”

On October 23, 2018, the Requester stated the following via NextRequest: “Please note that you are in violation of the California Public Records Act.”

Also on October 23, 2018, the Commission received a complaint alleging that Joanne Karchmer had failed to disclose records in response to public records request No. 18-3281. At the time that the Commission received the Complaint, the City had not responded to the request at all. Staff notified the Requester that the Sunshine Ordinance requires complaints regarding public records requests undergo mediation before the complaint can be opened, and considered the complaint as a request for mediation.

On October 25, 2018, Sun Kwong Sze (special projects coordinator for the Mayor’s Office) stated the following via NextRequest: “Dear Ms Ackerman, In order to better serve you, could you clarify what the ‘2015 Noncompliant Rental Project’ is? For example, is it a legislation or a city program? Thank you”

On November 5, 2018, Staff commenced mediation proceedings. Staff first contacted the Requester and clarified that “2015 Noncompliant Rental project” referred to an audit by the Finance Department of landlords who did not pay a business license tax. Staff also notified Joanne Karchmer that the Commission received a request for mediation concerning records request No. 18-3281 and gave Karchmer the opportunity to respond to the allegation that the City had not provided records in violation of the Oakland Sunshine Ordinance. Staff also forwarded the clarification of the request to Karchmer.

Also on November 5, 2018, Karchmer stated to Staff that the Mayor’s Office did an initial keyword search that returned no responsive records and that a more thorough search through the IT department of past Staff for the Mayor’s Office may be necessary

On November 6, 2018, Sun Kwong Sze uploaded one responsive record via NextRequest but did not release it for public view.

On November 14, 2018, Staff followed up with Karchmer and Sze asking whether an IT search had been conducted. Karchmer responded two days later (November 6, 2018) and stated that no additional responsive records had been found.

On November 26, 2018, Richard Luna (public record request liaison for the City Administrator’s Office) released the record previously uploaded by the Mayor’s Office, one additional record, closed the

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<sup>6</sup> Complaint Procedures § IV (C)(5).

# ATTACHMENT 6

request, and stated the following: “There was also mention of the non-compliant rental property project in the FY 2015-16 Q4 Revenue and Expenditure Report submitted to the City Council. It's on page 11 of the report attached to the link.”

Staff contacted the Requester to confirm that they were satisfied with the City’s response to the request. The Requester stated they were not satisfied with the record produced by the Mayor’s Office because the Mayor’s personal phone number was redacted. Staff informed the Requester that section 6254.21 of the CPRA precludes a local agency from releasing the telephone number of the Mayor without first obtaining written permission of the Mayor and that no permission was given here.

#### IV. RECOMMENDATION

Because all responsive records were produced in response to the mediation, Staff recommends that the Commission close the mediation without further action.



# ATTACHMENT 7



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 20, 2019  
RE: *In the Matter of the City Clerk (Case No. M2019-03); Mediation Summary*

---

## I. INTRODUCTION

On February 19, 2019, the Commission received a request for mediation alleging that Krystal Sams (Legislative Recorder for the City Clerk) failed to disclose records in response to a public records request made by the Requester on February 2, 2019. On April 19, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Requester stated that the City had produced all responsive records after the mediation request had been filed.

Because the Requester notified Staff that they received all of the originally requested records, 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

<sup>5</sup> Complaint Procedures § IV (C)(5).

# ATTACHMENT 7

### III. SUMMARY OF FACTS

On February 2, 2019, the City received, via NextRequest, the following public records request (No. 19-590):

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain an electronic copy of the following records and to review and papers records, which I understand to be held by your agency, including any reports, memoranda, communications, or any other writings, as defined in section 6252(e) of the California Government Code, pursuant to the California Public Records Act (Cal. Gov't Code §§ 6250 et seq.).

**Mayor Libby Schaaf's November 2018 ballot argument in favor of Measure Y, along with all the signature pages.**

Please note that previous requesters have asked for this and these documents have still not been uploaded. If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information. If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

On February 19, 2019, the Requester stated the following via NextRequest: "Please note that this request is overdue, and Krystal Sams is in violation of the California Public Records Act. A complaint has been filed with the Public Ethics Commission."

Also, on February 19, 2019, the Commission received a complaint alleging that Krystal Sams 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.

On February 26, 2019, Krystal Sams uploaded one responsive record.

On February 27, 2019, Krystal Sams closed the record request and stated the following: "We released all of the requested documents"

On April 19, 2019, Staff commenced mediation proceedings and asked the Requester if there were any outstanding issues with the response to the request. On April 23, 2019, the Requester confirmed that the City had produced all responsive records but stated they were not satisfied with the timeliness of the response because it exceeded the statutory 10-day response requirement of the Sunshine Ordinance.

### IV. RECOMMENDATION

# ATTACHMENT 7

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  
Gail Kong  
Nayeli Maxson  
Jerett Yan

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
Kyle McLean, Mediation Coordinator  
DATE: May 20, 2019  
RE: *In the Matter of the City Human Resources Department (Case No. M2019-10); Mediation Summary*

---

## I. INTRODUCTION

On May 8, 2019, the Commission received a request for mediation alleging that the Human Resources Department failed to disclose records in response to a public records request made by the Requester on November 19, 2018. On May 16, 2019, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the City produced thirteen responsive records.

Because the City provided all of the originally requested records, 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.<sup>1</sup> The CPRA requires each agency to make public records promptly available to any person upon request.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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

<sup>2</sup> Government Code § 6253(b).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

<sup>5</sup> Complaint Procedures § IV (C)(5).

# ATTACHMENT 8

## III. SUMMARY OF FACTS

On November 19, 2018, the City received, via NextRequest, the following public records request (No. 18-4048): “All personnel records of Parking Citation Bureau, including the director in charge.”

On November 27, 2018, Denise Aaron (records request liaison for the Human Resources Department) changed the due date of the request from November 29, 2018, to December 28, 2018, and stated the following via NextRequest: “Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).”

On December 26, 2018, Denise Aaron changed the due date of the request from December 28, 2018 to January 11, 2019, and stated the following via NextRequest: “Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).”

On May 8, 2019, the Commission received a verbal request for mediation alleging that the Human Resources Department had failed to disclose records in response to public records request No. 18-4048. At the time that the Commission received the Complaint, no responsive records had been produced by the City.

On May 16, 2019, Staff commenced mediation proceedings and contacted Denise Aaron to determine why no responsive records had been posted. The same day, Aaron stated that the records had been awaiting review by the City Attorney’s Office for redaction but that she would release the properly redacted records shortly. A few hours later, Aaron posted thirteen records, closed the request, and stated the following via NextRequest: “We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).”

On May 17, 2019, Staff contacted the Requester to confirm that they were satisfied with the records produced in response but received no response.

## IV. RECOMMENDATION

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

# ATTACHMENT 9



## Public Ethics Commission

### Core Values for Public Communications

1. Collaborative Community – Hear every voice and work together to solve problems
2. Joint Accountability – Be honest, responsible, and respectful of each other
3. Open Mindset – Listen carefully to fully understand the issue or person
4. Inclusive Design – Invite and consider all views in making difficult decisions
5. Proactive Transparency – Voluntarily share information and reasons for decisions



# ATTACHMENT 10



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Suzanne Doran, Lead Analyst  
Jelani Killings, Ethics Analyst  
Whitney Barazoto, Executive Director  
DATE: May 24, 2019  
RE: Disclosure and Engagement Report

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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.

## Compliance

**Boards and Commissions** – After receiving several inquiries regarding agenda posting requirements, PEC staff sent out an advisory to all board and commission staff liaisons informing them of local agenda posting requirements per the Sunshine Ordinance as well as a new state law, AB 2257, which added new accessibility requirements for online agenda postings. The advisory outlined the timing for meeting agenda posting and where they must be posted, including on the board/commission's website.

In addition, board and commission liaisons were informed that PEC staff would be conducting a review of each board's respective website to determine if they were following local and state laws. Staff began the initial surface review in May and will report back to the Commission in July with a compliance update.

## Improving Filing Tools and Illuminating Disclosure Data

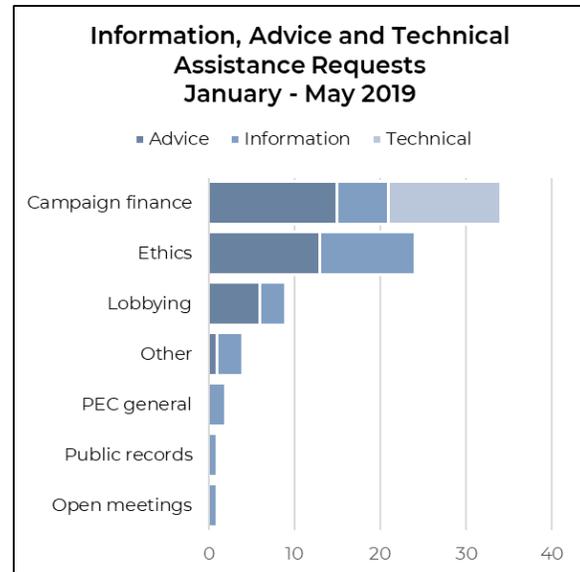
**Lobbyist and behested payment disclosure** – As previously reported, Commission staff continues working with City Digital Services on e-filing forms for lobbyist registration and quarterly reports as well as FPPC Form 803 Behested Payment reports utilizing the FormStack platform.

**OpenOakland Day of Service 2019** – Commission staff sponsored two volunteer projects focused on illuminating lobbyist and behested payment disclosure at OpenOakland's [Day of Service](#) on May 11 at City Hall. The PEC's volunteer team tested the Form 803 Behested Payment report prototype, input data from past paper filings and proposed options for future data storage. Working together we

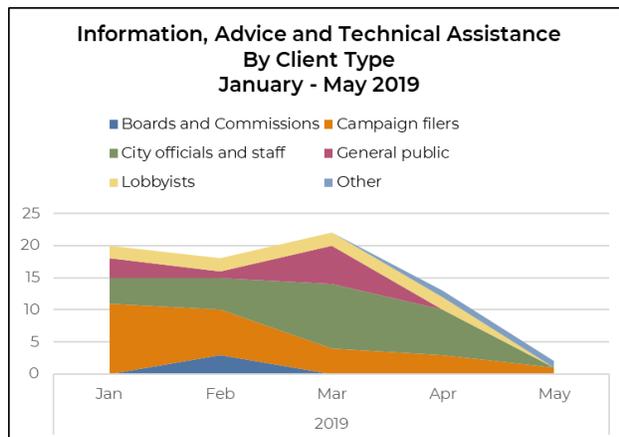
identified issues and made improvements to the form, gained knowledge aiding the design process for the Commission’s future online filing platform, and nearly completed data entry for a dataset we hope to publish in the future. In addition, volunteers working with the City’s Digital Service staff, drafted electronic versions of our OCRA Form 301 and Request for Mediation form.

## Engagement and Outreach

**Advice and Technical Assistance** – To date, Commission staff has fielded 75 requests for information, informal legal advice, or technical assistance this year.



**Education and Training** – This month PEC staff participated in a joint effort with the Mayor’s office, City Clerk, and City Attorney to provide comprehensive training for City Board and Commission staff liaisons. The training covered all relevant laws and responsibilities pertaining to boards and commissions, including Sunshine and GEA requirements, to ensure understanding and compliance. Copies of the PEC’s Board and Commission Members Handbook were provided to attendees, staff highlighted the PEC’s online training for Form 700 filers, and reminded liaisons of the PEC’s online agenda posting review.



Staff facilitated an ethics discussion at the City’s quarterly Supervisory Academy. Topics of discussion included gift rules, conflicts of interests, identifying when you are being lobbied, misuse of City resources, and Form 700 filing. The discussion format allows for meaningful dialogue concerning ethical values in decision making with a focus on identifying ethical dilemmas that City staff face in carrying out their daily duties.

Staff also continued to make presentations 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. Thirteen new employees received training on GEA provisions this month.

**General Outreach** – Staff and commissioners attended two community events hosted by the League of Women Voters on campaign finance reform. Commissioner Maxson presented on the Commission’s campaign finance reform project at a forum with 25 attendees on May 15 and Commissioner Smith presented at a forum with 15 attendees on May 22. Participants were provided with handouts outlining flaws in the current campaign financing system and potential solutions to addressing the influence of money in Oakland elections. The groups discussed the benefits of publicly financed elections and shared ideas to remove barriers to participation for voters and candidates in Oakland campaigns.

# ATTACHMENT 11



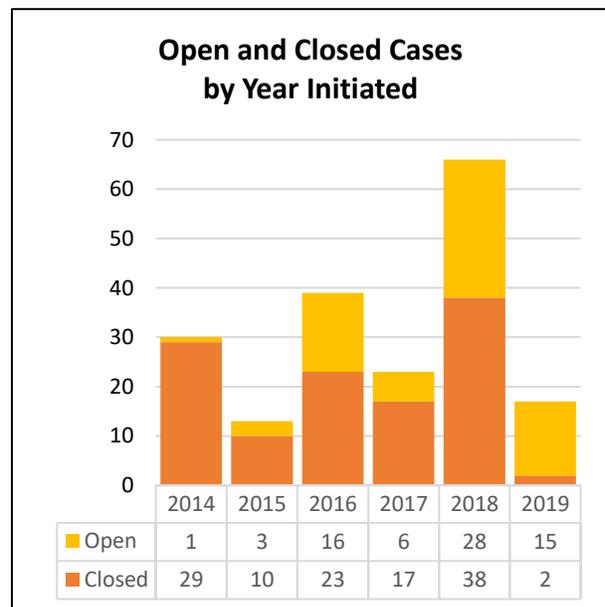
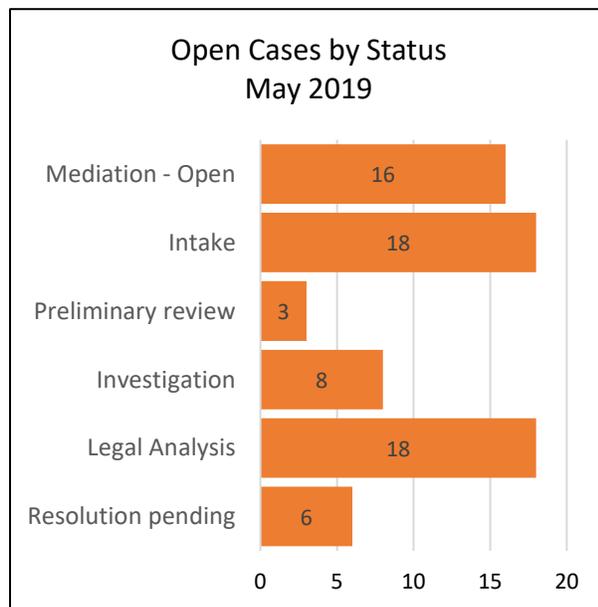
Jodie Smith, Chair  
James E.T. Jackson, Vice-Chair  
Jill Butler  
Gail Kong  
Nayeli Maxson  
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
DATE: May 20, 2019  
RE: Enforcement Program Update

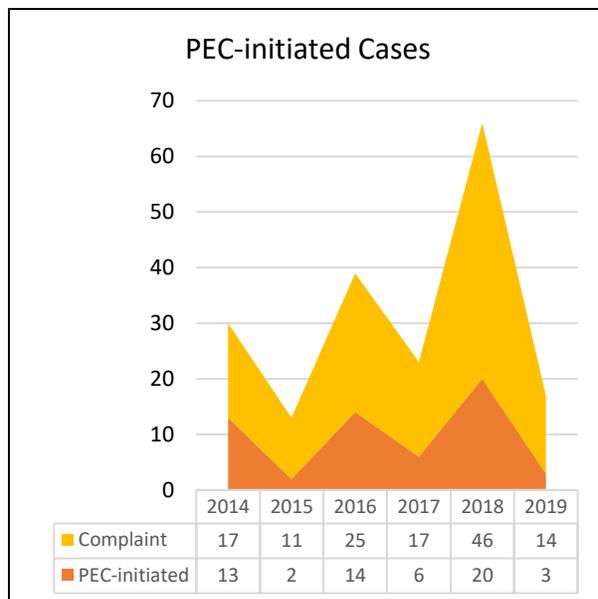
## Current Enforcement Activities:

Since the last Enforcement Program Update on May 6, 2019, Commission staff received 7 formal complaints. Enforcement staff dismissed 2 complaints after determining that either the allegations did not warrant a PEC investigation or that there was insufficient evidence to establish a violation of any laws under the PEC's jurisdiction. This brings the total Enforcement caseload to 18 matters in the intake or preliminary review stage, 8 matters under active investigation, 18 matters under post-investigation analysis, and 6 matters in settlement negotiations or awaiting an administrative hearing. Enforcement's caseload also includes 16 ongoing records request mediations.



The Enforcement team continues to initiate complaints based on information obtained from informal complaints, citizen tips or local news reports regarding City or Public Servant activities. As part of this proactive enforcement, we are hearing about potential and actual violations as they are happening. This allows the team an opportunity to address minor violations as they are occurring, or soon thereafter, resolving issues swiftly and long before a more time-intensive complaint, investigation, and settlement process. For example, case number 19-08, discussed below, came to PEC staff as an

informal tip that a former public servant was beginning to get involved in post-employment communication that might result in a violation. Staff conducted a preliminary review that included brief investigative questioning and then, seeing the possibility that a very minor violation may have or will soon occur, staff decided to send a letter to the former City employee to inform them of the law so they could cease any wrongful behavior. This proactive work to stop potential violations before they happen, or address actual violations early in the process, is the result of good communication and coordination with City staff and Oaklanders who are now more aware of and trusting of the PEC, and it exemplifies preventive enforcement. Staff will continue to utilize its full range of enforcement options to address matters commensurate to the type, level, and impact of the infraction.



### Enforcement Process:

During our third and fourth quarter, Commission Staff will review and propose revisions to the PEC’s enforcement procedures to ensure they are clear, reflective of best practices in our industry, and aligned with the Commission’s vision for swift, effective, and fair enforcement. Staff will bring a draft to the Commission later this year; meanwhile, we encourage members of the regulated community or the public to email Commission staff at [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) with any suggested changes or issues to address in our PEC Complaint Procedures.

Since the last Enforcement Program Update in May 2019, the following status changes occurred:

1. *In the Matter of City of Oakland* (Complaint No. 19-05): 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 Cesar Avila* (Complaint No. 19-08): This complaint was dismissed after staff determined that the allegations in the informal complaint did not warrant a formal investigation into a violation of the Government Ethics Act. 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 the City of Oakland* (Complaint No. 18-32M): 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 3).
4. *In the Matter of the City of Oakland* (Complaint No.18-42M): This request or mediation was dismissed after Staff determined that the complaint did not allege any violation of any laws under the PEC’s enforcement jurisdiction (Attachment 4).

5. On May 9, 2019, Staff initiated complaints in Case No.(s) 19-06 and 19-07 after receiving a referral from the PEC Lead Analyst and Campaign Filing Officer regarding the Respondent's failure to file their semi-annual campaign statements. After multiple attempts to gain voluntary compliance, enforcement is conducting a preliminary review for violations to the Oakland Campaign Reform Act.

# ATTACHMENT 11



## CITY OF OAKLAND

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

Public Ethics Commission  
Enforcement Unit

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

3 de mayo de 2019

Oscar Chavez



### **Re: queja PEC #19-05; Carta de despido**

Estimado señor Chávez:

El 17 de abril de 2019, la Comisión de ética pública de la ciudad de Oakland (PEC) recibió su queja (#19-05) alegando que un inspector de cumplimiento del código de construcción de la ciudad de Oakland ("inspector") violó la ley de ética del gobierno de Oakland cuando no inspeccionó su apartamento y que recibió mal servicio de atención. La supuesta conducta no cae dentro de la jurisdicción de la Comisión de Ética Pública, por lo que hemos rechazado su denuncia.

Dado que la supuesta conducta aplica a un empleado del código de aplicación de la ciudad de Oakland, es posible que desee ponerse en contacto con el Gerente del Departamento de planeación y construcción de Oakland, William Gilchrist, para compartir sus inquietudes. Su información de contacto está disponible en la siguiente página web: <https://www.oaklandca.gov/departments/Planning-and-Building>. Con respecto a su queja contra el administrador de la propiedad, es posible que desee consultar Oakland Tenants Unión en (510) 704-5276.

Estamos obligados a informar a la Comisión de ética pública de la resolución de este asunto en su próxima reunión pública, como parte de nuestra junta regular sobre las acciones de observancia. Esa reunión tendrá lugar el 3 de junio de 2019, a las 6:30PM en la sala de audiencias 1 del Ayuntamiento de Oakland (1 Frank Ogawa Plaza). El informe será solamente informativo, y la Comisión no tomará ninguna medida en relación con este asunto, que ya está cerrado. Sin embargo, usted es bienvenido a asistir a esa reunión y/o dar un comentario público si lo desea. También puede enviarnos comentarios por escrito antes de esa reunión, y los añadiremos a los materiales de la reunión.

# ATTACHMENT 11

Queja de PEC No. 19-05; Carta de despido  
Página 2

Gracias por traer este asunto a nuestra atención. Si usted tiene alguna pregunta con respecto a este asunto, por favor no dude en ponerse en contacto conmigo.

Sinceramente,

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



## CITY OF OAKLAND

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

Public Ethics Commission  
Enforcement Unit

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

May 3, 2019

Oscar Chavez



### **Re: PEC Complaint No. 19-05; Dismissal Letter**

Dear Mr. Chavez:

On April 17, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#19-05) alleging that a City of Oakland Building Code Enforcement Inspector (“Inspector”) violated the Oakland Government Ethics Act when he failed to inspect your apartment and that you received poor customer service. The alleged conduct does not fall within the PEC’s enforcement jurisdiction, and we have therefore dismissed your complaint.

Since the alleged conduct concerns an employee of the City of Oakland’s Code Enforcement, you may want to contact the Oakland Planning and Building Department Manager, William Gilchrist to share your concerns. His contact information is available at the following webpage: <https://www.oaklandca.gov/departments/planning-and-building>. Regarding your complaint against the property manager, you may want to consult Oakland Tenants Union at (510) 704-5276.

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 June 3, 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  
City of Oakland, Public Ethics Commission

# **ATTACHMENT 11**



## CITY OF OAKLAND

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

Public Ethics Commission  
Enforcement Unit

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

May 13, 2019

Mr. Cesar Avila  
[REDACTED]  
[REDACTED]

### **Re: PEC Complaint No. 19-08; Notice of Dismissed Complaint**

Dear Mr. Avila:

The City of Oakland Public Ethics Commission (PEC) initiated an informal investigation against you after we received information alleging that you violated the Government Ethics Act Permanent Post Service Restriction on Representing, Advising and/or Assisting Non-City Parties in Particular Matters (O.M.C. 2.25.050). We reviewed the allegations and dismissed it because the allegation in this informal complaint does not warrant a formal investigation into a violation of the Government Ethics Act.

In this case, we received information that you appeared before the City of Oakland's Fire Department in March 2019, to discuss "FA plans, fire alarm and sprinkler system requirements," with a Joseph Sarapochillo on behalf of a licensed marijuana grow business, "Blum."

The City of Oakland imposes restrictions on a former Public Servant upon termination of his or her service or employment. Specifically, O.M.C. 2.25.050 prohibits a former Public Servant from acting as an agent or attorney or otherwise representing any person or entity before the City, among other agencies, with the intent to influence the City or any officer or employee thereof by communicating about a particular matter in which the city is a party or has a direct substantial interest after the Public Servant had participated personally and substantially in the matter as a City Public Servant. A Public Servant includes any full or part-time City employee, consultant, or elected official.

In reviewing this matter, we learned that you appeared alongside Mr. Sarapochillo in attempting to persuade City staff in your former department to take a course of action on a matter on which you worked during your tenure with the City. Though we did not investigate further to determine whether your conduct amounted to a violation of the Government Ethics Act, we are taking this opportunity to advise you about the law in case you find yourself in a similar situation in the future.

# ATTACHMENT 11

PEC Complaint No. 19-08; Notice of Dismissed Complaint  
Page 2

Please see the attached summary of post-employment restrictions on City employees, or Public Servants, who have terminated their employment with the City, with particular emphasis on the Permanent Post-Service Restriction.

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

Sincerely,

Kellie Johnson  
Enforcement Chief,  
City of Oakland Public Ethics Commission



## CITY OF OAKLAND

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

Public Ethics Commission  
Enforcement Unit

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

May 20, 2019

E. A. Cox



### **Re: PEC Complaint No. 18-32M; Dismissal Letter**

Dear Ms. Cox:

On September 26, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (18-32M) alleging that Public Records Request RT-15747 was never fulfilled in violation of the Oakland Sunshine Act. The Oakland Sunshine Ordinance requires that mediation of disputes regarding public records requests take place before a formal complaint can be filed. Therefore, we have regarded your complaint to be 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.

# ATTACHMENT 11

PEC Complaint No. 18-32M; Dismissal Letter  
Page 2 of 2

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 June 3, 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  
Chief of Enforcement

cc: *Amber Danielle-Rose Todd*



## CITY OF OAKLAND

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Public Ethics Commission  
Enforcement Unit

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

May 20, 2019

E. A. Cox



### **Re: PEC Complaint No. 18-42M; Dismissal Letter**

Dear Ms. Cox:

On October 24, 2018, the City of Oakland Public Ethics Commission (PEC) received your complaint (18-42M) alleging that Public Records Request 18-1939 was never fulfilled in violation of the Oakland Sunshine Act. The Oakland Sunshine Ordinance requires that mediation of disputes regarding public records requests take place before a formal complaint can be filed. Therefore, we have regarded your complaint to be a request for mediation.

We have reviewed your request for mediation and determined that you do not have standing to request mediation for this records request because you were not the original requester. However, even if you did have the requisite standing to request mediation, your request does not allege any violation of the laws within the jurisdiction of the PEC because the records sought by your request are labelled as confidential under Oakland Municipal Code (O.M.C.) section 5.04.140. 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 take place on June 3, 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.

# ATTACHMENT 11

PEC Complaint No. 18-42M; Dismissal Letter

Page 2 of 2

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

cc: *Amber Danielle-Rose Todd*

# ATTACHMENT 12



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

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Whitney Barazoto, Executive Director  
DATE: May 24, 2019  
RE: Executive Director's Report

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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 other staff program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and activities for 2019-20 for each program area.

## Law Clerk

Kyle McLean started with the PEC as a law clerk in the Fall of 2018 to assist with public records mediations. He continued to volunteer his time from January-March and then was hired as a part-time Mediation Coordinator given his excellent service to records requestors and his legal acumen in ensuring records are produced, redacted according to the law, and that the process summarized clearly for the Commission. Unfortunately, Mr. McLean will be leaving the staff team on May 28 to begin studying for the California State Bar exam in July. We thank him for his good work on mediations and wish him well on the Bar exam and beyond.

## FPPC Ticket Distribution Regulations Amended

At its public meeting on May 16, 2019, the California Fair Political Practices Commission adopted amendments to Regulation 18944.1 and other regulations related to agency ticket distribution policies. The amendments provide clarifying structural changes and requires that an agency's ticket distribution policy include a provision prohibiting the disproportionate use of tickets or passes by the governing body, the chief administrative officer, or department heads. It also requires an official to submit to the agency a written inspection report of findings and recommendations where the public purpose cited for the use of tickets involves the oversight or inspection of facilities. Changes to the state regulations are effective roughly 30 days following adoption.

These changes are responsive to concerns identified by the PEC in its report, *Ensuring Ethical and Transparent Distribution of City Tickets*, which was shared with FPPC lawyers earlier this year along with direct input from Staff. We will be communicating the adopted changes to City Council members and will work with Council offices in late summer to negotiate policy amendments that address these and other remaining concerns with the policy.

## Government Ethics Portal/PEC Web Applications Design and Development Project

At the Commission's April 4 Retreat, Commissioners and staff discussed the desire to move all of the PEC's filing processes to a digital format for easier filing, public accessibility and integration of

government ethics data. Following the discussion, staff created a project plan that includes multiple sub-projects and is moving forward with OpenOakland volunteers to begin work. Staff also is working to utilize funds remaining the PEC's budget that have not been exhausted for Fiscal Year 2018-19 to pay two individuals for the first sub-project work in June, allowing the work to begin sooner than originally anticipated.

## **Summer Interns**

Commission staff interviewed and selected two interns to assist with communications and civic technology projects this Summer (June-August):

Meredith Wang grew up in Oakland, went to Oakland Technical High School, and is now at the University of Wisconsin-Madison pursuing a B.A. in International Studies, with a minor in Global Health and Political Economy, Philosophy, and Politics. Ms. Wang expressed interest in the PEC's role in holding City leaders accountable, enhancing the role of community in City government, and ensuring equity and justice in how people use positions of power. She will be assisting with PEC communications, including drafting a PEC newsletter, reviewing publications for consistency with the City style guide, and drafting social media and web content, and – given her prior experience as a photographer for National Geographic Student Expeditions – she will develop a much-needed photo library for the PEC to use in future communications and publications.

Casey Petersen is a student at the University of Alabama, Tuscaloosa, majoring in Interdisciplinary, Depth Study Cultural Political Science, with a minor in Spanish. She spent a semester in Argentina focusing on Latin American Politics and Culture, and she helped organize a professional conference to connect, engage, and empower underserved women in the Tuscaloosa community. Ms. Petersen expressed interest in the PEC's campaign finance app and its impact on educating citizens about ethics in government. While with the PEC, she will be conducting research on lobbyist disclosure in other jurisdictions to compare with Oakland's rules, assisting with the creation and development of the lobbyist e-filing system, and communicating with OpenOaklanders, lobbyists, and the public to test and receive feedback on the system and integrate that feedback into the development process, among other disclosure and public engagement-related activities.

Attachment: Commission Programs and Priorities

# ATTACHMENT 12

## PUBLIC ETHICS COMMISSION Programs and Priorities 2018-19

Program	Goal	Desired Outcome	Key Projects for 2019-20
<b>Lead/ Collaborate (Policy, Systems, Culture)</b>	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"> <li>1. Adoption of PEC-drafted City Ticket Distribution policy and process changes</li> <li>2. Campaign Finance/Public Financing Act Project to expand participation in the campaign process</li> <li>3. Government Integrity Data partnership</li> </ol>
<b>Educate/ Advise</b>	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"> <li>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</li> <li>2. Board/Commission member/liaison support/guidance</li> <li>3. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2)</li> <li>4. Sunshine and Lobbyist education materials</li> </ol>
<b>Outreach/ Engage</b>	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"> <li>1. Outreach to client groups: -City staff/officials -people doing business with the City</li> <li>2. Sustain/enhance general PEC social media outreach</li> <li>3. PEC Roadshow – focus on CF project outreach (Commissioners)</li> <li>4. Engage Boards/Commissions regarding Sunshine requirements (ensure/review agenda postings online)</li> </ol>
<b>Disclose/ Illuminate</b>	<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"> <li>1. Lobbyist Registration – pilot new e-filing system, create online open data format for public accessibility</li> <li>2. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility</li> <li>3. Initiate/develop project plan to establish contractor database</li> <li>4. Open Disclosure 2020 – campaign data visualization project</li> <li>5. Government Integrity Data Project planning and development</li> </ol>
<b>Detect/ Deter</b>	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"> <li>1. Focus on ethics violations, proactive investigations</li> <li>2. Conduct complaint intakes within 2 weeks</li> <li>3. Collaborate with other government law enforcement agencies</li> </ol>

# 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
<b>Prosecute</b>	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"> <li>1. Conduct hearings on two cases</li> <li>2. Complete City ticket cases</li> <li>3. Expedite Sunshine Mediations</li> <li>4. Amend Complaint Procedures</li> <li>5. Resolve all 2014 and 2015 cases</li> <li>6. Streamline and expand enforcement systems to incorporate broader tools</li> </ol>
<b>Administration/ Management</b>	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"> <li>1. Publish performance goals and data on PEC website – dashboards</li> <li>2. Review data to adjust activities throughout the year</li> <li>3. Ongoing: professional development and staff reviews</li> </ol>