



Item 09 - Executive Director's Report

Ryan McCall, Chair
Francis Upton IV, Vice Chair
Alea Gage
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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: September 4, 2024
RE: Executive Director's Report for the September 16, 2024, Special Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting, as well as an update on the status of different Commission priorities adopted at the August 2023 retreat. The attached overview of Commission Programs and Priorities also includes the ongoing goals and key projects for 2023-24 for each program area.

Limited Public Financing Program

Last year, the City Council voted to re-authorize the Limited Public Financing (LPF) Program for the 2024 election cycle with a total budget of \$155,000. Under the LPF Program, qualifying candidates running for Council District office may request that eligible campaign expenses be reimbursed.

The deadline for Council District candidates to opt into the LPF Program for this election cycle closed on August 28. In total, 13 candidates filed LPF Form 1 to accept public financing.¹ Because there are insufficient funds to fully fund each potentially eligible candidate, candidates may only receive a maximum of \$11,923 in public funding ($\$155,000 / 13$ potentially eligible candidates).

Candidates who accept public financing must file LPF Form 2 to apply to participate in the Program, and demonstrate their eligibility to participate, by September 20, 2024. Among other requirements, by that date candidates must raise \$7,500 from Oakland residents and make \$7,500 in qualifying campaign expenditures. After September 20, the maximum amount of per candidate public funding will be re-calculated using the actual number of qualified candidates, which will result in the maximum funds candidates are eligible for increasing.

Commission Vacancy

In June of this year, Commissioner Hill stepped down from the Commission, creating a vacancy in a PEC-appointed Commission seat. In August the Commission opened a public application process to fill the remainder of Commissioner Hill's term, which expires January 21, 2025, as

¹ One candidate opted into the Program but failed to qualify for the ballot and will not be eligible receive public financing.

well to fill the subsequent full three-year term for that same seat. The application period to apply for both the partial term and full term expires on September 9, 2024.

To publicize this opportunity, staff purchased ads in the Oaklandside online news publication; shared the opportunity with community groups, including Common Cause, the League of Women Voters of Oakland, and Oakland's minority bar associations; emailed the Commission's distribution list twice; and posted to social media.

As of September 4, the Commission has received 7 applications. Applications were received from residents in Council Districts 2, 3, 4, 5, and 7. Most applicants heard about the opportunity to serve on the PEC from the Commission's website or email listserv, followed by social media or advertising.

Applicant District Residency

District	Count	Percent
District 1	0	0%
District 2	1	14%
District 3	2	29%
District 4	1	14%
District 5	2	29%
District 6	0	0%
District 7	1	14%
Grand Total	7	100%

At its July meeting, Chair Micik created the Commissioner Recruitment and Selection of Finalists for Interviews Subcommittee, which will meet in September to vet the applicants and recommend finalists for the full Commission's consideration, and expected appointment of a new Commissioner(s), at its October 9, 2024, meeting.

The PEC has one additional vacancy, which is for a seat filled by mayoral appointment. That seat has been vacant since January 2023.

Enforcement Staffing

The Commission's caseload far exceeds its enforcement staffing capacity. In August, the Executive Director met with the City Administrator and other staff to discuss possible options for increasing the PEC's enforcement staffing, including potential part-time, temporary hiring, or hiring of law clerks. Achieving appropriate staffing for the Enforcement Program remains a critical priority for the Commission.

2023 Retreat Priorities Update

At its August 2023 retreat, the PEC discussed near and mid-term project priority setting over the next one to two years in three non-enforcement program areas. In discussion, Commissioners identified the Executive/Policy Priorities listed below. This section provides a brief update as to each priority.

- Near Term (2023), in order of priority:
 - *Work with the City Council to adopt the Limited Public Financing Program of 2024 (High Priority): **Complete.***
 - The PEC proposed, and the Council adopted, the LPF Program of 2024. Funding for the LPF was preserved in the FY24-25 Midcycle Budget and the PEC is presently implementing this Program.
 - *Work with the City Council to adopt Lobbyist Registration Act Amendments (High Priority): **Complete.***
 - The PEC proposed, and the Council adopted, amendments to the LRA, including adopting an equity-based fee waiver/reduction policy. The PEC is presently implementing this policy.
 - *Pilot a Voter Guide in the 2024 Election (High Priority): **Partially Complete & On-Hold.***
 - Staff developed drafts of a paper voter guide which underwent user testing and received stakeholder, public, and Commissioner comment. In collaboration with Open Oakland, staff also mocked up what a mobile guide might look like, based on the categories in the draft paper guide. Due to the need to preserve PEC funding, uncertainty of whether or not the LPF would occur in 2024, and workload constraints, a pilot was not feasible for the 2024 election. However, staff anticipates incorporating a guide in the online Democracy Dollars portal, which build off the lessons learned and work product developed this past year.
 - *Recommend whether the PEC should set the Mayor Salary (Medium): **Complete.***
 - The Commission proposed, and the Council considered but did not adopt, a policy for how the Mayor's salary should be set.
 - *Review City Charter provisions relating to the PEC with (Medium): **Complete.***
 - The Commission proposed comprehensive reform to its charter authorities. Councilmember Kalb introduced a proposal which incorporated some of those reforms. That proposal was placed on the November 2024 ballot.
- Mid/Long Term (2024-25), in order of priority:
 - *Bi-Annual Policy Review: LRA (High): **On hold.***
 - Due to staffing changes, the need to intensively engage in the City's budget process, and additional work needed on other policy priorities (e.g. Charter change), staff has not had capacity to begin this work.
 - *Strengthen Public Records/Mediation (High): **In-Progress.***

- In 2023 and 2024, led by the Transparency Subcommittee, the Commission collected information on challenges and best practices relating to public records responses. The PEC has held hearings with the Oakland Police Department and Oakland Fire Departments to better understand the unique challenges of those high-volume departments, and will be hearing from the Planning Department next in October. In addition, the PEC successfully applied to have a team of Goldman students conduct research and write and present a report to the Commission on public records response best practices.
- *Build Ethics Commission Network (Low – begin with regular meetings): **Complete.***
 - The Oakland PEC has organized quarterly online meetings of the Executive Directors of the Los Angeles, San Diego, San Francisco, and Oakland Ethics Commissions.
- For Future Consideration, unordered:
 - Contractor Contributor Certification: **On hold.**
 - Regular Auditing Program: **On hold.**

The PEC anticipates holding another retreat in January of 2025 to review and potentially revise existing ongoing priorities.

\$1,000+ Late Fees / Late Fee Waivers

Under City Charter Section 603(f), any assessment of a per diem late fee of \$1,000 or more must be placed on the PEC's agenda. The PEC did not issue any late fees exceeding that amount since the last reporting period.

Under City Charter Section 603(f), if the Executive Director waives any per diem fees for the late filing of a disclosure report, including a campaign finance or lobbying report, he or she must notify the Commission at their next regular meeting. Pursuant to the PEC's [Guidelines for Waiving Late Filing Fees](#), I waived the following fees:

- Lobbyist Report Late Fees:

Lobbyist	Report	Waiver Eligibility	Days Late	Amount Waived
Arghandiwal, Edreece	Quarter 2 2024	NO PRIORS	2	\$20
Swanson, Sandre	Quarter 2 2024	NO PRIORS	2	\$20
Ogilvie, Robert	Quarter 1 2024	NO PRIORS	2	\$20
Shenoy, Kiran	Quarter 4 2023	NO PRIORS	1	\$10

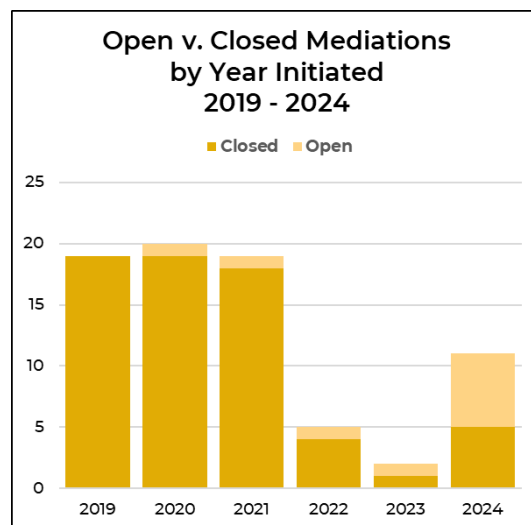
- Campaign Finance Report Late Fees: None.

Mediation Program

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. The PEC currently has 10 open mediations. One new mediation has been opened since the last meeting.

One mediation was conducted by staff and subsequently closed since the last Commission meeting. The following mediation summaries are attached:

1. *In the Matter of the City Attorney and the Planning Department (Case No. M2024-11)*



Additional Attachment: Commission Programs and Priorities.

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PUBLIC ETHICS COMMISSION

Programs and Priorities 2023/24 (new additions in **bold**)

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity, and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ul style="list-style-type: none"> ○ Lead Measure W implementation ○ Engage in review of laws PEC enforces 	<ul style="list-style-type: none"> ✓ Lobby Registration Act amendment to incorporate new fees and waiver policy ✓ Ordinance for one-time LPF for 2024 elections ○ Voter Guide Pilot – on hold ✓ Mayor Salary Setting Guidance ✓ Charter Review Options ○ Policy Review: Lobbyist Registration Act– on hold ✓ Ethics Commission Network ✓ Invite Department Presentations on Records Request Responses
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ul style="list-style-type: none"> • Regular ethics training • Information, advice, and technical assistance • Targeted communications to regulated communities • New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance - ongoing ✓ Public Records training
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ul style="list-style-type: none"> • Public Records mediations • Commissioner-led public outreach • Outreach to client groups – targeted training and compliance • PEC social media outreach 	<ul style="list-style-type: none"> ✓ Update OCRA, LPF, and LRA guides ✓ Update public and stakeholders on Democracy Dollar postponement ✓ Update Lobbyist Registration Act educational materials and share with Council ✓ Recruit for PEC vacancy ✓ Publicize Enforcement Needs ○ Publicize PEC campaign finance tools ○ Publicize how to file complaints

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Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ul style="list-style-type: none"> • Monitor compliance (campaign finance/lobbyist/ticket use) • Proactive engagement with filers • Technical assistance • Assess late fees/refer non-filers for enforcement • Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars Admin System: <ul style="list-style-type: none"> ✓ Approval to Contract ✓ Vendor Selected ○ Contract Entered ○ Work Begun ○ Updates to Ticket Distribution (Form 802) database – on hold ✓ Implement LRA Changes ○ Integrate Lobbyist App with Payment System ○ Public Records Performance Dashboard – on hold ✓ Update Open Disclosure 2024 ✓ Update Show Me The Money ○ Digitize Schedule O Form – on hold
Detect/ Deter	<p>PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.</p>	<p>Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.</p>	<ul style="list-style-type: none"> • Process and investigate complaints • Initiate proactive cases • Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/ mediation request – on hold ✓ Improve Enforcement database
Prosecute	<p>Enforcement is swift, fair, consistent, and effective.</p>	<p>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.</p>	<ul style="list-style-type: none"> • Prioritize cases • Conduct legal analyses, assess penalty options • Negotiate settlements • Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual ✓ Expand streamline & diversion
Administration/ Management	<p>PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.</p>	<p>PEC staff model a culture of accountability, transparency, innovation, and performance management.</p>	<ul style="list-style-type: none"> • Annual Report • Budget proposal • Ongoing professional development and staff reviews • Fill staff vacancies • Commissioner onboarding 	<ul style="list-style-type: none"> ✓ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council ○ Increase enforcement capacity

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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
DATE: September 4, 2024
RE: *In the Matter of the Planning and Building Department (Mediation Case No. M2024-11; Mediation Summary)*

I. INTRODUCTION

On July 9, 2024, the Commission received a request for mediation alleging that the City Attorney and Planning Department failed to respond to public records requests made by the Requestor on June 6, 2024 and June 21, 2024. Staff received a mediation request on July 9, 2024 and initiated the mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responsive departments stated that there are no responsive records, this mediation was closed with no further action.

II. SUMMARY OF LAW

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

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

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

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

III. SUMMARY OF FACTS

On June 6, 2024, the City received the following records request via NextRequest (24-6329):

I am requesting a copy of the document referenced as "that certain Estuary Park Agreement between the City and the Developer" which is part of the 3rd Amendment to the Development Agreement (Oak to Ninth/Brooklyn Basin) adopted and enacted by the City Council on May 16, 2023, as Ordinance No.13739.

The reference is found in Exhibit C "Phasing Schedule" at page 20 under the section titled "Phase V Demolition of Cash and Carry building and Remediation of Estuary Park and Parcel N" and then below at subsection b) Completion Time Frames.

On June 21, 2024, the Requestor made the same public records request to the Planning and Building Department via NextRequest (24-6892).

On July 1, the Planning Department provided a link to the City's Legistar platform stating that reports and documents for that Council meeting can be found online. The link did not include the specific document the Requestor was seeking. Subsequently, the Requestor reached out to the planner assigned by the Planning Department to answer questions about the request but received no reply or timetable for a response.

On July 9, the Commission received a mediation request stating that the City Attorney and the Planning Department failed to timely respond to a public records request. Subsequently, Staff initiated the mediation.

On July 17, the City Attorney closed the request stating:

After a diligent and good faith search, the City did not locate an Estuary Park Agreement between the City and Developer, and thus cannot produce any documents responsive to this request. To the extent the request calls for drafts of any agreements or documents related to pending negotiations, such documents are exempt from disclosure until the real property agreement is finalized, if ever, or the contract agreement is obtained. (See, Gov't Code Section 7928.705.)

On July 18, the Requestor emailed Staff stating that he received a satisfactory response from the City Attorney and was still waiting for a response from the Planning Department.

⁵ Complaint Procedures § IV (C)(5).

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Over several weeks, Staff communicated by email with the Planning Department to confirm if they had any responsive documents without success.

On August 21, the City Attorney emailed Staff on behalf of the Planning Department stating that the Requestor reached out to the City Attorney's Office with the same request and that no such agreement exists because it was never finalized by the parties and terms were never reached. In addition, the City Attorney stated that documents that are drafts only, and not finalized, are exempt from production as drafts.

On August 22, Staff notified the Requestor of the City Attorney's response on behalf of the Planning Department and that the mediation would be closed. The Requestor expressed frustration with the Planning Department's delay in responding stating:

This issue was the complete lack of a response from Planning. The initial request was made on June 20 and only now, August 21, are they saying they don't have the document because it doesn't exist. This took way too long and way too much effort. The other issue is the reference to the document sought appears in an executed agreement between the City of Oakland and the third party. It may be an obvious drafting error that no one is interested in thinking about.

IV. RECOMMENDATION

Because the responsive departments stated that there are no responsive documents, the mediation has been closed with no further action.