

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Regular Commission Meeting  
Hearing Room 1  
Wednesday, May 10, 2023  
6:30 p.m.



**Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check [www.oaklandca.gov](http://www.oaklandca.gov) for the latest news and [important information about the City's return to in-person meetings.](#)**

Commissioners: Ryan Micik (Chair), Charlotte Hill (Vice-Chair), Alea Gage, Arvon Perteet, Vincent Steele, and Francis Upton IV.

Commission Staff to attend: Suzanne Doran, Acting Executive Director/Lead Analyst; Chris Gonzales, Commission Assistant; Ana Lara-Franco, Commission Analyst; Simon Russell, Enforcement Chief.

City Attorney Staff: Trish Shafie, Deputy City Attorney.

### **PUBLIC ETHICS COMMISSION REGULAR MEETING AGENDA**

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**
  - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
  - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) for assistance filing a complaint.

### **ACTION ITEMS**

- 4. Approval of Commission Meeting Draft Minutes.**
  - a. April 12, 2023, Regular Meeting Minutes ([Meeting Minutes](#))

### **DISCUSSION ITEMS**

- 5. 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.



**a. Transparency and Public Records Subcommittee** (ad hoc, created March 8, 2023)  
- Francis Upton IV (Chair) and Arvon Perteet.

**b. Measure W Equity and Outreach Subcommittee** (ad hoc, created on March 8, 2023) – Charlotte Hill (Chair), Alea Gage, Vincent Steele.

**c. Measure W Implementation Subcommittee** (ad hoc, created December 14, 2022)  
– Arvon Perteet (Chair), Ryan Micik, Francis Upton IV.

- 6. Measure W Implementation - Oakland Fair Elections Act.** The Commission will review and discuss the activities necessary to implement Measure W, which passed the ballot on November 8, 2022, and which alters the Commission’s staffing, authority, and creates a newly designed public financing program to be administered by the Public Ethics Commission. ([Staff Memo with timeline](#))

## **INFORMATION ITEMS**

- 7. Disclosure and Engagement.** Commission Analyst Ana Lara-Franco provides a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting. ([Disclosure and Engagement Report](#))
- 8. Enforcement Program.** Enforcement Chief Simon Russell provides a summary of the Commission’s ongoing enforcement work, including overall caseload status, informal complaint intake, and enforcement-related litigation, as well as an overview of Enforcement’s new policy of placing certain matters on hold due to a staffing shortage. ([Enforcement Report](#);) )
- 9. Executive Director’s Report.** Acting Executive Director Suzanne Doran reports on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiative not covered in other staff reports. ([Executive Director’s Report](#); [M2020-09 Mediation Summary](#); [M2020-11 Mediation Summary](#))
- 10. Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

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 Chair allocates additional time.

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Members of the public may submit written comments to [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov).

*The following options may be available to observe this meeting:*

- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
- **Online video teleconference (via ZOOM):** Click on the link to join the webinar: <https://us02web.zoom.us/j/84356782713> Please note: the Zoom link and access number are to view/listen to the meetings only, not for participation.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592  
Webinar ID: 843 5678 2713

International numbers available: <https://us02web.zoom.us/j/84356782713>

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) or visit our webpage at [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec).



4/28/23

Approved for Distribution

Date



This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

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Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) or hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

## Item 4 - Meeting Minutes

CITY OF OAKLAND  
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6:30 p.m.

DRAFT



Commissioners: Ryan Micik (Chair), Charlotte Hill (Vice-Chair), Alea Gage, Arvon Perteet, Vincent Steele, and Francis Upton IV.

Commission Staff to attend: Suzanne Doran, Acting Executive Director/Lead Analyst; Chris Gonzales, Commission Assistant; Ana Lara-Franco, Commission Analyst; Simon Russell, Enforcement Chief; Chris Nardi, Law Clerk.

City Attorney Staff: Trish Shafie, Deputy City Attorney.

### PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

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

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

Members present: Micik, Hill, Gage, Perteet, Steele, Upton IV.

Staff present: Suzanne Doran, Chris Gonzales, Ana Lara-Franco, Chris Nardi, and Simon Russell.

City Attorney Staff: Tricia Shafie.

#### 2. Staff and Commission Announcements.

There were no announcements.

#### 3. Open Forum.

Public comment: *David Shor*.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at [www.oaklandca.gov/pec](http://www.oaklandca.gov/pec).

### ACTION ITEMS

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

- a. **CURE AND CORRECT:** January 11, 2023, Regular Meeting Minutes.

Public comment: None.

Upton IV moved, and Hill seconded to approve the minutes.

Ayes: Hill, Micik, Perteet, Upton IV.

## Item 4 - Meeting Minutes

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Noes: None.

Abstain: Gage, Steele.

Vote: Passed 4-0.

- b. February 27-28, 2023, Special Meeting Minutes.

Public comment: None.

Micik moved, and Steele seconded to approve the minutes.

Ayes: Micik, Hill, Gage, Perteet, Steele, Upton IV.

Noes: None.

Vote: Passed 6-0.

- c. March 8, 2023, Regular Meeting Minutes.

Public comment: None.

Micik moved, and Hill seconded to approve the minutes.

Ayes: Micik, Hill, Gage, Perteet, Steele.

Noes: None.

Abstain: Upton IV.

Vote: Passed 5-0.

### 5. City Attorney Salary.

The Commission discussed and took action to adjust the City Attorney salary in accordance with Oakland City Charter Section 401, as amended by Measure X.

Public comment: None.

Perteet moved, and Upton IV seconded to approve the resolution recommending the salary adjustment for the City Attorney.

Ayes: Micik, Hill, Gage, Perteet, Steele, Upton IV.

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Noes: None.

Vote: Passed 6-0.

## 6. City Auditor Salary.

The Commission discussed and took action to adjust the City Auditor salary in accordance with Oakland City Charter Section 403, as amended by Measure.

Public comment: None.

Micik moved, and Hill seconded to approve the resolution recommending the salary adjustment for the City Auditor.

Ayes: Micik, Hill, Gage, Perteet, Steele, Upton IV.

Noes: None.

Vote: Passed 6-0.

## 7. Lobbyist Registration and Late Filing Fees.

The Commission discussed staff's recommendation that an annual Lobbyist Registration fee and late filing fees be added to the Master Fee Schedule, effective January 2024.

Public comment: None.

Micik moved, and Steele seconded to approve the staff recommendation that an annual Lobbyist Registration fee and late filing fees be added to the Master Fee Schedule, effective January 2024.

Ayes: Micik, Hill, Gage, Perteet, Steele, Upton IV.

Noes: None.

Vote: Passed 6-0.

## DISCUSSION ITEMS

### 8. Executive Director Recruitment.

Micik shared updates on the recruitment of the new Executive Director and will make an announcement in next month's meeting, May 10, 2023. Hill acknowledged and thanked Micik

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for all the work that had been done for the Executive Director recruitment and thanked the staff.

## 9. Reports on Subcommittees and Commissioner Assignments.

- a) **Transparency and Public Records Subcommittee** (ad hoc, created March 8, 2023) - Francis Upton IV (Chair) and Arvon Perteet.

Upton IV I shared that the subcommittee did not meet but received an update and information from staff. The subcommittee plans to meet before the next meeting.

Public comment: None.

- b) **Measure W Equity and Outreach Subcommittee** (ad hoc, created on March 8, 2023) – Charlotte Hill (Chair), Alea Gage, Vincent Steele.

Hill shared that the subcommittee met with staff to discuss subcommittee goals and is developing Measure W talking points and an outreach plan outline.

Public comment: None.

- c) **Measure W Implementation Subcommittee** (ad hoc, created December 14, 2022) – Arvon Perteet (Chair), Ryan Micik, Charlotte Hill.

Perteet shared that the subcommittee did not meet but received an update from Acting Executive Director Doran, and noted that we are waiting for an update on our budget proposal, which will greatly influence the implementation process.

Public comment: None.

## 10. Measure W Implementation - Oakland Fair Elections Act.

Acting Executive Director Suzanne Doran provided an update on the Measure W implementation.

Public Comment: None.

## INFORMATION ITEMS

### 11. Disclosure and Engagement.

Commission Analyst Ana Lara-Franco provided a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting.

## Item 4 - Meeting Minutes

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Public Comment: None.

### **12. Enforcement Program.**

Enforcement Chief Simon Russell provided a summary of the Commission's ongoing enforcement work, including overall caseload status and enforcement-related litigation, as well as an update on complaint or case resolutions/submissions since the last regular Commission meeting.

Public Comment: None.

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

Acting Executive Director Suzanne Doran reported on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiative not covered in other staff reports.

Public Comment: None.

### **14. Future Meeting Business.**

Perteet expressed concern that communications with outside organizations could provide information outside of the City procurement process and inadvertently provide advantage to potential vendors for Measure W implementation and noted the subcommittee's intention to keep the process transparent.

Public Comment: None.

The meeting adjourned at 7:53 p.m.



## Item 6 - Staff Memo with timeline

Ryan Micik, Chair  
Charlotte Hill, Vice Chair  
Alea Gage  
Arvon Perteet  
Vincent Steele  
Francis Upton IV

Suzanne Doran, Acting Executive Director

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TO: Public Ethics Commission  
FROM: Suzanne Doran, Acting Executive Director  
DATE: April 28, 2023  
RE: Measure W Oakland Fair Elections Act Implementation Update for the May 10, 2023, Regular PEC Meeting

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With the passage of Measure W, the Oakland Fair Elections Act, the Public Ethics Commission (PEC or Commission) is planning for a transition of growth in staffing, structure, and responsibilities as administrator of a completely re-designed public financing program. This memorandum provides an update on implementation activities since the last Commission meeting and a timeline for implementation tasks.

### Operational Changes and Tasks

**Budget** – In April, Commission staff provided City administration with a service and equity impact analysis of the Commission’s budget proposal and potential effects should the proposal be reduced. The Mayor’s budget proposal will be published in May.

**Staffing** – Two new Ethics Analyst positions are expected to be added in the new fiscal year to staff the Democracy Dollars Program. In preparation for recruitment, Commission staff worked with the Human Resources Department to make minor classification specification updates to better reflect the work that has gradually evolved since the position was initially created and to include necessary references to the new Democracy Dollars program. City and union representatives met in February and March to discuss the proposed revisions and collaborated on minor language adjustments. In April, the union conveyed that there were no objections to the proposed revisions, which were then brought before the Civil Service Board and approved at its April meeting. The revised description will be used to initiate a recruitment and selection process once the positions are added to the PEC’s budget and can be filled.

### Administrative Processes and Technology

In April, staff met with the City’s Contracts and Compliance team to discuss next steps on the requests for proposals/quotes (RFP/Q) for technology and other services related to the Democracy Dollars program administration. A Contract Analyst and a Compliance Officer will be assigned to work with staff on the RFP/Q. The Compliance Officer will review the RFP/Q for compliance and approve it for release.

## **Outreach**

**Online engagement** – In April, Commission staff added a [Measure W/Democracy Dollars Program webpage](#) with a form to [subscribe for updates](#) and a form to [request a PEC speaker](#). Links to the page are featured prominently on the PEC’s home page. In addition, the PEC’s campaign finance webpages were updated with links to the Democracy Dollars webpage. Limited Public Financing webpages were archived or redirected to the Democracy Dollars program webpage. More detailed content covering new campaign finance rules, such as new political communication disclaimer requirements, are in progress and will continue to be released incrementally in the upcoming months.

**Candidates and campaigns** – In April, Commission staff sent an advisory to campaign subscribers providing an overview of changes to campaign rules affected by Measure W, including new contribution limits, voluntary spending limits, political communication disclaimers, and social media account disclaimers. Included with the advisory was a request for ongoing feedback from candidates and potential candidates, treasurers, and campaign consultants to inform preparation of guides, fact sheets, and training resources for the 2024 election cycle.

**Public events** – The Commission Chair and staff participated in an online panel discussion, “Democracy Dollars: Creating a More Democratic System in Oakland,” on April 20 hosted by the San Francisco Bay Area Planning and Urban Research Association (SPUR). Panelists included representatives of the Seattle Ethics and Elections Commission, Common Cause, and the Oakland League of Women Voters. The event garnered approximately 40 participants. A recording is available for viewing on the [SPUR website](#) and a link has been added to the [Measure W/Democracy Dollars Program webpage](#).

OAKLAND FAIR ELECTIONS ACT – DEMOCRACY DOLLARS PROGRAM

**Implementation Overview with Key Dates**

| <b>Phase 1: Preliminary Tasks</b>                   |  |
|---|--|
| <b>Nov 2022 – June 2023 Activities and Outcomes</b> |  |
| <b>Nov 2022</b>                                     | <ul style="list-style-type: none"> <li>✓ Preliminary research and analysis of requirements for program administration.</li> <li>✓ Begin coordination with other City stakeholders and agencies.</li> </ul>   |
| <b>Dec 2022 – Jan 2023</b>                          | <ul style="list-style-type: none"> <li>✓ 2023 – 2025 fiscal year budget preliminary deliverables including Democracy Dollars (DD) program complete</li> <li>✓ Updates to job specifications and civil service examination process for new staff positions – in progress</li> <li>✓ Business requirements for technology outlined in partnership with ITD</li> <li>✓ Establish advisory group/liaison with City Administrator’s office and internal stakeholders</li> </ul>   |
| <b>Feb 2023</b>                                     | <ul style="list-style-type: none"> <li>✓ Submit budget proposal with funding for DD program.</li> <li>✓ Submit DD job specifications for union approval.</li> <li>✓ Receive and incorporate feedback into tech system requirements.</li> </ul>   |
| <b>Mar 2023</b>                                     | <ul style="list-style-type: none"> <li>✓ Present budget proposal with PEC priorities for DD program to Mayor.</li> <li>✓ Response to union re: DD job specifications.</li> <li>✓ Draft milestones, success metrics for program roll-out for discussion.</li> <li>✓ Research DD design, printing, and distribution needs.</li> <li>✓ Initiate RFP process for tech and voucher production services with Finance Department.</li> </ul>  |
| <b>Apr – Jun 2023</b>                               | <ul style="list-style-type: none"> <li>• Issue tech system RFI/RFP in partnership with ITD. – in progress</li> <li>• Issue RFI/RFP for DD design, printing, and distribution. – in progress</li> <li>• Develop program webpages to chart implementation progress. – in progress</li> <li>• Recruitment for new positions, examination/interview process. – in progress</li> <li>• Outreach plan development. – in progress</li> <li>• Identify policy questions requiring Commission action prior to 2024 launch.</li> <li>• Vendor selection and approval in partnership with ITD and Finance Departments.</li> <li>• Vendor selection for printing and mailing of DD packets.</li> </ul> |
| <b>Phase 2: Program Foundations</b>                 |  |
| <b>Jul - Dec 2023</b>                               |  |
| <b>Jul 2023</b>                                     | <p><b>MILESTONE 1:</b> Program funds budgeted and available for 2023 – 2024.</p> <p><b>MILESTONE 2:</b> Vendor approved; tech system development begins.</p>   |
| <b>Aug 2023</b>                                     | <p><b>MILESTONE 3:</b> New positions filled; staff onboarded.</p> <p><b>MILESTONE 4:</b> Vendor approved for printing and mailing of DD packets.</p> <ul style="list-style-type: none"> <li>• Preliminary development of forms, systems for program administration.</li> </ul>   |
| <b>Sep – Oct 2023</b>                               | <ul style="list-style-type: none"> <li>• DD and packet design selection.</li> <li>• Adopt Commission regulations prior to 2024 launch, as needed.</li> <li>• Outreach and training materials development for Oakland residents, candidates.</li> <li>• Monitor milestones required for 2024 launch date.</li> </ul>  |
| <b>Nov – Dec 2023</b>                               | <p><b>MILESTONE 5:</b> DD voucher, packet, and mailing information ready for printing and distribution.</p> <p><b>MILESTONE 6:</b> Tech system MVP tested and ready to deploy.</p>   |
| <b>Phase 3: Program Launch</b>                      |  |
| <b>Jan - Apr 2024</b>                               |  |
| <b>Jan – Mar 2024</b>                               | <ul style="list-style-type: none"> <li>• Tech system live.</li> <li>• DD funds available announcement.</li> </ul>  |

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• Candidate application process begins.</li> <li>• Ongoing outreach to raise awareness of Democracy Dollars program.</li> </ul>  |
| <b>Apr 2024</b>                          | <ul style="list-style-type: none"> <li>• DD distribution to Oakland registered voters by April 1, 2024.</li> <li>• Voucher assignment system and public program dashboard live.</li> </ul>  |
| <b>May – Nov 2024</b>                    | <ul style="list-style-type: none"> <li>• PEC staff processes DD vouchers, disburses funds to candidates.</li> </ul>   |
| <b>Phase 4: Post-election Evaluation</b> |   |
| <b>Dec 2024 - ongoing</b>                | <ul style="list-style-type: none"> <li>• Candidates return unused funds.</li> <li>• Program audit, performance evaluation reports for Commission and City Council.</li> <li>• Tech system and outreach development continues, user-experience, data-informed improvements.</li> </ul> |

# Item 7 - Disclosure and Engagement



Ryan Micik, Chair  
Charlotte Hill, Vice Chair  
Alea Gage  
Arvon Perteet  
Vincent Steele  
Francis Upton IV

Suzanne Doran, Acting Executive Director

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TO: Public Ethics Commission  
FROM: Jelani Killings, Ethics Analyst  
Ana Lara Franco, Commission Analyst  
Suzanne Doran, Acting Executive Director  
DATE: April 27, 2023  
RE: Disclosure and Engagement Monthly Report for the May 10, 2023, Meeting

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This memorandum provides a summary of major accomplishments in the Public Ethics Commission’s (PEC or Commission) Disclosure and Engagement program activities since the last monthly meeting. 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.

## Filing Officer – Compliance

**Campaign finance disclosure** – The committees listed below failed to submit campaign statements for the January 31, 2023, deadline after repeated attempts by staff to gain compliance and have been referred to the Fair Political Practices Commission for enforcement:

| Committee  | Treasurer                  | Candidate                  |
|--|----------------------------|----------------------------|
| ANNIE CAMPBELL WASHINGTON 2014 OFFICEHOLDER COMMITTEE      | CAMPBELL WASHINGTON, ANNIE | CAMPBELL WASHINGTON, ANNIE |
| ANNIE CAMPBELL WASHINGTON FOR OAKLAND CITY COUNCIL 2018    | CAMPBELL WASHINGTON, ANNIE | CAMPBELL WASHINGTON, ANNIE |
| KENNY SESSION FOR DISTRICT 6 2022                          | SESSION, KENNETH           | SESSION, KANDIS            |
| LOWE FOR CITY COUNCIL 2022; HAROLD                         | LOWE, HAROLD               | LOWE, ANDREA               |
| JOEL VELASQUEZ FOR OAKLAND SCHOOL BOARD 2022;              | VELASQUEZ, JOEL            | RASMUSSEN, KRISTIN         |
| YAKPASUA ZAZABOI FOR OAKLAND CITY COUNCIL DISTRICT 6 2022; | ZAZABOI, YAKPASUA          | ZAZABOI, YAKPASUA          |

## Item 7 - Disclosure and Engagement

Campaign statements are available to view and download at the PEC's [Public Portal for Campaign Finance Disclosure](#)

**Lobbyist Registration and Reporting Program** – The Oakland Lobbyist Registration Act (LRA) requires lobbyists to submit quarterly reports disclosing their lobbying activities to ensure that the public knows who is trying to influence City decisions. April 30 is the next deadline for quarterly lobbyist activity reports covering the period from January 1 through March 31, 2023. The Lobbyist Registration portal, which was taken offline due to the ransomware attack in February, is back online and available. Lobbyist registration and activity reports may be viewed online at the [PEC's Lobbyist Dashboard and Data webpage](#).

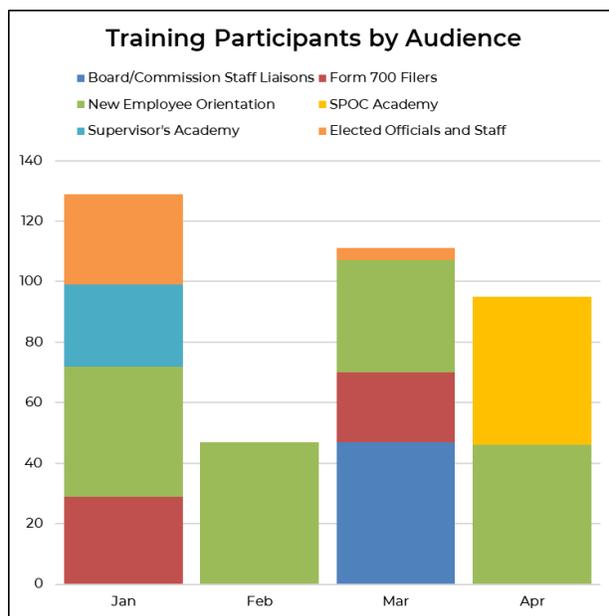
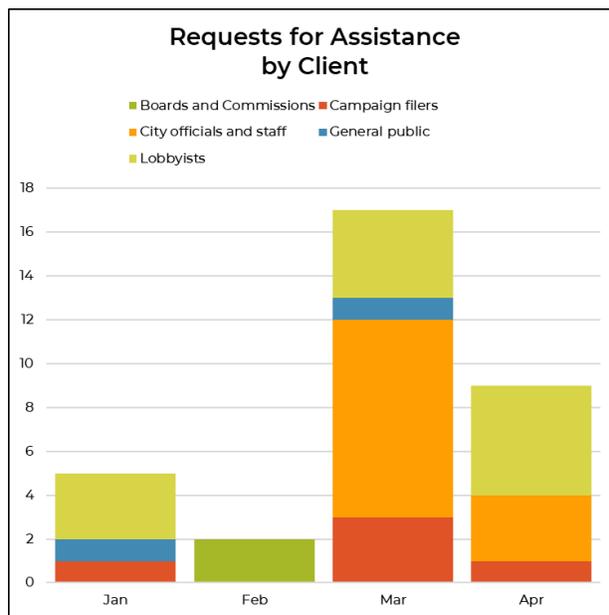
### Advice and Engagement

**Advice and Technical Assistance** – In the months of January - April, Commission staff responded to 33 requests for information, advice, or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues.

**New Employee Orientation** – Staff continues to make presentations at the City's monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). On April 19, Staff trained a total of 46 new employees on GEA provisions.

**Form 700 Compliance** – April 3 was the deadline for City officials and designated employees within the City's Conflict of Interest Code to file their annual statement of economic interests (Form 700). Staff conducted an initial compliance check of elected officials to confirm that their Form 700 had been filed. 10 out of 11 officials filed their statements on time. Staff contacted the official that did not file their statement by the deadline and will follow-up to ensure compliance.

**SPOC Academy** – On April 4, Staff participated in a joint training with the City Clerk's office to train department single point



## Item 7 - Disclosure and Engagement

of contacts (SPOCs) on new ethics onboarding and exit processes. Commission staff provided SPOCs with resources to ensure that all employees receive information and understand the rules about filing Form 700 and completing the PEC's mandatory ethics training.

**Oakland Fair Elections Act Advisory** – On April 27, Staff sent an advisory to elected officials and campaign subscribers about the newly passed Oakland Fair Elections Act and the changes to campaign finance rules in Oakland. Topics covered included new contribution and expenditure limits, political communications and social media disclaimer requirements, and eligibility rules for the new Democracy Dollars Program. Staff will be providing more detailed guides and training opportunities in the second half of the year.

### **Online Engagement**

**Social Media** –Commission staff post social media content to highlight specific PEC policy areas, activities, or client-groups. In April our posts focused on introducing new Commissioners, upcoming disclosure deadlines, and the Democracy Dollars panel discussion sponsored by SPUR.

# Item 8 - Enforcement Report



Ryan Micik, Chair  
Charlotte Hill, Vice Chair  
Alea Gage  
Arvon Perteet  
Vincent Steele  
Francis Upton IV

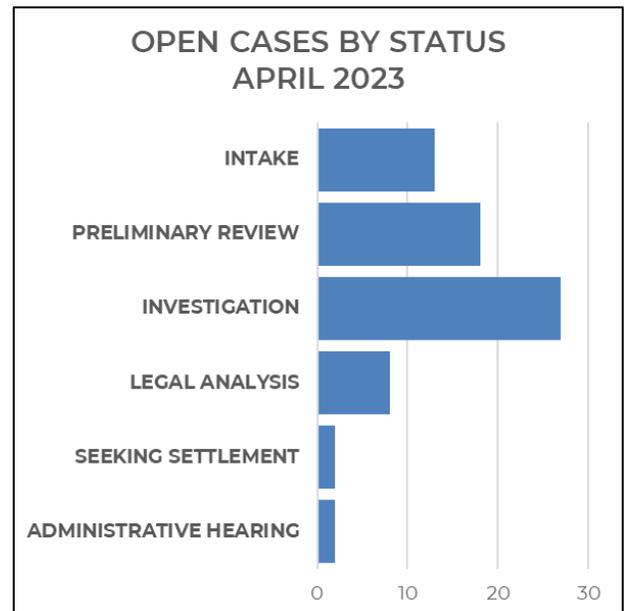
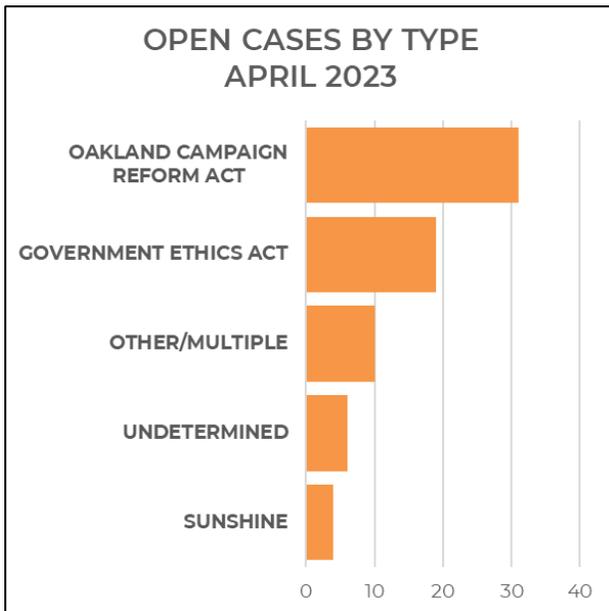
Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission  
FROM: Simon Russell, Enforcement Chief  
DATE: April 26, 2023  
RE: Enforcement Unit Program Update for the May 10, 2023, PEC Meeting

### Current Enforcement Activities:

Since the Enforcement Unit Program Update submitted to the Commission on March 28, 2023, Commission staff received 2 formal complaints, which are still in the intake stage. Enforcement staff also initiated 3 pro-active complaints on its own, of which two are under preliminary review and one is under investigation.

This brings Enforcement’s caseload to 70 matters at all stages, from preliminary review through to investigation, settlement negotiations or administrative hearing. That number does not include informal complaints awaiting review.



## Item 8 - Enforcement Report

In addition, Enforcement staff also received 11 informal complaints, of which 6 were rejected and 5 are awaiting a decision as to whether to reject them or escalate them to a preliminary review (i.e. waive the formal complaint requirements and process them as if they were formal complaints).

At its meeting of April 12, 2023, a Commissioner requested that Enforcement provide a summary of the subject matter of informal complaints received. That summary is provided here (the total below is greater than eleven, because some complaints contained multiple allegations):

- two informal complaints alleged misuse of City resources;
- two informal complaints alleged a conflict of interest;
- one informal complaint alleged a lobbyist violation;
- one informal complaint alleged a misuse of City position;
- one informal complaint alleged a violation of the open meetings laws;
- one informal complaint alleged a failure to receive public records;
- one informal complaint alleged improper operations of a street food vendor;
- one informal complaint alleged racial discrimination at a private business;
- one informal complaint sought monetary damages from the City due to a pothole;
- one informal complaint concerned a landlord-tenant dispute; and
- one informal complaint alleged a violation of federal contracting requirements.

### **Personnel**

Enforcement is very pleased to announce the hiring of Chris Gonzales as a full-time Administrative Assistant. Chris will be assisting the Enforcement Unit with complaint intake and administrative support functions, in addition to supporting other PEC units. Chris is a dedicated public servant for the City of Oakland, having previously served with the Purchasing and Parking Enforcement offices, as well as with Head Start. He also has prior experience in the private sector, including as an administrative assistant at a law firm. He has a B.S. in Business Administration (Marketing) from San Francisco State University, and is bilingual in Tagalog. This is the first time that the PEC has had an Administrative Assistant whose primary role will be to support the Enforcement Unit, and we are extremely pleased that Chris will be bringing his skills and insight to our team.

### **Due to Severe Staffing Shortage, Enforcement Will Begin Placing Some Matters on Indefinite Hold**

Increasing public awareness of Enforcement's work has led to a greater number and complexity of formal and informal complaints being filed with our office over time. Unfortunately, staffing levels at Enforcement have not kept pace with the growth in caseload. Delays caused by the recent ransomware attack and COVID-19 lockdown also impacted our case processing.

Currently, Enforcement is budgeted for a total investigative staff of two: an Enforcement Chief (who also functions as an attorney/prosecutor) and an Investigator. No additional investigative staff has been budgeted for Enforcement since our first investigator was brought on in 2016. Present caseload is 70. Under such circumstances, our current caseload-to-staff ratio would be 35:1 even if we were fully staffed at our current budget level.

Unfortunately, no new Investigator has been hired since our most recent Investigator was promoted to Enforcement Chief. The lengthy times associated with the recruitment process and unforeseen delays in hiring a temporary investigator means that the Enforcement program must continue to manage with a staff of one, the Enforcement Chief, and a caseload-to-staff ratio of 70:1. It is unknown how long this situation will last, but our caseload is expected to continue to grow as we receive more complaints than we are able to resolve.

By way of comparison, the Enforcement Unit at the San Francisco Ethics Commission has a total of eight budgeted investigative staffers, including an Enforcement Chief and seven Investigative Analysts. With a total caseload of 56<sup>1</sup>, San Francisco's budgeted caseload-to-staff ratio is 7:1 – a tenfold difference with our own ratio of 70:1.

In light of our severe staffing shortfall, Enforcement is unable to work on all of the cases in our caseload with the level of attention they require. Cutting corners in the interest of expediency is not desirable in light of the seriousness and complexity of the many allegations we investigate, which can also involve serious monetary and reputational consequences for respondents.

Staff has therefore made the difficult choice to begin formally placing certain preliminary reviews, investigations, and prosecutions on an indefinite hold on a case-by-case basis. Any complaint or case that is put on hold will have its status changed to “ON HOLD” in our Enforcement Database (as opposed to, e.g., “INVESTIGATION” or “PRELIMINARY REVIEW”). This will allow staff to more accurately report the number of cases or complaints on which Enforcement is able to work at its current staffing level. It will also allow us to provide a more accurate status update to complainants, respondents, media, and members of the public whenever we receive inquiries as to the current status of a case or complaint. Finally, placing some matters on hold allows us to allocate scarce resources more effectively.

Enforcement will use the following criteria when deciding which cases or complaints to put on hold at this time:

1. The degree to which the public interest would be impacted by proceeding with a case or complaint versus putting it on hold. While every case or complaint is important, there is

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<sup>1</sup> March 6, 2023, San Francisco Ethics Commission Enforcement report.

typically a greater public interest in those matters involving higher-ranking public officials (e.g. elected officials or senior administrative staff), larger amounts of money (e.g. in campaign finance or conflict-of-interest cases), and/or potential public safety issues (e.g. involving health-and-safety inspectors or police/fire personnel).

2. The availability of evidence to prove or disprove the allegations at hand, and the staff resources that may be needed to obtain and review that evidence. While this is always a consideration when deciding to pursue an investigation or prosecution, we will begin making this determination earlier in the process.
3. The amount of staff time and resources already invested into a particular matter, and its expected time to completion. We are highly unlikely to place a matter on hold if we have already conducted substantial investigation and/or litigation, particularly if we believe we are approaching the conclusion of our work on the matter. This also means that newer matters are unlikely to be given priority until older matters are resolved.

The above criteria are not exhaustive, and Enforcement retains the discretion to place a matter on hold and/or take it off hold for any reason it deems necessary or warranted. In cases involving a combination of major and minor allegations, we may place the minor allegations on hold while continuing to pursue the major ones.

At this time, Enforcement anticipates putting at least half of its 70 complaints or cases on hold.

To be clear, Enforcement is still vigorously pursuing a number of cases on its docket. While there is a substantial risk that respondents may try to take advantage of Enforcement's staffing challenge to unduly delay the investigation or prosecution of their case, Enforcement will continue to pursue those cases with all resources at its disposal. Any bad-faith effort to delay or obstruct a PEC investigation or prosecution will be treated by Enforcement as a serious aggravating factor when determining what final penalty to seek.

We must emphasize that this is not a long-term or even sustainable solution to the challenges Enforcement faces. Placing some complaints and cases on an indefinite hold will certainly have a detrimental effect on our work, as certain matters may become too old to reasonably pursue; we are unable to help resolve new issues or controversies as they arise; and knowledge of our staffing shortage potentially emboldens new violations. The only solution is to ensure that Enforcement has adequate staff to carry out its work. In the absence of that, we believe that placing certain matters on hold will allow staff to allocate the resources we have more effectively, while also allowing a greater level of transparency with the Commission and the public as to the status of a particular matter and its likelihood of completion in the near-term.

### Legal Actions

Since the last Enforcement Unit Program report on March 28, 2023, the following public court actions have been submitted or scheduled by or on behalf of the Enforcement Unit:

1. *City of Oakland Public Ethics Commission v. Harriet Hutchinson* (Alameda County Superior Court case no. 22CV019951). A case management conference is scheduled for May 30, 2023, at 10:00 AM in Department 14.

Except where otherwise noted, no allegations have yet been proved or admitted in any of the above matters, and the existence of these cases and associated litigation should not be taken as an indication that the potential respondent(s) necessarily violated any laws. This information is being provided for the PEC's informational purposes only.



# Item 9 - Executive Director's Report

Ryan Micik, Chair  
 Charlotte Hill, Vice Chair  
 Alea Gage  
 Arvon Perteet  
 Vincent Steele  
 Francis Upton IV

Suzanne Doran, Acting Executive Director

TO: Public Ethics Commission  
 FROM: Suzanne Doran, Acting Executive Director  
 DATE: April 28, 2023  
 RE: Executive Director's Monthly Report for the May 10, 2023, PEC Meeting

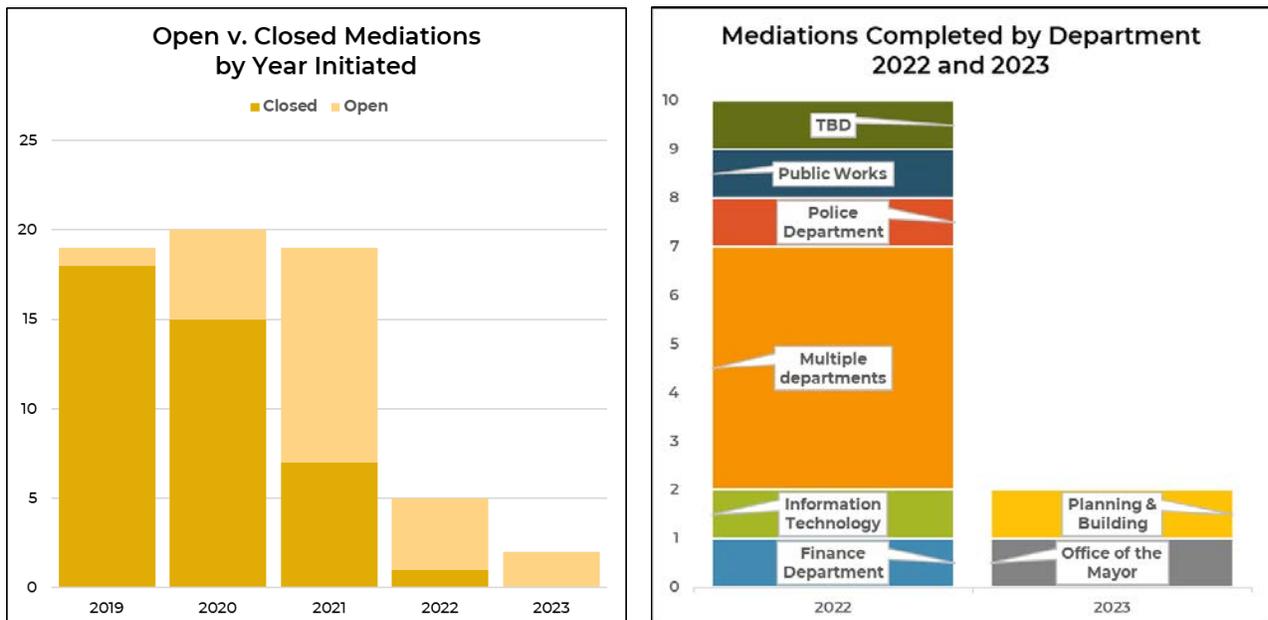
This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2023 for each program area.

## Budget

In April, Commission staff provided City administration with a service and equity impact analysis of the Commission's budget proposal including potential effects should the proposal be reduced. The Mayor's budget proposal will be published in May.

## 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 has 24 open mediations.



Following a mediation, Commission staff provides a written summary of the mediation to the Commission and can also make recommendations for further Commission action. Mediation M2020-11 was conducted by staff and subsequently closed this past month. In addition, a revised copy of mediation M2020-09, reported at the March 1, 2021, Commission meeting, is included this month

because the summary was inadvertently left off the original meeting packet. The following mediation summaries are attached:

1. In the Matter of the Planning & Building Department (Case No. M2020-11)
2. In the Matter of the Mayor's Office (Case No. M2020-09)

### **General Outreach**

On April 4, the Acting ED participated in a panel discussion hosted by Open Oakland, "Follow the Money: A Partnership for Transparent Campaign Finance in Oakland" with members of the Open Disclosure project team to share insights on the PEC's partnership with Open Oakland to promote electoral accountability, transparency in campaign activities, and increase civic engagement and participation by Oakland residents.

Attachment: Commission Programs and Priorities.

**Item 9 - Executive Director's Report  
PUBLIC ETHICS COMMISSION  
Programs and Priorities 2023**

| <b>Program</b>  | <b>Goal</b>   | <b>Desired Outcome</b>  | <b>Program Activities</b>  | <b>2023 Major Projects</b>   |
|---|---|---|--|--|
| <b>Lead/<br/>Collaborate<br/>(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  | <ul style="list-style-type: none"> <li>○ Lead Measure W implementation</li> </ul>  | <ul style="list-style-type: none"> <li>○ Public Records Performance Tool</li> <li>○ GSPP project re contractor pay-to-play restrictions and improving disclosure</li> </ul>  |
| <b>Educate/<br/>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.                               | <ul style="list-style-type: none"> <li>● Regular ethics training</li> <li>● Information, advice, and technical assistance</li> <li>● Targeted communications to regulated communities</li> <li>● New trainings as needed for diversion</li> </ul>                                      | <ul style="list-style-type: none"> <li>○ Develop Democracy Dollars training resources for candidates</li> <li>○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance</li> <li>○ Public Records training</li> </ul> |
| <b>Outreach/<br/>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.                  | <ul style="list-style-type: none"> <li>● Public Records mediations</li> <li>● Commissioner-led public outreach</li> <li>● Outreach to client groups – targeted training and compliance</li> <li>● PEC social media outreach</li> </ul>   | <ul style="list-style-type: none"> <li>○ Develop content to reflect Measure W changes and Democracy Dollar Program</li> <li>○ Develop Democracy Dollars Community Engagement plan</li> </ul>   |
| <b>Disclose/<br/>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> | <ul style="list-style-type: none"> <li>● Monitor compliance (campaign finance/lobbyist/ticket use)</li> <li>● Proactive engagement with filers</li> <li>● Technical assistance</li> <li>● Assess late fees/refer non-filers for enforcement</li> <li>● Maintain data assets</li> </ul> | <ul style="list-style-type: none"> <li>○ Democracy Dollars admin system development</li> <li>○ Democracy Dollars performance tracking and public data development</li> <li>○ Updates to Ticket Distribution (Form 802) database</li> </ul>                               |

## Item 9 - Executive Director's Report

| Program                               | Goal  | Desired Outcome  | Program Activities  | 2023 Major Projects   |
|---------------------------------------|---|--|---|---|
| <b>Detect/<br/>Deter</b>              | PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction. | Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.  | <ul style="list-style-type: none"> <li>• Process and investigate complaints</li> <li>• Initiate proactive cases</li> <li>• Collaborate/coordinate with other government law enforcement agencies</li> </ul>                   | <ul style="list-style-type: none"> <li>○ Digital complaint form/mediation request</li> <li>○ Improve Enforcement database</li> </ul>  |
| <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. | <ul style="list-style-type: none"> <li>• Prioritize cases</li> <li>• Conduct legal analyses, assess penalty options</li> <li>• Negotiate settlements</li> <li>• Make recommendations to PEC</li> </ul>                        | <ul style="list-style-type: none"> <li>○ Resolve 2016 and 2017 case backlog</li> <li>○ Review/revise policies for release of public information and election-related complaints</li> <li>○ Develop internal Enforcement staff manual</li> </ul> |
| <b>Administration/<br/>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.   | <ul style="list-style-type: none"> <li>• Annual Report</li> <li>• Budget proposal</li> <li>• Ongoing professional development and staff reviews</li> <li>• Fill staff vacancies</li> <li>• Commissioner onboarding</li> </ul> | <ul style="list-style-type: none"> <li>○ 2023 – 2025 strategic plan preparation/retreat</li> <li>✓ Develop process for City Attorney and City Auditor Salary Adjustment</li> </ul>  |

# Item 9a - M2020-09 Mediation Summary



Ryan Micik, Chair  
Charlotte Hill, Vice Chair  
Alea Gage  
Arvon Perteet  
Vincent Steele  
Francis Upton IV

Suzanne Doran, Acting Executive Director

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TO: Public Ethics Commission  
FROM: Chris Nardi, Law Clerk  
Jelani Killings, Ethics Analyst  
DATE: April 21, 2023  
RE: *In the Matter of the Mayor's Office (Case No. M2020-09); Mediation Summary*

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## I. INTRODUCTION

On May 6, 2020, the Commission received a request for mediation alleging the Mayor's Office failed to provide all responsive documents to a public records request made by the Requester on February 26, 2020. On May 21, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the Requester received all responsive documents that could be attained through the mediation process, this mediation request was closed with no further action. During the March 1, 2021, Commission meeting, Staff notified the Commission that this mediation request was closed. However, a mediation summary for a different mediation request was inadvertently included in the meeting packet instead of the summary for this request. Staff is therefore providing the Commission with a revised copy of the original mediation summary prepared by Carly Johnson, Mediation Coordinator Intern, and Kellie Johnson, Enforcement Chief.

## 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 their 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); Government Code § 7920.000 et seq.

<sup>2</sup> Government Code § 7922.530(a).

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

## Item 9a - M2020-09 Mediation Summary

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 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 February 26, 2020, the City received, via NextRequest, the following records request (#20-1106):

“All text message and email communications to and from Oakland Mayor Libby Schaaf spokesperson Justin Berton and KCBS reporter Doug Sovern since Jan. 1, 2018.”

On March 9, 2020, Sun Kwong Sze (Public Records Alternative Liaison for the Office of the Mayor) stated the following via NextRequest:

“Request extended: additional time is required to answer your records request. We need to search for, collect, or examine a large number of records (Government Code section 6253(c)(2)).”

On March 9, 2020, Requester stated the following via NextRequest:

“Please provide an estimated date for a determination when records will be available that is no more than two weeks from today, as required under the CPRA.”

On March 10, 2020, Requester stated the following via NextRequest:

“Hi -- following up because I still have not been provided with a date for your next response.”

On March 9, 2020, Sze stated the following via NextRequest:

“We are aiming for March 20. Thank you for your patience. Best regards,” and updated the due date to 3/20/2020.

On March 23, 2020, Sze stated the following via NextRequest:

Dear Requester,  
Due to the Shelter in Place order and staff are telecommuting, our ability to review and post records is greatly impacted. We will try to post any records as soon as we can. Thank you for your patience. Stay healthy.

On March 23, 2020, Requester stated the following via NextRequest:

Hi, Thank you for the update. While I am sympathetic to the challenges posed by the current public health crisis, I'm not quite sure I understand the reasoning here. All records I have requested are by nature electronic records -- emails and text messages. It would seem to me that this is not an appropriate time to limit government transparency given the enormous

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

## Item 9a - M2020-09 Mediation Summary

restrictions on citizen's lives ordered by local, state and federal government. If you are unable to provide records today, please provide an estimated date for their release. This should not have to wait until an indefinite shelter-in-place order is lifted.

On April 6, 2020, Requester stated the following via NextRequest:

Hi,  
It has now been two weeks since you wrote that "we will try to post any records as soon as we can" with no further response.  
While some reasonable allowances under the circumstances are appropriate, I do not think this should be delayed indefinitely because of a public health crisis. At the very least, please provide a date for your expected response. The public records act is clear that you must provide an expected date for records release.

On April 7, 2020, Requester emailed Mr. Sze with the following message:

Thank you for the response but I asked two weeks ago what date you think you can respond to this request by and still have received no response. I point out once again that the records I am seeking are electronic records so telecommuting should not be a burden on retrieving them, that if the mayor's office had responded to this request in a timely manner in the first place this request would not be impacted by the shelter in place order and there is no legal basis for indefinitely delaying the release of public records under these circumstances. Please provide a specific date that the records will be released.

On April 10, 2020, Sze stated the following via NextRequest:

Hi Scott,  
Thank you for your patience. Please see the released records.  
Best,  
Sun Kwong

Accompanying this message were four documents. The NextRequest case was consequently closed.

On April 10, 2020, Requester emailed Sze:

Hi,  
Thank you for releasing records, but these records are incomplete. My request included text messages. Please reopen this request and provide all documents

On April 16, 2020, Requester emailed Sze:

Hi,  
Why is this request still closed? I am aware of the existence of responsive text messages. If these are not going to be released please explain why.

On April 21, 2020, Requester emailed Sze:

Hi,

## Item 9a - M2020-09 Mediation Summary

It has been 10 days since I received an incomplete response to this request, yet it is still closed and I have received no further correspondence. Please reopen the request and provide the rest of the responsive records.

On April 22, 2020, Sze responded to Requester via email:

“Dear Mr. Morris,  
We have received your inquiries. There are no more responsive records to this request.”

On April 22, 2020, Requester responded to Sze via email:

The mayor's office is clearly withholding responsive records. Mr. Berton has indeed used text message communications as part of official business as spokesperson for the mayor's office, and these are disclosable records under the California Public Records Act. If you are withholding these records under an exemption in the statute, you must state the statute. If the records were destroyed, it would be in violation of record retention laws. Your responses that there are no records are insufficient as I have specific information of text messages by Mr. Berton to Mr. Sovern. The statement that you have no further records is false, and if Mr. Berton is not disclosing the existence of these records, he should be reminded that as a city employee his communications are in fact disclosable records.

On April 27, 2020, Sze responded to Requester via email:

“Dear Mr. Morris,  
In response to your further inquiry, the Mayor's Office does not have any additional records pertaining to your request.”

On April 27, 2020, Requester responded to Sze via email:

This still requires further explanation.  
On Feb. 26, 2020, Mr. Berton had a text message conversation with Mr. Sovern that specifically pertained to me. On Feb. 27, 2020, Mr. Berton alerted Mr. Sovern to my public records request, but Mr. Sovern indicated that I would not be able to obtain those records because Mr. Berton was using a personal cellphone to communicate.

If the mayor's office's position is indeed that personal text messages conducting official business are not subject to the California Public Records Act, I would direct you to review the California Supreme Court's 2017 decision in *City of San Jose vs. Superior Court* which held that city employee's writings about public business are not excluded from CPRA simply because they have been sent, received, or stored in a personal account.

As an official spokesperson for the mayor's office, Mr. Berton's interactions with reporters are official business, particularly in this case when he was interacting about a news story in the context of Mr. Sovern's professional duties. From the sparse email exchanges released, which strain credulity that it is all the official communications between Mr. Berton and Mr. Sovern, a full time political reporter, it would appear that Mr. Berton believes that he can hide his professional communications by using a personal account. The state Supreme Court disagrees.

## Item 9a - M2020-09 Mediation Summary

Please release all records without further unlawful delay.

On May 4, 2020, Requester emailed Sze:

“Hi, Can you please clarify whether it is the position of the mayor's office that employees can avoid disclosing official communications by using personal accounts and devices?”

On May 5, 2020, Sze responded to Requester via email:

“Dear Mr. Morris,  
Employees are to provide all City related business including those conducted on personal devices. Mr. Berton has indicated that all responsive documents have been provided.”

On May 5, 2020, Requester responded to Sze:

Frankly, Mr. Berton is lying. As I said, it is absurd to think that this is all the communications that Mr. Berton has had with a local political reporter and I have specific information that Mr. Berton indicated he would prevent disclosure by using a personal account. I don't know if the mayor's office is complicit in this deception or being deceived itself, but there are more communications that are being undisclosed.

On May 6, 2020, Requester filed the mediation request, alleging that records were withheld.

On October 10, 2020, Sze confirmed to Staff that all responsive records had been provided to the requester.

On October 21, 2020, Staff made an IT request to search Mr. Berton's Oakland.gov email for any communications between Mr. Berton and Mr. Sovern.

On October 23, 2020, Sze confirmed that the search for responsive records included those from personal devices and that, again, all responsive records had been provided.

On October 30, 2020, Staff received results from the IT search and found additional emails between Mr. Berton and Mr. Sovern that were responsive to the requester's original records request.

On November 5, 2020, Staff contacted Requester and provided all responsive documents.

On November 5, 2020, Requester responded with additional questions and, once answered, expressed satisfaction with the mediation and the hope that the department's delay in responding and possible failure to provide all responsive documents would be investigated further.

#### **IV. RECOMMENDATION**

Since all responsive documents available at this time have been provided to the requester, the mediation has been closed with no further action.

While the Requester was frustrated with the Mayor's Office failure to provide responsive documents in a timely manner and the requester believed the department was deliberately withholding

## Item 9a - M2020-09 Mediation Summary

information, further inquiry with the department staff did not establish that the department liaison had deliberately withheld the requested records from the requester. There was no indication that further investigation would recover additional records.

# Item 9b - M2020-11 Mediation Summary



Public Ethics Commission | CITY OF OAKLAND

Ryan Micik, Chair  
Charlotte Hill, Vice Chair  
Alea Gage  
Arvon Perteet  
Vincent Steele  
Francis Upton IV

Suzanne Doran, Acting Executive Director

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TO: Public Ethics Commission  
FROM: Chris Nardi, Law Clerk  
Jelani Killings, Ethics Analyst  
DATE: April 24, 2023  
RE: *In the Matter of the Planning & Building Department (Case No. M2020-11); Mediation Summary*

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## I. INTRODUCTION

On June 22, 2020, the Commission received a request for mediation alleging the Planning & Building Department was unlawfully delaying its response to a public records request made by the Requester on June 11, 2020. Staff initiated its mediation program on July 1, 2020, pursuant to the Oakland Sunshine Ordinance.

Because the Planning & Building Department and City Attorney's office represent that all non-exempt responsive records were provided to the Requester, and the City Attorney's office represents that all redactions were proper, 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.<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 their 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 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); Government Code § 7920.000 et seq.

<sup>2</sup> Government Code § 7922.530(a).

<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).

## Item 9b - M2020-11 Mediation Summary

### III. SUMMARY OF FACTS

On June 11, 2020, the City received the following records request via NextRequest (20-3255):

All records of communication between the Planning Department and the applicant, or any representative of the applicant, for the project at 5200 Old Redwood Road. This would include communications with the owners, the applicant, and any representative including legal representation.

On June 14, 2020, the City received the following records request via NextRequest (20-2300):

All records of communication to or from Neil Gray in any way related to Case File No. PLN18512; 5200 Old Redwood Road; APN: 37A-3138-004-06.

On June 22, 2020, the Planning & Building Department closed request 20-3255, stating:

Similar/duplicate request.  
Response to request will be under your other request, #20-3300.  
Thank you

On June 22, 2020, the Planning & Building Department requested an extension for request 20-2300, stating:

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 June 22, 2020, the Requester filed a mediation request with the Commission, alleging that the Planning & Building Department was unlawfully delaying release of records.

On July 1, 2020, Staff initiated its mediation program and notified the Planning & Building Department of the mediation request.

On July 15, 2020, the City Attorney's office released to the Requester PDF copies of emails related to the development. It subsequently closed the request, stating that all requested documents had been released.

On July 18, 2020, the Requester stated via NextRequest:

This response is incomplete. None of the attachments to emails were included. Examples include the 02/28/2020 letter from Corrina Could, the June 18, 2020 email from Neil Gray attaches the Fish and Wildlife Debrief that is not included. None of the Zoom meeting videos are included. No notes of phone calls or meetings are part of the records. The January 21, 2020 email from Sarah Fonseca had attachments not included. June 17, 2020 email from Neil Gray to Ed Manasse had the Final IS attached but was not included. December 9, 2019 email from Hightail to Neil Gray had and attachment that was not produced. March 2, 2020 email from Neil Gray to Theresa Wallace did no include the attachment. May 28, 2020 email from Neil Gray to Sanjeev Jain had attachments not included. No records for the June 22, 2020 Zoom call involving Neil Gray and others. April 16, 2020 email from Theresa Wallace to Neil

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Gray had attachments. January 27, 2020 emails from Theresa Wallace to Neil Gray. December 3, 2019 email from Neil Gray to Theresa Wallace had no attachments included. March 2, 2020 email from Neil Gray to Theresa Wallace attached letter. October 25, 2019 letter from Michael Branson. October 18, 2019 letter from Todd Williams to the City. I could go on but you get the point. The records are incomplete.

On July 22, 2020, the City Attorney's office released copies of attachments to the previously disclosed emails. The City Attorney's office stated that it redacted some of the attachments under several exemptions: attorney-client privilege pursuant to Section 6254(k), the draft exception pursuant to Section 6254(a) because "[d]rafts that do not represent staff's full analysis of a topic may lead to inaccurate conclusions as to the City's position," and the unwarranted invasion of personal privacy exception under Section 6254(c).

On January 24, 2022, and January 27, 2022, Staff followed up with the Requester via email to confirm if they had received all the requested documents and that, if so, staff would be closing the mediation request. On January 28, 2022, the Requester responded, stating:

The Planning Department regularly withholds records that the public requests. Given the history with the Planning Department I assume some records have been withheld, but I have no way of knowing what those records might be. Unless Commission staff uses its ability to inspect the records there is no way of knowing if the records have been produced. And even then the records might not be found. I assume some records have been withheld. Mediation was designed to be a quick process, not to go on for years. This request is almost two years old and I have not thoroughly reviewed the history, but given the misrepresentations made by Planning Department staff I will assume they have withheld records unless proven otherwise.

On March 30, 2023, and April 5, 2023, Staff reached out to the City Attorney's office to confirm that all requested records were disclosed to the Requester. On April 5, 2023, the City Attorney's office asked the Planning & Building Department to confirm that all relevant communications were disclosed.

On April 6, 2023, Neil Gray of the Planning & Building Department confirmed to Staff that all responsive records they held should have been disclosed, stating: "The only correspondence I had was through email, so what you showed should be responsive." The City Attorney's office confirmed to Staff that they were not aware of any additional non-exempt responsive records on April 7, 2023.

On April 10, 2023, the Planning & Building Department confirmed to Staff that they provided all responsive records to the Requester.

On April 7, 2023, the City Attorney's office confirmed to Staff that it reviewed all claimed exemptions before the records were disclosed, stating in part:

Essentially all correspondence between me and Neil would be attorney-client privileged since my role on this was to advise Planning on legal issues pertaining to the development.

On April 19, 2023, the City Attorney's office confirmed to Staff that it reviewed the applicability of the draft provision of the Sunshine Ordinance to this request, stating:

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Yes, that provision of the OMC is consistent with and clarifying of the California Public Records Act requirement that preliminary drafts not kept in the ordinary course of business need not be disclosed. Drafts that are kept in the ordinary course of business are thus not exempt from disclosure. The drafts at issue here are preliminary drafts of CEQA documents. Our office does not retain preliminary drafts of various CEQA documents. Practice is to hold onto a draft so that when we receive the next version, we can ensure our comments were addressed. But after that point they are not retained in the ordinary course of business.

On April 24, 2023, Staff followed up with the Requester regarding their public records request and informed them that the mediation would be closed.

#### **IV. RECOMMENDATION**

Because both the Planning & Building Department and the City Attorney's office represent that all non-exempt responsive records were provided to the requester, and the City Attorney's office represents that the claimed exemptions were legally applicable, the mediation has been closed with no further action.