

# Item 11f - M2021-10 Mediation Summary



Ryan Micik, Chair  
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TO: Public Ethics Commission  
FROM: Chris Nardi, Law Clerk  
Jelani Killings, Ethics Analyst  
DATE: May 11, 2023  
RE: *In the Matter of the Cannabis/Special Activity Permitting Department (Case No. M2021-10); Mediation Summary*

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## I. INTRODUCTION

On May 3, 2021, the Commission received a request for mediation alleging the Cannabis/Special Activity Permitting Department was unlawfully delaying its response to public records requests made by the Requester on April 14, 2021. Staff initiated its mediation program on May 4, 2021, pursuant to the Oakland Sunshine Ordinance.

Because the Cannabis/Special Activity Permitting Department provided the Requester with 69 additional documents on May 3 and 4, 2021, and the Requester is satisfied with that response, 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).

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## III. SUMMARY OF FACTS

On April 14, 2021, the City received the following records request via NextRequest (21-3332):

Copies of any traffic, noise, odor, public safety, public safety, or other environmental reports, studies, or analyses related to E7 Oakland LLC's application to establish a cannabis dispensary at 1446 Leimert Boulevard in the City of Oakland.

Later that day, the City received the following records request via NextRequest (21-3334):

1. A copy of the lease, draft lease, or other document establishing a legal or equitable interest of E7 Oakland LLC in the property located at 1446 Leimert Boulevard.
2. Materials related to the City of Oakland's notice or other document informing E7 Oakland LLC that it was eligible to proceed with RPA Phase Three: Site Identification, in which applicants have up to 120 days to identify a location for a cannabis dispensary that complies with the location restriction under OMC Chapter 5.80.

Later that day, the City received the following records request via NextRequest (21-3347):

21-3326

All correspondence, including without limitation letters and emails, between (1) E7 Oakland LLC and any of its representatives or associates, including without limitation Robert Devito, Gary Payton, Brendan Royal, Assata Bilal, Scott Lambert, Amber Norwood, Elicia Terry, Yolanda Shavies, officers, principals, staff members, and agents and (2) the City of Oakland, including without limitation its City Councilmembers, Planning Commissioners, the City Administrator, Nancy Marcus, or staff members of the Special Activity Permits Division, pertaining to the application for a cannabis dispensary at 1446 Leimert Blvd, Oakland from 01/01/2020 to the present.

Later that day, the City received the following records request via NextRequest (21-3350):

21-3326

Copies of any documents, including without limitation staff reports, findings (draft or final), memoranda, emails, notes, and letters concerning compliance of E7 Oakland LLC's application to establish a cannabis dispensary at 1446 Leimert Blvd in the City of Oakland with the California Environmental Quality Act, including without limitation such documents that discuss whether a CEDA exemption, negative declaration, mitigated negative declaration, or environmental impact report must be prepared with respect to the foregoing application.

On May 3, 2021, the Commission received a mediation request from the Requester, alleging that the Cannabis/Special Activity Permitting Department had unlawfully delayed responding to these requests.

Later that day, the Requester stated the following on request 21-3332 via NextRequest:

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Within 10 days from receipt of a request for public records, a local agency must, under Government Code § 6253, make an initial determination of whether it has disclosable documents in its possession responsive to the request. It must notify the requesting party as to the records it can provide, and the estimated date the records will be available. To date, I've received no response in violation of the Public Records Act. Please provide this information. My neighbors have also submitted information requests and not heard back. All this information relates to a proposed marijuana dispensary at 1446 Leimert Boulevard, and we are troubled by what appears to be a systematic strategy of non-response. If we do not receive the records request by Tuesday, May 4, we request the hearing on the marijuana dispensary be continued at least one month. These records are important to the community's understanding of the proposal, its merits, and its impacts on the neighborhood and the environment, and it is unfair to introduce such a polarizing use without the benefit of critical information. Failure to provide information is a violation of our constitutional due process rights.

Fifteen minutes later, the Cannabis/Special Activity Permitting Department closed request 21-3332, stating:

These documents do not exist.

The applicant may address these concerns at their public hearing, but the city did not do these reports requested.

Eight minutes later, the Cannabis/Special Activity Permitting Department released two records to the Requester on request 21-3344. It subsequently closed the request, noting that personal information had been redacted under Government Code Section 6254(c).

On May 4, 2021, Staff initiated its mediation program and notified the Cannabis/Special Activity Permitting Department of the mediation request. An hour later, the public records liaisons for the Cannabis/Special Activity Permitting Department notified Staff that they were working on the requests.

Later that day, the Cannabis/Special Activity Permitting Department stated the following on request 21-3350:

California Environmental Quality Act, including without limitation such documents that discuss whether a CEQA exemption, negative declaration, mitigated negative declaration or environmental impact report must be prepared with respect to the foregoing application.

**The City does not require the CEQA process until the site has been approved to move forward. This determination will be made after the public hearing on May 10th.**

**Other items noted in the PRR will be available shortly attached to PRR #21-3447**

An hour and a half later, the Cannabis/Special Activity Permitting Department released 67 records to the Requester on request 21-3347. It subsequently closed the request, noting that personal information had been redacted under Government Code Section 6254(c).

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Three minutes later, the Cannabis/Special Activity Permitting Department closed request 21-3350, noting that all requested correspondence could be found under request 21-3347.

On May 1, 2023, Staff reached out to the Requester to determine whether they were satisfied with these responses to their requests. Later that day, the Requester notified Staff that they were satisfied with these responses. Staff subsequently notified the Requester that their mediation was closed.

#### **IV. RECOMMENDATION**

Because the Cannabis/Special Activity Permitting Department provided the Requester with 69 additional records, satisfying the Requester's mediation request, the mediation has been closed with no further action.