

CITY OF OAKLAND  
PUBLIC ETHICS COMMISSION  
One Frank Ogawa Plaza (City Hall)  
Regular Commission Meeting  
Teleconference  
Monday, May 3, 2021  
6:30 p.m.



## PUBLIC ETHICS COMMISSION (PEC or COMMISSION) MEETING

**NOTE: Pursuant to the Governor's Executive Order N-29-20 and City of Oakland Emergency Order dated March 23, 2020, suspending the Sunshine Ordinance, all members of the Commission and participating PEC staff will join the meeting via phone/internet audio conference, and the following options for public viewing and participation are available:**

- **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:** Click on the link below to join the webinar:  
<https://us02web.zoom.us/j/88171471481?pwd=ODIQVFFUeVRsZUtHdFU3YU5XcHVadz09>

Password: 674732

- To comment by online video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” is available at: <https://support.zoom.us/hc/en-us/articles/205566129> - Raise-Hand-In-Webinar.
- **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: 881 7147 1481  
International numbers available: <https://us02web.zoom.us/j/88171471481>
  - To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing \*9 to request to speak when Public Comment is being taken on an eligible agenda item. You will then be unmuted, during your turn, and allowed to make public comments. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663> - Joining-a-meeting-by-phone.

Members of the public may submit written comments to [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov). If you have any questions about how to participate in the meeting, please email [ethicscommission@oaklandca.gov](mailto:ethicscommission@oaklandca.gov) before or during the meeting.

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Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Arvon Perteet, and Joseph Tuman

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

City Attorney Staff: Trish Shafie, Deputy City Attorney

### PEC MEETING AGENDA

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

### ACTION ITEMS

4. **Approval of Commission Meeting Draft Minutes.**
  - a. April 5, 2021 Regular Meeting Minutes ([Meeting Minutes](#))
5. ***In the Matter of Everett Cleveland Jr. (Case No. 20-03 (a))***. On January 7, 2020, PEC staff received information alleging that Everett Cleveland Jr. may have violated the Government Ethics Act when he decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 “Notice of Funding Availability” (NOFA) program. Cleveland had taken part in the decision-making process regarding NOFA applications submitted by a nonprofit housing development company called Community Housing Development Corporation, whose executive director, Don Gilmore is Cleveland’s father-in-law. The PEC staff’s investigation found that Cleveland influenced or attempted to influence the review of NOFA applications submitted by CHDC. The investigation also found that Cleveland, although required to file an annual Form 700 Statement of Economic Interests in 2019, failed to file the Form 700. At its April 5, 2021, meeting, the Commission discussed and approved Commission staff’s request to offer a Diversion agreement to the Respondent. Commission staff recommends that the PEC approve the attached Diversion Agreement including a \$600 Diversion payment by Respondent to resolve the violation. ([20-03a Case Summary and Diversion Agreement](#))



6. **In the Matter of Norma Thompson (Case No. 20-03(b)).** On January 7, 2020, PEC staff received information alleging that Norma Thompson, a City of Oakland Housing Community Development staff member, violated conflicts of interest rules when she decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 “Notice of Funding Availability” (NOFA) program. The allegation was that Thompson was working as a paid consultant for the Community Housing Development Corporation at the time that she took part in the decision-making process regarding CHDC’s 2019 NOFA applications. The PEC staff investigation found that Thompson failed to file a Form 700 when she rejoined the City in 2019, that she failed to file a Form 700 upon leaving office, and that she violated the City of Oakland revolving-door provisions of the Government Ethics Act through her consulting work with CHDC. At its April 5, 2021, meeting, the Commission discussed Commission staff’s request to offer a Diversion agreement to the Respondent and suggested changes to strengthen the agreement. Commission staff recommends that the PEC approve the attached Diversion Agreement with additional conditions, including an \$800 Diversion payment, to resolve the violation. ([20-03b Case Summary and Diversion Agreement](#))
7. **Sunshine Review Subcommittee Progress Report.** The Sunshine Review Subcommittee presents a report on its work to review City department performance in responding to public records requests, with an emphasis on data extracted from the City’s NextRequest online public portal for public records requests. The report summarizes the data as well as user input collected via satisfaction surveys, and it identifies next steps for the Commission to continue to work to improve department performance in this area. ([Spotlight on Oakland’s Public Records System Report](#))

## **DISCUSSION ITEMS**

8. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission’s last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission’s work. Current or recent subcommittees include the following:
  - a. **Sunshine Review Subcommittee** (*ad hoc*/temporary, created on May 8, 2020)  
– Michael MacDonald (Chair), Avi Klein, and Joe Tuman
  - b. **Recruitment Subcommittee** (*ad hoc*/temporary, created on April 5, 2021) -  
Michael MacDonald (Chair), Jerett Yan, and Arvon Perteet

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## INFORMATION ITEMS

9. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Disclosure Report](#))
10. **Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Enforcement Report](#); [21-03 Closure Letter](#))
11. **Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Executive Director's Report](#); [Mediation Summary M2020-07](#); [Mediation Summary M2020-14](#))

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

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

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



4/23/2021

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Approved for Distribution

Date



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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 [alarafranco@oaklandca.gov](mailto:alarafranco@oaklandca.gov) hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.

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DRAFT

Commissioners: Michael MacDonald (Chair), Jerett Yan (Vice-Chair), Avi Klein, Arvon Perteet, and Joseph Tuman

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

City Attorney Staff: Trish Shafie, Deputy City Attorney

**PEC MEETING MINUTES**

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

The meeting was held via teleconference.

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

Members present: MacDonald, Yan, Klein, Perteet, and Tuman.

Staff present: Whitney Barazoto, Suzanne Doran, Kellie Johnson, Ana Lara-Franco and Simon Russell.

City Attorney Staff: Trish Shafie

**2. Staff and Commission Announcements.**

There were no announcements.

**3. Open Forum.**

There were no public speakers.

**ACTION ITEMS**

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

- a. March 1, 2021 Regular Meeting Minutes

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DRAFT

Tuman moved, and MacDonald seconded to adopt the March 1, 2021 Regular Meeting Minutes.

There were no public speakers.

Ayes: MacDonald, Yan, Klein, Perteet, and Tuman.

Noes: None

Vote: Passed 5-0

**5. New Commissioner Selection.**

Whitney Barazoto, Executive Director, shared the Commission received 5 timely applications for the PEC-appointed vacancy. Applicants were invited to appear before the full Commission for a public interview.

Each applicant was given four minutes to introduce themselves to the Commission, followed by questions from Commissioners. Commissioners asked questions of the candidates and discussed both the application process and candidate applications.

There were no public speakers.

Perteet moved, and Tuman seconded with a friendly amendment by Tuman to extend the recruitment period for 30 days in order to expand the pool of applicants for the position and allow time for all applicants to satisfy the requirement to attend a Commission meeting prior to their final interview.

Ayes: MacDonald, Yan, Perteet, and Tuman.

Noes: None

Absent: Klein (Klein stepped away from the meeting at 8 p.m.)

Vote: Passed 4-0

**6. In the Matter of Everett Cleveland Jr. (Case No. 20-03 (a)).**

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DRAFT

Kellie Johnson, Enforcement Chief, shared with the Commission the background on the matter. On January 7, 2020, PEC staff received information alleging that Everett Cleveland Jr. may have violated the Government Ethics Act when he decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 “Notice of Funding Availability” (NOFA) program. Cleveland had taken part in the decision-making process.

Staff recommended that the Commission approve the staff offer of a Diversion Agreement to resolve the violation.

Commissioners discussed and asked questions.

There were two public speakers.

Perteet moved, and Tuman seconded to accept the staff recommendation.

Ayes: MacDonald, Yan, Perteet, and Tuman.

Noes: None

Absent: Klein

Vote: Passed 4-0

**7. *In the Matter of Norma Thompson (Case No. 20-03(b)).***

Ms. Johnson shared with the Commission information alleging that Norma Thompson, a City of Oakland Housing Community Development staff member, violated conflicts of interest rules when she decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 “Notice of Funding Availability” (NOFA) program. The allegation was that Thompson was working as a paid consultant for the Community Housing Development Corporation at the time that she took part in the decision-making process regarding CHDC’s 2019 NOFA applications.

Staff investigation found that Thompson failed to file a Form 700 when she rejoined the City in 2019, that she failed to file a Form 700 upon leaving office, and that she violated the City of Oakland revolving-door provisions of the Government Ethics Act through her consulting work with CHDC.

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DRAFT

Staff recommended that the Commission approve the staff offer of a Diversion Agreement to resolve the violation.

Commissioners discussed and asked questions.  
There were no speakers.

Perteet moved, and Tuman seconded to accept the staff recommendation with an edit from “he” to “she” in the draft document.

Ayes: Perteet, Tuman

Noes: MacDonald, Yan

Absent: Klein

Vote: Failed 2-2

Ms. Johnson indicated that she will take the Commission’s feedback into consideration as she moves forward with the case resolution.

**8. *In the Matter of Manuel Altamirano Sr. (Case No. 20-04(a)).***

Ms. Johnson shared information about an allegation that a City Parking Control Technician was approached by a co-worker, Manuel Altamirano Sr., to retract/void two tickets that the technician issued for Use of a Counterfeit/Altered Disabled Placard and Use of Disabled Parking Space on Manuel Altamirano’s wife’s car in exchange for money.

Commission staff completed its review and investigation of the matter and found sufficient evidence that Manuel Altamirano Sr. violated the Government Ethics Act. Staff recommended that the Commission find probable cause that Manuel Altamirano Sr. Violated the Government Ethics Act and schedule this matter for a hearing.

Commissioners discussed and asked questions.

There were no public speakers.

Tuman moved, and MacDonald seconded to accept the staff recommendation to schedule the matter for a hearing.

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DRAFT

Ayes: MacDonald, Yan, Perteet, and Tuman.

Noes: None

Absent: Klein

Vote: Passed 4-0

**DISCUSSION ITEMS**

**9. Reports on Subcommittees and Commissioner Assignments.**

- a. Sunshine Review Subcommittee** (*ad hoc*/temporary, created on May 8, 2020)  
– Michael MacDonald (Chair), Avi Klein, and Joe Tuman

MacDonald created an ad hoc Recruitment Subcommittee. Members are MacDonald, Yan, and Perteet.

MacDonald shared that the *ad hoc* Sunshine subcommittee will share an update after their next meeting.

There were no public speakers.

**INFORMATION ITEMS**

**10. Disclosure and Engagement.**

There were no additions or questions from Commissioners.

There were no public speakers.

**11. Enforcement Program.**

There were no additions or questions from Commissioners.

There were no public speakers.

**12. Executive Director’s Report.**

## Item #4 - Meeting Minutes

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*DRAFT*

There were no additions. Ms. Barazoto noted that there were two mediations included in the report.

There were no public speakers.

The meeting adjourned at 11:32 p.m.

# Item #5 - 20-03a Case Summary and Diversion Agreement



Michael MacDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joseph Tuman

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie F. Johnson, Enforcement Chief  
DATE: January 25, 2020  
RE: Case No. 20-03 (a); In the Matter of Everette Cleveland prepared for the April 5, 2021 Commission meeting.

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## I. INTRODUCTION:

On or about January 7, 2020, Former Assistant City Administrator Maraskeisha Smith (Smith) reported to the Public Ethics Commission (PEC) Staff that the City Attorney had contacted her about Housing Development Coordinator (HCD), Everette Cleveland Jr.'s (Respondent) alleged violation of the Government Ethics Act. As the Assistant City Administrator, Smith was the Respondent's supervisor. The City Attorney informed Smith, by letter, that two HCD staff members violated conflicts of interest ordinances when they decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 "Notice of Funding Availability" (NOFA) program. (Norma Thompson was also named in the report and the PEC prepared a separate Case Analysis and Recommendation Case No. 20-03 (b))

The Respondent was alleged to have taken part in the decision-making process regarding NOFA applications submitted by a nonprofit housing development company called Community Housing Development Corporation (CHDC), whose executive director – Don Gilmore – is also Cleveland's father-in-law.

The PEC investigation found that Cleveland influenced or attempted to influence the review of NOFA applications submitted by CHDC. It does not appear that he specifically intended to confer an undue benefit on CHDC. Cleveland's supervisors were aware of his potential conflict but did not remove him from working on CHDC applications until midway through the NOFA process; even then, Cleveland was only instructed not to directly score CHDC applications, but does not seem to have been instructed to avoid influencing the review of those applications altogether.

The investigation also found that Cleveland, although required to file an annual Statement of Economic Interest in 2019, failed to file a Form 700.

## Item #5 - 20-03a Case Summary and Diversion Agreement

Staff recommends that the Commission allow Cleveland to enter into a Diversion Agreement. If Cleveland pays the fees associated with the Diversion Agreement and successfully completes the specified provisions of his agreement, in a timely manner, the Commission will close the allegations against Cleveland.

### II. SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

**O.M.C. 2.25.040 (A):** Financial Conflicts of interest: A public servant is prohibited from participating in making or influencing a decision in which he or she has a financial interest, as defined by the CA Political Reform Act. (CA PRA)

**O.M.C. 2.25.040 (B):** Elected officials and designated public servants are required to file a Form 700 Statement of Economic Interest pursuant to the CA PRA.

**O.M.C. 2.25.060 (A)(2):** Misuse of City Position: A Public Servant is prohibited from using his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

**O.M.C. 2.25.070 (D):** A public servant may not make or influence an employment or contract action involving a relative, as defined.

**O.M.C. 2.25.030 (E):** Definitions: A relative is any person who is related with in the third degree by blood, marriage, or contract, and includes a spouse, domestic partner, parent, grand parent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, first cousin or any similar step relations.

### III. OVERVIEW OF THE NOFA PROCESS

The NOFA is an awarding of loan funds from the City of Oakland for the construction, rehabilitation or preservation of affordable housing development projects. The program is administered by HCD, which submits its funding recommendations to the City Council for final approval. Funds are awarded on a biennial basis. In the 2019-2020 City budget, the amount of NOFA funds to be awarded was estimated to be \$19,033,959.

In 2019, NOFA consisted of two separate NOFAs that were awarded at the same time: one for New Construction of Multifamily Affordable Housing, and one for the Acquisition, Rehabilitation, and Preservation of Multifamily Affordable Housing. Nonprofit housing developers were eligible to seek funds for up to two separate projects under each NOFA, meaning that a developer could potentially

## Item #5 - 20-03a Case Summary and Diversion Agreement

seek funds for a maximum of four of their projects under the 2019 NOFA. Each project required a separate application, even if they belonged to the same developer.

The NOFA process began with the publishing of the NOFA guidelines, detailing what type of projects the City would fund as well as the application requirements. Prior to publication, the NOFA guidelines were drafted by HCD staff and incorporating input from City officials and private sector advisors.

Once NOFA applications were received, HCD staff reviewed those applications in two phases. The first phase – referred to in this report as a “threshold” or “completeness” review – determined whether the applications included all of the necessary information and met the City’s minimum qualifications. The reviewer would then send a letter to the applicant informing them of any outstanding information needed to complete the application. The second phase – referred to in this report as the “scoring” phase – consisted of detailed staff evaluation and ranking of applications per the criteria outlined in the NOFA guidelines.

During both the threshold and the scoring phases, applications were reviewed by a handful of HCD staffers and consultants. Each reviewer typically handled three or four applications apiece, and generally (but not always) reviewed the same set of applications during both phases. Decisions regarding who would review each application were made by HCD staff as a group, with final approval by the HCD Unit Manager/Housing Development Manager.

Both phases of the NOFA application review also involved HCD staff meetings where applications were discussed. During the threshold phase, the meetings concerned questions regarding whether certain submissions made by applicants satisfied the completion criteria. During the scoring phase, the reviewer would present the scores they had assigned to different parts of the application, for the purpose of ensuring that HCD staff was scoring applications consistently and to address any special issues that the reviewer may have encountered.

HCD staff and the respondents characterized the scoring of NOFA applications as more of a technical application of objective criteria, rather than a subjective appraisal of the merits of a particular project. Decisions to award NOFA funds are based on final tabulated scores and availability of funds. (The project with the highest score is awarded the full amount they requested). There is no such thing as a “vote” within HCD to decide which projects get approved for funds; it all depends on the scoring of a project relative to the scores received by other projects.

The next step in the NOFA process was the drafting of the City Council agenda report, which detailed the funding recommendations that had been made by HCD staff. Funding recommendations were based by ranking applications based on their final scores; staff did not “vote” *per se* on which applications should be ranked over others. The City Council would then vote to approve the staff recommendation.

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## IV. SUMMARY OF EVIDENCE:

Everett Cleveland, Jr., was hired at HCD in May 2018, as a Housing Development Coordinator IV. It was his first time working for the public sector. Previously, he had worked at a nonprofit housing developer. The Respondent is also the son-in-law of Don Gilmore, who is Executive Director of the nonprofit Community Housing Development Corporation (CHDC). Gilmore has been Cleveland's father-in-law since 2007. Neither the Respondent nor his wife received any income from CHDC<sup>1</sup>, nor does the Respondent have any other relatives besides Gilmore who work at CHDC.

The Respondent was hired at HCD by Antoinette Pietras, who was then Housing Development Manager. (Pietras passed away shortly after Cleveland joined the City). She was the one who interviewed him, and the only person with whom he interfaced personally during the hiring process. According to the Respondent, there was an understanding when he was hired that he would take the lead on managing the 2019 NOFA process. The topic of the Respondent's relationship to Gilmore never came up during the hiring process, though he told the PEC that it was common knowledge among HCD staff at the time he was hired that Gilmore was his father-in-law. (Gilmore was known to HCD staff from his long-standing role as an affordable housing developer). According to the Respondent, his relationship to Gilmore was never a subject of concern until late in the 2019 NOFA process.

The Assistant City Administrator informed PEC Staff that the Housing Department did not have a formal policy on potential conflicts of interest in the NOFA selection process. Smith was not aware of any conflicts policy, written or otherwise, provided to the Respondent, nor did she recall any formal policy on avoiding an appearance of impropriety in the NOFA selection process.

The Respondent was the "lead facilitator" of the 2019 NOFA process, from the guideline revision phase until the initial drafting of the City Council staff report. He was assigned that role by Pietras. As the lead facilitator, he essentially acted as a project manager – he scheduled HCD staff meetings regarding the NOFA, answered staff questions about how to interpret the NOFA guidelines, ensured that staffers were meeting their internal deadlines, and tracked scoring decisions in a master spreadsheet.

During the drafting of the NOFA guidelines, the drafting team consulted with the Mayor's Housing Cabinet, of which Gilmore was a member. The input from the Mayor's Housing Cabinet was given at a meeting of that group, attended by the Respondent and HCD Deputy Director Leshin, though Gilmore directed his input to the whole group. According to e-mails reviewed by the PEC, Gilmore's input specifically related to equity aspects of the NOFA process. There is no evidence in the e-mails and text messages reviewed by the PEC of any direct communication between Gilmore and the Respondent about the guidelines. According to the Respondent, the subject of a possible conflict with his father-in-law did not come up during the time that he was revising the NOFA guidelines.

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<sup>1</sup> Gilmore did provide the Respondent and his wife with a \$5,000.00 cash gift in April 2018 towards the down payment on their house; this was one month prior to the Respondent's employment at the City.

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While drafting the NOFA guidelines, the Respondent would discuss the draft with other HCD staffers. The draft was then presented to Deputy Director Leshin for review and approval; the Respondent did not have final say over the contents of the guidelines. Following publication of the NOFA, the Respondent facilitated a public workshop regarding the requirements of submitting a completed, thorough NOFA application. There was a brief question-and-answer session at the end, but the substance of the workshop was limited to the general guidelines; no individualized advice on particular applications was given because no applications had been completed or submitted at that point.

During the threshold review phase, the Respondent was assigned to review several applications. One of those applications was submitted by CHDC for its project at Harp Plaza. The Respondent was assigned to that application because Harp Plaza was an already-existing (“pipeline”) project which he had been managing on behalf of HCD since before the 2019 NOFA.<sup>2</sup> (Harp Plaza had been a recipient of NOFA funds in 2017, and was now seeking additional funding in support of the project). According to the Respondent, it was common for HCD staffers already assigned to an existing project to perform the threshold review on that project if they were seeking 2019 NOFA funds; the idea was that the staffer was already familiar with the project and therefore could more easily review the application.

The Respondent wrote a letter to CHDC during the threshold review of its Harp Plaza application, letting them know what further information they needed to submit or clarify. This was standard procedure during the NOFA, in that every other Housing Development Coordinator did the same for the applications that they were reviewing.

Before the scoring phase of the NOFA began, Katz Mulvey was promoted to Unit Manager. She subsequently met with Leshin to review the list of which staff members would score each NOFA application that had passed the threshold review. In reviewing the list, Katz Mulvey noted that the Respondent was assigned to score the Harp Plaza application even though Gilmore was his father-in-law. She flagged this as a potential conflict of interest, and she and Leshin decided to reassign the Harp Plaza application scoring review to another staffer (Janet Howley, a consultant brought on to help with the NOFA). This decision was communicated to the Respondent, along with an instruction not to score any other CHDC applications. Cleveland did not object to the reassignment.

During the subsequent scoring phase of the NOFA process, the Respondent scored two NOFA applications, neither of which were CHDC applications.

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<sup>2</sup> The Respondent had been assigned to facilitate the Harp Plaza project by then-Housing Development Manager Antoinette Pietras. There was no discussion at that time about a potential conflict given that Gilmore was the Respondent’s father-in-law, though it was common knowledge at HCD that Gilmore and he were related.

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CHDC had submitted four applications in total under the 2019 NOFA. Other HCD staffers besides the Respondent conducted the threshold reviews of the other three (non-Harp Plaza) CHDC applications. The Respondent told the PEC that he only discussed those applications during staff meetings, in the same context as with other NOFA applications: to make sure the threshold reviews were consistent across all applications without giving a “special advantage” to one project over another. He does not recall ever disagreeing with another staff member about whether CHDC had fulfilled its threshold requirements on any of its applications.

According to the Respondent, due to the group meetings there was “no need” to come to him individually with questions about a particular application, and in any event, it was “not my role” to make “unilateral decisions.” He did confirm that he discussed all four of the CHDC applications at staff meetings, just as he did with non-CHDC applications. HCD staffers attending those meetings included Cleveland, Thompson, Janet Cowley, Ahmed Conde, and sometimes Katz Mulvey. The Respondent told the PEC that he did not weigh in on any applications during those meetings that he did not personally review. Instead, he took notes on what the other reviewers were doing and documented their decisions into a master spreadsheet.

The Respondent also told the PEC that, outside of the staff meetings, he provided “no input whatsoever” on the scoring of any CHDC applications. Cleveland’s internal e-mails largely verify this. However, there are some instances where – by request of, or in coordination with, other HCD staffers – he weighed in on potential scoring issues on CHDC applications, contacted other City departments to obtain information necessary to score CHDC applications, or reaches out to CHDC to obtain the required documentation or clarification would allow them to receive a higher score.

When asked about this discrepancy between his claim to the PEC that he did not weigh in on CHDC applications outside of meetings, and the evidence of his e-mails, the Respondent clarified that he would give input in a “general context” based upon “NOFA guidelines” because, as the one who had put the guidelines together and therefore had the most knowledge of them, he was responsible for answering such questions. When a staffer would ask him such a question, he would turn to the NOFA guidelines and give an answer based on that.

When scores on all NOFA applications were completed, the Respondent consolidated them into a master spreadsheet. The HCD Director then reviewed the information. The Respondent then wrote the first draft of the City Council staff report, describing HCD’s funding recommendations based on the application scores. He did not finalize the staff report after working on the initial draft, because at that point he was asked to step away from the NOFA process entirely due to the issue of his potential conflict of interest involving Gilmore.

The Respondent has not been specifically involved in any CHDC projects since this matter became an issue. When asked by the PEC if he ever had a personal hesitation about working on CHDC applications, the Respondent said he did not, because in his mind he was not doing anything different from other Housing Development Coordinators. He also never discussed “NOFA stuff” with Gilmore

## Item #5 - 20-03a Case Summary and Diversion Agreement

outside the office because they did not want to cause any problems with the processing of CHDC applications. When asked if he was ever concerned about the appearance of impropriety, he said no, because he is a “worker bee” and does what he is instructed to do. He said such concerns are a matter for his supervisors, not for him.

In 2019, CHDC, The Respondent’s Father-in-Law’s non-profit, was selected to receive one or more of the NOFA project funding. A report or tip was sent to the City Attorney regarding the selection process. The City Attorney reviewed the facts of the allegations and contacted the Housing Department and the Assistant Administrator Smith and informed her that the that funding awarded to DHDC cannot be approved and must be revoked because of the conflict of interests. As a result of the City Attorney’s decision, CHDC’s funding award was rescinded.

During the investigation, PEC staff confirmed that as of March 17, 2020, the Respondent had not filed any Form 700s. In an interview, he told the PEC that he is familiar with a Form 700, and that he had filed one. When asked when he filed that form, and he said it was around the time he received a letter from Public Ethics about this investigation. Prior to that, no one had ever informed him that it was his responsibility to fill out a Form 700. The Respondent’s only Form 700 was filed on March 30, 2020.

### V. ANALYSIS

The evidence obtained during the investigation established that the Respondent, in his official capacity, participated in the decision of the Housing Department to grant NOFA funding to various non-profit candidates. Although the Respondent was adamant that he did not weigh in on any applications during meetings to evaluate NOFA candidate applications, other than those he personally reviewed. Evidence to the contrary established that by request of, or in coordination with, other HCD staffers – he weighed in on potential scoring issues on CHDC applications, contacted other City departments to obtain information necessary to score CHDC applications, or reaches out to CHDC to obtain the required documentation or clarification would allow them to receive a higher score.

The Respondent also participated in scoring other NOFA applicants. Grading and reviewing other NOFA applicants which created a potential conflict of interest for the Respondent because the opportunity to score or advocate for scoring other applicants lower or differently to provide an advantage to his father-in-law’s nonprofit, remained a possibility.

A City employee is prohibited from making or influencing a contract action involving a relative. Most city governments and agencies have rules against nepotism and Oakland is no different. The Respondent was aware that his father-in-law’s non-profit CHDC submitted an application for NOFA Funds. The NOFA process is the awarding of a contract loan from the City of Oakland for the funding of construction, rehabilitation or preservation of affordable housing development projects. In this case, the Respondent violated the City’s nepotism ordinance when he participated in or influenced the decision to recommend NOFA funding to a particular applicant.

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Designated City employees are required to file Statement of Economic Interest Form 700 to openly disclose any economic interests that may present a conflict of interest. The Form 700 is a relatively simple form that requires a public servant to self-report any and all economic interests (including those of a spouse or family member) that may impact their employment with the City of Oakland. Here, the Respondent failed to timely file a Form 700 for the year 2019 until well after the Public Ethics Commission Enforcement Staff contacted him.

Under the provisions of the Government Ethics Act, a Public Servant may violate conflict of interest laws when he or she uses or attempts to use their official position to influence a decision when he or she contacts or appears before any official in his or her agency for the purposes of affecting a decision in which they have a financial interest.

Further, a City employee is prohibited from making, participating in making or influencing a decision of the City when he or she has a financial interest in the decision. On the facts gathered in the investigation, it appears that the Respondent did not have a direct financial interest in the decision to recommend awarding the NOFA funding.

There was no evidence that Cleveland received any funds, fees or kickback when CDHC was initially awarded the NOFA funding. There was no evidence that the Respondent's father-in law promised to make a payment or provided a payment (or any other thing of value) upfront to the Respondent in exchange for a favorable recommendation to the City Council for a NOFA funding. In the absence of any evidence to establish the Respondent's financial interest, there is insufficient evidence to show that the Respondent violated any provision of the Government Ethics Act for Financial Conflicts of Interests.

### VI. VIOLATIONS

#### **Count 1: Misuse of City Position**

A City employee violates the Government Ethics Act when he or she uses his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

Between January 2019 and December 2019, the Respondent Everett Cleveland, violated O.M.C. 2.25.060 (A)(2), by using his position in a manner intended to induce a private advantage or economic gain to another person.

#### **Count 2: Prohibition Against Nepotism**

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A City employee violates the Government Ethics Act when he makes or influences a contract action involving a relative.

Between January 2019 and December 2019, the Respondent, Everette Cleveland Jr., violated Section 2.25.070 (D) making or attempting to influence a NOFA application selection process.

### **Count 3: Failure to File Financial Interest Form (F700)**

A designated City employee violates the Government Ethics Act when he or she fails to file a Form 700 Statement of Economic Interest.

The Respondent failed to file a Financial Interest Form 700 for the year 2019, pursuant to the CA PRA and in violation of O.M.C. 2.25.040 (B).

### **VII. PROPOSED PENALTY**

This matter consists of three violations of the Government Ethics Act (GEA), which carries a maximum administrative penalty of \$5,000 per violation or up to three (3) times the amount the person failed to report properly, or expended, gave, or received, whichever is greater.

The PEC considers several factors to determine the appropriate penalty, including, but not limited to, the following factors:

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

The Public Ethics Commission has an independent obligation to determine the penalty merited by the Respondent's violation of the GEA. And, although the Commission has often concluded that the guideline penalty is sufficient to vindicate the Commission's interests in regulating violations of GEA, the Commission is free to impose a different sanction if that is appropriate. In this case, Staff recommends that the Commission impose a different sanction, a Diversion Agreement.

### **Aggravating Factors**

## Item #5 - 20-03a Case Summary and Diversion Agreement

1. The respondent did not recuse himself from the application review process.

### **Mitigating Factors:**

1. The Respondent cooperated with Enforcement Staff's investigation into this matter.
2. The Respondent was new to his position with the City.
3. The Department failed to provide Cleveland training on conflicts of interests.
4. The Department did not have a written policy, nor did it inform Cleveland on recusal due to conflicts of interest.
5. The Respondent made an effort to not directly review or approve his father-in-law's application.
6. The Respondent's supervisors were aware of the relationship between Cleveland and his father-in-law applicant and did not take action to resolve the conflict until later in the process.
7. Although untimely, the Respondent eventually filed a Financial Interest Form 700.

The purpose of administrative penalties like those provided in the Government Ethics Act is to promote transparency, gain compliance with the City Ordinance requirements and protect the public from Public Servants who have not discharged, will not discharge or are unlikely to properly discharge their professional duties. In this case, lack of knowledge of the law is not a defense to a Government Ethics Act violation. In fact, the facts establish Cleveland was vaguely aware of the potential conflict of interest and eventually attempted to mitigate the conflict by not directly reviewing his father-in-law's application. Here, most of the Respondent's actions, if not all, were performed with the full knowledge of his department supervisors. Not until later in the application review process did the Respondent's Supervisors recognize the potential conflict of interest.

This is a case where the failure of the department to provide sufficient training and oversight informed the choices that Cleveland made. As a result of the department's failure to provide training, staff recommends that Cleveland enter a Diversion Agreement with the Commission pay an imposed fee and agree to successfully complete trainings on conflicts of interest and related policies.

### **V. CONCLUSION AND RECOMMENDATION**

There is probable cause that the Respondent violated Count 2 Financial Conflict of Interest, Count 1 Misuse of City Position, Count 2 Prohibition Against Nepotism and Count 3 Failure to File Form 700 when he participated in the decision to recommend a grant of NOFA funding, knowing that his father-in-law's non-profit was a candidate in the applicant pool.

To resolve this case, Staff recommends that the Commission approve a Diversion Agreement to counts 1, 2, and 3. A diversion program will provide the Respondent with the essential training and services that can address the underlying cause that contributed to his violations of the Government Ethics Act. By targeting the underlying issue of lack of training and department policies, a diversion

## **Item #5 - 20-03a Case Summary and Diversion Agreement**

program can improve long-term compliance with City ordinances and ensure effective execution of City policies and laws.

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

4 Petitioner

5  
6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION

8  
9 In the Matter of

) Case No.: 20-03 (a)

10 EVERETT CLEVELAND Jr.,

) **Diversion Agreement**

11 Respondent.

12  
13 **Everett Cleveland Jr.**

14  
15 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission (PEC), and  
16 Respondent, Everett Cleveland Jr., enter into the following Diversion Agreement pursuant to  
17 O.M.C. 2.24.030.

18 **DIVERSION ELIGIBILITY**

19 The Respondent is eligible for and this matter may be resolved by diversion, in that:

- 20 (a) the allegation against Respondent does not involve misappropriation of City funds
- 21 or property; or the commission of a misdemeanor or felony under California law;
- 22 (b) the violation by Respondent appears to be the result of inadequate departmental
- 23 controls and lack of training education; and
- 24 (c) there appears to be a reasonable likelihood that the successful completion of a
- 25 remedial program will prevent the recurrence of violations by Respondent similar to
- 26 that under consideration for diversion.

DIVERSION STIPULATIONS:

1. This Diversion Agreement resolves all factual and legal issues raised in this matter and represents the final resolution to this matter without the necessity of holding an administrative hearing to determine the liability of Respondents;
2. In exchange for his entry into the Diversion Agreement, admission to the counts named in this agreement, and completion of the terms of the Diversion Agreement, the Commission, if approved, will close this matter with no further penalty.
3. Respondent knowingly and voluntarily agrees to enter diversion and waive all procedural rights under the Oakland City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint Procedures, including, but not limited to, the right to personally appear at an administrative hearing held in this matter, to be represented by an attorney at their own expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
4. This Diversion Agreement is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to this matter, or any other matter related to it;
5. There is probable cause to establish that the Respondent violated the Government Ethics Act by engaging in the following conduct: a). using his position in a manner intended to induce a private advantage or economic gain to another person., in violation of the Oakland Municipal Code section O.M.C. 2.25.060 (A) (2) (Misuse of Position); b). making or attempting to influence a NOFA application selection process involving a relative in violation of O.M.C. 2.25.070 (D) (Prohibition Against Nepotism); and c).

## Item #5 - 20-03a Case Summary and Diversion Agreement

1 failure to file a Form 700 Statement of Economic Interests for the year 2019 in violation  
2 of O.M.C. 2.25.040 (B).

### 3 **DIVERSION AGREEMENT TERMS**

- 4
- 5 1. The term of this agreement shall be for six (6) months, beginning on May 3, 2021, and  
6 shall terminate on November 3, 2021, or until Respondent has satisfied all of the  
7 requirements of this agreement, whichever is later.
- 8
- 9 2. The proposed Diversion Agreement is subject to approval by the Public Ethics  
10 Commission.
- 11
- 12 3. The respondent agrees that in the event the Commission refuses to approve the proposed  
13 Diversion Agreement, it shall become null and void.
- 14
- 15 4. In the event the Commission rejects the proposed Diversion Agreement and a full  
16 evidentiary hearing before the Commission becomes necessary, no member of the  
17 Commission shall be disqualified because of prior consideration of the diversion  
18 agreement.
- 19
- 20 5. During the term of this agreement, Respondent shall attend and successfully complete the  
21 following trainings:
- 22 i. Government Ethics Act Training for Form 700 Filers, in coordination with  
23 Public Ethics Commission staff to ensure course completion,
- 24 ii. Conflicts of Interest Training provided by PEC staff, and
- 25 iii. One-hour follow-up in-person training with PEC staff.
- 26
- 27 6. Respondent acknowledges that a failure to complete this requirement timely may be  
28 grounds for the extension or termination of this agreement by the PEC.

## Item #5 - 20-03a Case Summary and Diversion Agreement

- 1
- 2 7. The Respondent agrees to pay a Diversion Program Fee of \$600, payable to the City of
- 3 Oakland upon entry into the Diversion Agreement by money order or cashier's check.
- 4 The complete cost of each training is \$200 per training session for a total cost of \$600.
- 5 Any costs associated with the remedial program shall be borne by Respondent.
- 6
- 7 8. Respondent is responsible for the timely submission of all completion certificates
- 8 required by this agreement and must communicate the completion of all requirements to
- 9 the PEC.
- 10

### 11 COMPLIANCE AND DISPOSITION

12

- 13 1. Any failure by Respondent to comply with any term of this agreement or any
- 14 subsequent complaint that alleges that the Respondent violated a provision of Oakland's
- 15 Government Ethics Act in a matter unrelated to the facts stipulated to in this diversion,
- 16 is a basis for the extension or termination of this agreement by the PEC.
- 17
- 18 2. In the event the PEC has a reason to believe that there is such a basis to extend or
- 19 terminate the agreement, Respondent acknowledges that the PEC shall provide the
- 20 Respondent with an opportunity to be heard through written submission concerning the
- 21 alleged non-compliance. Thereafter, the PEC staff shall determine whether to terminate
- 22 or extend this agreement and, if so, shall refer the matter to the PEC for review.
- 23
- 24 3. In the event that the Respondent fails to comply with the terms of this agreement, he
- 25 agrees that the following facts shall be deemed true in any subsequent hearing:
- 26
- 27 a. On or between January 2019 and December 2019, Respondent, Everett Cleveland Jr.
- 28 attempted to use his official position to influence the Housing Department's decision

## Item #5 - 20-03a Case Summary and Diversion Agreement

1 to approve his father-in-law's (Don Gilmore) non-profit Community Housing  
2 Development Corporation's NOFA application for funding.

3  
4 b. Between January 2019 and December 2019, the Respondent Everett Cleveland Jr.,  
5 used his position in the Housing Department as a Housing Development Coordinator  
6 in a manner intended to induce a private advantage or economic gain to another  
7 person, Don Gilmore and the community Housing Development Corporation.

8  
9 c. Between January 2019 and December 2019, the Respondent, Everett Cleveland Jr., a  
10 City of Oakland Housing Development Coordinator, made or attempted to influence a  
11 NOFA application selection process involving a family member, Don Gilmore.

12  
13 d. The Respondent, Everett Cleveland Jr. failed to timely file a Form 700 Statement of  
14 Economic Interests for the year 2019.

15  
16  
17 4. Notification: During the term of this Diversion Agreement, Respondent shall notify the  
18 PEC, in writing, of any change of e-mail address, mailing address, or telephone change  
19 within 10 days of the change.

20  
21 5. This Diversion Agreement is a deferral of enforcement proceedings, fines and penalties.  
22 If, in the sole discretion of the PEC, Respondent complies with all the terms of this  
23 agreement through the duration of the agreement, the matter/complaint shall thereafter  
24 be closed and shall not be considered a prior PEC offense in any subsequent PEC  
25 proceeding against him/her. The stipulated facts contained in this agreement will serve  
26 as your admission to the alleged violation(s). If the terms of this agreement are violated,  
27 the enforcement action will proceed, and the stipulated facts contained in this agreement  
28 will serve as your admission to the alleged violation(s).

Item #5 - 20-03a Case Summary and Diversion Agreement

6. The parties acknowledge that this Diversion Agreement, Respondent's compliance with the Agreement, and the disposition of this proceeding upon completion or termination of the Agreement, are matters of public record. He further acknowledges that the Complainant will be made aware that this matter was resolved through a diversion agreement.

Dated: 04/19/2021

  
Kellie F. Johnson (Apr 19, 2021 09:08 PDT)

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

I, (Everett Cleveland Jr.), attest that the statements contained in the diversion agreement are true and correct, and that I agree to the above terms.

Dated: 4/19/2021

Everett Cleveland Jr.  
Everett Cleveland Jr. (Apr 19, 2021 08:46 PDT)

Everett Cleveland Jr., Respondent

Print Name: Everett Cleveland Jr.

**ORDER OF DIVERSION**

The foregoing Diversion Agreement of the parties (Case No. 20-03(a)), including all attached exhibits, is hereby accepted as the Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael MacDonald, Chair  
City of Oakland Public Ethics Commission

**Item #5 - 20-03a Case Summary and Diversion Agreement**

# Item #6 - 20-03b Case Summary and Diversion Agreement



Michael MacDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joseph Tuman

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie F. Johnson, Enforcement Chief  
Simon Russell, Investigator  
DATE: January 25, 2020  
RE: Case No. 20-03(b) ; In the matter of Norma Thompson prepared for the April 5, 2021, Commission meeting

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## I. INTRODUCTION:

On or about January 7, 2020, this matter was referred to the PEC by the City of Oakland’s Assistant City Administrator Marakiesha Smith. Smith had received a letter from the Oakland City Attorney that informed her that two City of Oakland Housing Community Development (HDC) staff members violated conflicts of interest ordinances when they decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 “Notice of Funding Availability” (NOFA) program.

One of the HCD staff members identified in the City Attorney’s letter was Norma Thompson. (Everette Cleveland was also named in the report and the PEC prepared a separate Case Analysis and Recommendation) The allegation is that Thompson was working as a paid consultant for Community Housing Development Corporation (CHDC) at the time that she took part in the decision-making process regarding CHDC’s 2019 NOFA applications. The PEC also proactively inquired into whether Thompson may have violated any of the revolving-door provisions of GEA through her consulting work with CHDC.

The investigation also found that Thompson failed to file a Form 700 when she rejoined the City in 2019 and that she failed to file a Form 700 upon leaving office.

Staff recommends that the Commission allow Thompson to enter into a Diversion Agreement. If Thompson pays the fees associated with the Diversion Agreement and successfully completes the specified provisions of his agreement, in a timely manner, the Commission will dismiss and close the allegations against Thompson.

## II. SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

## Item #6 - 20-03b Case Summary and Diversion Agreement

O.M.C. 2.25.040(A), Financial Conflicts of interest: A public servant is prohibited from participating in making or influencing a decision in which he or she has a financial interest, as defined by the CA Political Reform Act. (CA PRA)

O.M.C. 2.25.040(B), Form 700 Disclosure: Elected officials and designated public servants are required to file a Form 700 Statement of Economic Interest pursuant to the CA PRA.

O.M.C. 2.25.060(A)(2), Misuse of City Position: A Public Servant is prohibited from using his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

O.M.C. 2.25.050(D), Leaving public service "revolving door" restrictions; Employment by a Party to a City Contract on Which the Public Servant Worked: No current or former Public Servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

### III. SUMMARY OF EVIDENCE:

For an overview of the NOFA process please review the Case Summary in the Matter of Everett Cleveland Case No. 20-03(a).

Norma Thompson worked for the City of Oakland on-and-off beginning in 1989, always in the housing field (though not always with HCD). She also worked for the cities of San Francisco and Richmond. In 2010, she joined HCD and worked on several NOFAs during her time there. Thompson retired from HCD in 2017; her title at that time was Housing Development Manager.

During periods where Thompson was not working in the public sector, she worked for affordable housing non-profits. This included some periods where she worked for CHDC, the first of which began in 2004 and lasted (according to Thompson) “for a couple of years.” She later became a volunteer board member of CHDC from 2008-2010 and resigned from that position after joining HCD in 2010. After retiring from the City, she worked for CHDC as a consultant on some projects it was developing in Richmond. She was also an unpaid board member of CHDC during that time.

Thompson twice came out of retirement in 2019 to work at HCD as a temporary annuitant. First, she came back from April to September, where she oversaw the development of the 2019 NOFA guidelines. She was Cleveland’s supervisor during that time. After the NOFA was published, she was asked to come back again and assist in the scoring phase of the NOFA – sometimes around November-December 2019. At that time, she and Cleveland were supervised by Christia Katz Mulvey.

When Thompson first returned to HCD 2019, she was hired by Michele Byrd, who was then the Director of HCD. (Byrd left the City in April 2019 and was replaced by Maraskeshia Smith).<sup>1</sup> Leshin and Katz Mulvey were not involved in re-hiring Thompson. Byrd asked Thompson to come back because Thompson’s position had not been filled and staff was under workload pressure, particularly

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<sup>1</sup> On Byrd’s departure from the City, see: <https://www.nbcbayarea.com/news/local/michele-byrd-no-longer-oakland-housing-chief/158263/>. Byrd’s departure appears to have been unrelated to the NOFA.

## Item #6 - 20-03b Case Summary and Diversion Agreement

considering the upcoming NOFA. Byrd formally offered Thompson the position via an offer letter dated March 11, 2019.

According to Thompson's lawyer, Thompson consulted for CHDC from January 1- April 2, 2019, and again from November 1 - December 12, 2019.<sup>2</sup> According to City HR, Thompson's "start date with the city as an ELDE (TCSE) was 4/6/2019 and her end date was 1/4/2020." Thompson's offer letter (dated March 11, 2019) and Temporary Employment Agreement both state that the term of her employment would end on October 8, 2019. Based on a review of City emails, Thompson worked on the NOFA at least through November 28, 2019. In an interview with the PEC, she said that she was no longer actively involved with HCD by the Christmas holiday, though she did attend a holiday party.

Maryann Leshin recalled that Thompson was a temporary contract employee from April 8, 2019 to October 8, 2019, with an extension from November 11, 2019 to January 3, 2020. Christia Mulvey Katz took over as Unit Manager (overseeing Cleveland, among others) on September 30, 2019.

Thompson told the PEC that she did not perform any work for CHDC or receive any payments from them during her time at HCD in 2019. Before returning to HCD, Thompson also resigned her unpaid board position at CHDC so as not to create the appearance of a conflict of interest. For the same reason, she also told her supervisor that she would not "sign off" on anything regarding CHDC (as Thompson later described it to the PEC during an interview). Instead, her supervisor signed off on things regarding CHDC. When asked by the PEC if that arrangement just included "signing off" on CHDC matters, or if it meant that Thompson would not weigh in on CHDC matters at all, Thompson said that there were rarely discussions about CHDC matters and "if there were" then she would refer the staff person to someone else, especially if it involved making a decision. Thompson also communicated this to staff members who tried to bring CHDC matters to her attention. Thompson told the PEC that she would never make a decision regarding CHDC funding or be in a situation that involved exercising judgment over a CHDC matter, just to avoid the perception of a conflict.

When asked by the PEC if she had a similar agreement with CHDC to not discuss the content or status of their NOFA applications, Thompson said she did not, because no one at CHDC ever asked her about it in the first place. She also told the PEC that she did not offer any such information to CHDC without them asking. The PEC requested that Thompson and Gilmore provide all of their correspondence concerning CHDC's NOFA applications; both said they did not have any responsive

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<sup>2</sup> Thompson's lawyer also provided the following detail:

Between January 1 and April 2, 2019, Norma consulted with CHDC on proposed affordable housing projects in both Oakland and Richmond. From November 1 to December 12, 2019, she only consulted on affordable housing developments in the City of Richmond. As we stated in our interview with you, both Norma and CHDC believed that they took the proper steps to avoid even the appearance of conflict of interest and fully disclosed to the City of Oakland the nature of her work with CHDC. Neither Norma nor CHDC (nor, apparently, the Housing Department of the City) was aware of the conflict of interest regulations or restrictions in effect for staff or consultants to the City. Each has had a longstanding relationship with the City, and neither would have deliberately done anything to damage that relationship.

## Item #6 - 20-03b Case Summary and Diversion Agreement

records, which would seem to corroborate Thompson's claim that she did not discuss their NOFA applications with them.<sup>3</sup>

None of the HCD staffers interviewed by the PEC (Cleveland, Leshin, Mulvey Katz, or Smith) were under the impression that Thompson was working for CHDC while she was working for the City.

Thompson's role upon her return to HCD was to assist in the launching of the NOFA, and to lead the staff meetings in the development of the NOFA. In terms of what that specifically entailed, Thompson told the PEC that HCD staff gave input on how applications would be scored, as well as what funding priorities would be (i.e. type of projects to prioritize). If the discussion concerned something that Thompson felt was "political or above my head" then she would refer it to the Housing Director. She told the PEC that she did not discuss the NOFA guideline revisions with CHDC, and that CHDC is not one of the nonprofit housing developers that tends to get involved in the revision process.

Thompson left HCD (initially) in mid-September 2019, just after NOFA applications began to come in. Thompson told the PEC that she was not involved in assigning Cleveland to perform the threshold review of the Harp Plaza application because she was not "there" at the time that such assignments were being made.

Thompson did return to HCD a few weeks later to take part in the scoring phase of the NOFA. Of the applications that she scored, none of them were from CHDC. It was around this time that Leshin and Mulvey Katz met to review who would be assigned to score each NOFA application, and decided to remove Cleveland from any CHDC applications. At the same time, Mulvey Katz suggested that Thompson also not be assigned to any CHDC applications due to her past association with CHDC, and Leshin agreed. Christia Mulvey Katz says Leshin had been aware of Cleveland's relationship with Gilmore; she does not know if Leshin raised this issue with anyone else before this discussion between the two of them (Mulvey Katz and Leshin). Christia Mulvey Katz pro-actively raised the issue re: Cleveland's potential conflict during that conversation. She also raised the issue re: Thompson, but only because she knew that Thompson had done consulting work for CHDC at some point after retiring from the City; she was not sure if Thompson was still consulting for CHDC after re-joining the City as an annuitant, but she felt it was best to keep Thompson from reviewing any CHDC applications because of her past association with the company. She was not concerned about Thompson's objectivity, but she did not want to put her in that role regardless given that they had other staff available. She did not discuss the matter with Thompson at that time; she does not know if anyone else (e.g. Leshin) discussed it with Thompson.

However, Thompson did attend the staff meetings to discuss the scores of other applications besides those she personally scored. She recalled about two such meetings taking place. She also recalled weighing in on a discussion of a CHDC application, when Janet Howley (a consultant brought on by HCD, who was scoring some of CHDC's applications) was concerned that CHDC lacked the in-house staff capacity to take on more projects in addition to those it was already working on. At that meeting, Thompson argued in response that CHDC could overcome that problem by hiring consultants and pointed out that this was a common practice among nonprofit housing developers. Other people at the meeting agreed with Thompson. Thompson does not believe that Howley had given CHDC a

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<sup>3</sup> It should be noted that these were voluntary requests for documents, not subpoenas, so Thompson and Gilmore's responses were not sworn.

## Item #6 - 20-03b Case Summary and Diversion Agreement

score on its application at that point. She told the PEC that this conversation was not contentious, and that she does not recall anyone else getting involved in the conversation. Other than that incident, she does not recall discussing a CHDC application with anyone. She also does not recall discussing any NOFA applications at all outside of those meetings.

According to Thompson, she left the City in December 2019 and began doing consulting work for CHDC and on some of their Richmond projects. The PEC asked Thompson to describe when she began communicating with CHDC about the possibility of going back to work for them. She could not recall exactly but said because she had a “relationship” with them for many years and did not consult for anyone else. Thompson’s attorney and fellow CHDC board member, Kit Hoover, who was also present at the PEC interview, stated it was “always the thought” that Thompson would return to work for CHDC when she was no longer working at the City. She said Thompson is “one of the consultants who does regular work for CHDC” so it was not necessary to have formal discussions about her returning to that role. Thompson did not dispute this characterization during the interview. Hoover also said CHDC had a law firm-style “Chinese wall” with Thompson while she was working with the City.<sup>4</sup>

In her interview with the PEC, Thompson said she was unfamiliar with the revolving door provisions of GEA. Thompson and her lawyer pointed out that the “housing community” in the Bay Area is very small, and they believe the revolving-door provisions are commonly violated. The only ethics training Thompson recalled receiving was one about sexual harassment. Thompson did not have an exit interview with the City.

Thompson did not fill out a Form 700 when she came back to the City to work on the NOFA. According to Thompson, no one in HCD ever told her to complete one.

#### IV. ANALYSIS

Oakland City Ordinance provides that it is a misuse of position for a Public Servant to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person. O.M.C. 2.25.060 (A)(2). During the time that Thompson participated in the processing of the NOFA applicants, on at least two occasions, she attended staff meetings to discuss the scores of other applications besides those she personally scored. She weighed in on a discussion of a CHDC application, when Janet Howley (a consultant brought on by HCD, who was scoring some of CHDC’s applications) was concerned that CHDC lacked the in-house staff capacity to take on more projects in addition to those it was already working on. At that meeting, Thompson advocated on CHDC’s behalf, knowing that she was also working as a consultant with CHDC. Thompson’s participation in the evaluation process of the NOFA applicants, while she was consulting for CHDC, establishes that she misused her position to induce City staff to provide a benefit or advantage to CHDC in violation of the Government Ethics Act.

The Oakland Municipal Code restricts public servants from engaging in “revolving door” practices. The Code provides that no current or former Public Servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially

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<sup>4</sup> Thompson and her attorney Hoover did not have anything in writing regarding that firewall; Hoover characterized the situation as more informal and said CHDC just calls people when it needs consultants.

## Item #6 - 20-03b Case Summary and Diversion Agreement

participated in the award of the contract. A City employee who engages in this conduct violates O.M.C. 2.25.050. Here, Thompson while employed by the City in the Housing Department, entered into a consulting contract with CDHC, an entity, which was in the process of entering a contract with the City and had entered into contracts with the City in previous years.

All designated City employees are required to file a Form 700 Statement of Economic Interest pursuant to the CA PRA. Although Thompson has worked with the City of Oakland multiple times, for more than 20-years, she failed to file a Form 700 when she was hired in 2019 by the City and upon her departure from the City in January of 2020.

The City also prohibits an employee from participating in making or influencing a decision in which he or she has a financial interest, as defined by the CA Political Reform Act. (CA PRA). This investigation did not confirm that Thompson received any payment or thing of value in exchange for her participation in the recommendation of the NOFA funding. Although she was a consultant for CHDC at the time she was participating in the evaluation of NOFA applicants, there is no evidence that she was a paid consultant receiving compensation or reimbursement from CHDC. In the absence of evidence to the contrary, there is insufficient evidence to establish that Thompson had a financial interest that influenced her decision making.

### V. VIOLATIONS:

#### **Count 1: Misuse of City Position**

A City employee violates the Government Ethics Act when he or she uses his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

Between January 2019 and December 2019, the Respondent Norma Thompson, violated O.M.C. 2.25.060 (A)(2), by using her position in a manner intended to induce a private advantage or economic gain to Don Gilmore and CDHC.

#### **Count 2: Revolving Door Restrictions**

A City employee violates the Government Ethics Act when she is employed by or otherwise receives compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

Between January 2019 and December 2019, the Respondent, Norma Thompson, violated Section O.M.C. 2.25.050 – when she was employed by CDHC as a consultant, when CDHC had a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

#### **Count 3: Failure to File Financial Interest Form (F700)**

A designated City employee violates the Government Ethics Act when he or she fails to file a Form 700 Statement of Economic Interest.

## Item #6 - 20-03b Case Summary and Diversion Agreement

The Respondent, Norma Thompson failed to file a Financial Interest Form 700 for the year 2019, pursuant to the CA PRA and in violation of O.M.C. 2.25.040 (B).

### VI. PROPOSED PENALTY

This matter consists of three violations of the Government Ethics Act (GEA), which carries a maximum administrative penalty of \$5,000 per violation or up to three (3) times the amount the person failed to report properly, or expended, gave, or received, whichever is greater.

The PEC considers several factors to determine the appropriate penalty, including, but not limited to, the following factors:

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

The Public Ethics Commission has an independent obligation to determine the penalty merited by the Respondent's violation of the GEA. And, although the Commission has often concluded that the guideline penalty is sufficient to vindicate the Commission's interests in regulating violations of GEA, the Commission is free to impose a different sanction if that is appropriate. In this case, Staff recommends that the Commission impose a different sanction, a Diversion Agreement.

#### **Aggravating Factors**

1. The Respondent did not recuse herself from the application review process.
2. The Respondent was a long-standing employee with the City and should have been aware of City policy and ordinances.
3. The Respondent was working both for the City and an applicant CDHC at the time she participated in the NOFA application review process.

#### **Mitigating Factors:**

1. The Respondent cooperated with Enforcement Staff's investigation into this matter.
2. The Department failed to provide Thompson training on conflicts of interests.
3. The Department did not have a written policy, nor did it inform Thompson on recusal due to conflicts of interest.
4. The Respondent made an effort to not directly review or approve the CDHC application.

## Item #6 - 20-03b Case Summary and Diversion Agreement

The purpose of administrative penalties like those provided in the Government Ethics Act is to promote transparency, gain compliance with the City Ordinance requirements and protect the public from Public Servants who have not discharged, will not discharge or are unlikely to properly discharge their professional duties. In this case, lack of knowledge of the law is not a defense to a Government Ethics Act violation. In fact, the facts establish Thompson was aware of the potential conflict of interest and eventually attempted to mitigate the conflict by not directly reviewing CDHC's application. Not until later in the application review process did the Respondent's Supervisors recognize the potential conflict of interest.

This is a case where the failure of the department to provide sufficient training and oversight informed the choices that Thompson made. As a result of the department's failure to provide training, staff recommends that Thompson enter a Diversion Agreement with the Commission pay an imposed fee and agree to successfully complete trainings on conflicts of interest and related policies.

### **V. CONCLUSION AND RECOMMENDATION**

There is probable cause that the Respondent violated count 1 Misuse of Position, Count 2 Violation of Revolving Door Restrictions and Count 3 Failure to File Form 700 when she participated in the decision to recommend a grant of NOFA funding to CDHC, knowing that she was employed as a consultant for CDHC, a candidate in the NOFA applicant pool.

To resolve this case, Staff recommends that the Commission approve a Diversion Agreement to counts 1, 2 and 3. A diversion program will provide the Respondent with the essential training and services that can address the underlying cause that contributed to her violations of the Government Ethics Act. By targeting the underlying issue of lack of training and department process and policies to prevent ethics violations, a diversion program can improve long-term compliance with City ordinances and ensure effective execution of City policies and laws.



# Item #6 - 20-03b Case Summary and Diversion Agreement

## DIVERSION STIPULATIONS:

- 1  
2  
3 1. This Diversion Agreement resolves all factual and legal issues raised in this matter and  
4 represents the final resolution to this matter without the necessity of holding an  
5 administrative hearing to determine the liability of Respondents;  
6
- 7 2. In exchange for his entry into the Diversion Agreement, admission to the counts named  
8 in this agreement, and completion of the terms of the Diversion Agreement, the  
9 Commission, if approved, will close this matter with no further penalty.  
10
- 11 3. Respondent knowingly and voluntarily agrees to enter diversion and waive all  
12 procedural rights under the Oakland City Charter, Oakland Municipal Code, and Public  
13 Ethics Commission Complaint Procedures, including, but not limited to, the right to  
14 personally appear at an administrative hearing held in this matter, to be represented by  
15 an attorney at their own expense, to confront all witnesses testifying at the hearing, to  
16 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;  
17
- 18 4. This Diversion Agreement is not binding on any other law enforcement agency, and  
19 does not preclude the Commission or its staff from referring the matter to, cooperating  
20 with, or assisting any other government agency with regard to this matter, or any other  
21 matter related to it;  
22
- 23 5. There is probable cause to establish that the Respondent violated the Government Ethics  
24 Act by engaging in the following conduct: a). using her position in a manner intended to  
25 induce a private advantage or economic gain to another person, in violation of the  
26 Oakland Municipal Code section O.M.C. 2.25.060 (A) (2) (Misuse of Position); b). when  
27 she was employed by CDHC as a consultant, when CDHC had a contract with the City  
28 within the preceding one year, where the Public Servant personally and substantially

## Item #6 - 20-03b Case Summary and Diversion Agreement

1 participated in the award of the contract in violation of O.M.C. 2.25.050 (Revolving Door  
2 Restrictions); and c). failure to file a Form 700 Statement of Economic Interests for the  
3 year 2019 in violation of O.M.C. 2.25.040 (B).

### 4 5 **DIVERSION AGREEMENT TERMS**

- 6
- 7 1. The term of this agreement shall be for six (6) months, beginning on May 3, 2021, and  
8 shall terminate on November 3, 2021, or until Respondent has satisfied all of the  
9 requirements of this agreement, whichever is later.
  - 10  
11 2. The proposed Diversion Agreement is subject to approval by the Public Ethics  
12 Commission.
  - 13  
14 3. The respondent agrees that in the event the Commission refuses to approve the proposed  
15 Diversion Agreement, it shall become null and void.
  - 16  
17 4. In the event the Commission rejects the proposed Diversion Agreement and a full  
18 evidentiary hearing before the Commission becomes necessary, no member of the  
19 Commission shall be disqualified because of prior consideration of the diversion  
20 agreement.
  - 21  
22 5. During the term of this agreement, Respondent shall attend and successfully complete  
23 the following trainings:
    - 24 i. Government Ethics Act Training for Form 700 Filers, in coordination with  
25 Public Ethics Commission staff to ensure course completion,
    - 26 ii. Conflicts of Interest Training provided by PEC staff, and
    - 27 iii. One-hour follow-up in-person training with PEC staff.
  - 28



## Item #6 - 20-03b Case Summary and Diversion Agreement

1 alleged non-compliance. Thereafter, the PEC staff shall determine whether to terminate  
2 or extend this agreement and, if so, shall refer the matter to the PEC for review.

3  
4 3. In the event that the Respondent fails to comply with the terms of this agreement, she  
5 agrees that the following facts shall be deemed true in any subsequent hearing:

6  
7 a. Between January 2019 and December 2019, the Respondent Norma Thompson used  
8 her position in the Housing Department in a manner intended to induce a private  
9 advantage or economic gain to another, Community Housing Development  
10 Corporation.

11  
12 b. Between January 2019 and December 2019, the Respondent, Norma Thompson,  
13 when she was employed by CDHC as a consultant, and when CDHC had a contract  
14 with the City within the preceding one year, the Public Servant personally and  
15 substantially participated in the recommendation of the award of the NOFA funding  
16 contract for her employer CDHC.

17  
18 c. The Respondent, Norma Thompson failed to timely file a Form 700 Statement of  
19 Economic Interests for the year 2019.

20  
21 4. Notification: During the term of this Diversion Agreement, Respondent shall notify the  
22 PEC, in writing, of any change of e-mail address, mailing address, or telephone change  
23 within 10 days of the change.

24  
25 5. This Diversion Agreement is a deferral of enforcement proceedings, fines and penalties.  
26 If, in the sole discretion of the PEC, Respondent complies with all the terms of this  
27 agreement through the duration of the agreement, the matter/complaint shall thereafter  
28 be closed and shall not be considered a prior PEC offense in any subsequent PEC

Item #6 - 20-03b Case Summary and Diversion Agreement

1 proceeding against him/her. The stipulated facts contained in this agreement will serve  
2 as the Respondent's admission to the alleged violation(s). If the terms of this agreement  
3 are violated, the enforcement action will proceed, and the stipulated facts contained in  
4 this agreement will serve as the Respondent's admission to the alleged violation(s).

5  
6 6. The parties acknowledge that this Diversion Agreement, Respondent's compliance with  
7 the Agreement, and the disposition of this proceeding upon completion or termination  
8 of the Agreement, are matters of public record. She further acknowledges that the  
9 Complainant will be made aware that this matter was resolved through a diversion  
10 agreement.

11  
12  
13 Dated: 4/20/21

  
Kellie F. Johnson (Apr 20, 2021 14:11 PDT)

14 Kellie F. Johnson, Enforcement Chief  
15 City of Oakland Public Ethics Commission, Petitioner  
16

17 I, (Norma Thompson), attest that the statements contained in the diversion agreement are true  
18 and correct, and that I agree to the above terms.

19  
20 Dated: 4/20/21

Norma Thompson  
Norma Thompson (Apr 20, 2021 14:10 PDT)

21 Norma Thompson, Respondent

22  
23 Print Name: Norma Thompson

**ORDER OF DIVERSION**

The foregoing Diversion Agreement of the parties (Case No. 20-03(b)), including all attached exhibits, is hereby accepted as the Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael MacDonald, Chair  
City of Oakland Public Ethics Commission

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**Item #6 - 20-03b Case Summary and Diversion Agreement**

**SPOTLIGHT ON OAKLAND'S  
PUBLIC RECORDS SYSTEM:  
A Data-Driven Review of  
City Agency Performance and  
Opportunities for Improvement**

DRAFT

# Item #7 - Spotlight on Oakland's Public Records System Report

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## EXECUTIVE SUMMARY

The Oakland Sunshine Ordinance is an indispensable component of the City's commitment to open government. In simplest terms, sunshine (exposing and making accessible things, acts, actions, plans and the like for all to see) is critical to good government because being honest and truthful about government activities is the best way to cultivate and ensure public trust. The right to access and inspect public documents is vital to healthy democracy and serves as a critical tool, which enables individuals to fully participate in the public arena, keep government more efficient, and fight corruption. When requests for public records are unanswered or unaddressed for months or longer, public confidence in our local government diminishes, the community is deprived of information needed for informed decision-making, and people are frustrated, inconvenienced, and possibly harmed legally, economically or politically.

Oakland led the nation in municipal transparency policy by adopting its local Sunshine Ordinance in 1997. The City's Sunshine Ordinance, which builds upon the rules imposed on municipal governments by the State of California's Public Records Act (CA PRA), imposes additional transparency requirements on the City of Oakland by requiring a quicker response time for certain public records and the release of more City documents than is required under the CA PRA. Despite these requirements, the number of appeals for mediation of unfulfilled public records requests to the Public Ethics Commission (PEC or Commission) from members of the public continues to rise.

In response, the Commission formed an ad-hoc subcommittee in May 2020 to review the City's system of responding to public records requests and identify opportunities for improvement. The PEC assessed Oakland's current performance to develop an ongoing accountability tool to monitor department progress going forward. The subcommittee analyzed data from Oakland's online public record request system (NextRequest); reviewed mediation requests filed with the Commission; reached out to City staff tasked with responding to public records requests; and surveyed community members and users of the public records request system to ask how Oakland is doing and what the City could do to improve its service. Highlights from the Commission's findings include:

	<b>46% increase in public records requests in 2020</b>		<b>105 average days to close a request</b>
	<b>Police, Planning, and Fire department records 83% of requests</b>		<b>63% of requests fulfilled</b>
	<b>64% of requests fell into overdue status</b>		<b>25% took over 90 days to close</b>
	<b>56% received an initial response within 10 days</b>		<b>70% of users surveyed dissatisfied with service</b>

A comparison of performance by the 14 City departments receiving 100 or more requests between 2018 and 2020 follows capturing a general picture of where the system is working and where there is the greatest need for improvement. The report concludes with opportunities for collaboration between City administration and the Commission to improve responsiveness and ensure that City staff are well-trained and have the resources and tools needed to respond to public records requests.

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## OAKLAND'S PUBLIC RECORDS REQUEST PROCESS

### Thousands of Public Records Requests Submitted Each Year

The City of Oakland receives thousands of requests for public records each year. Under California law, a “public record” includes any writing containing information related to the conduct of public business “prepared, owned, used, or retained” by a local agency regardless of its physical form or characteristics.<sup>1</sup> Since going online in 2013, Oakland’s public records request system has received almost 50,000 requests for public information. These tens of thousands of requests came from a diverse array of people: Oakland residents and homeowners, journalists, attorneys, local businesses, and contractors, to name a few. Each request represents a piece of information that someone needed for a personal, professional, or civic purpose.

Oakland’s public record regulations are set out in both state and local law. The Ralph M. Brown Act and California Public Records Act (CA PRA) are state laws that govern access rights to public information; however, cities and counties are free to require a greater right of access than state law demands, often known as “Sunshine” laws. Oakland’s Sunshine Ordinance, passed in 1997, is an indispensable component of Oakland’s commitment to open government intended to guarantee the public access to information that enables them to monitor how their government functions.

### State Law Prohibits Delays or Obstruction

The California Public Records Act requires government agencies to respond within ten days to a request for public information. Section 6253 of the CA Government Code requires a response “within ten days from receipt of the request plus an additional 14 days if it invokes a specific exemption.” The ten-day period begins as soon as the agency receives the request. Notably, while the code states that a response shall be made within ten days, it does not require an agency to provide responsive records within that time period; rather, it requires an agency to respond whether the record exists and whether the agency needs an extension to produce the record.

Importantly, CA PRA does not “permit an agency to delay or obstruct the inspection or copying of public records.” Even if the record at issue does not exist, does not reasonably describe an identifiable record, or is exempt from disclosure, the agency must still respond. Furthermore, if the record exists, City employees must assist persons who request inspection or copies of public records. They must help identify records being sought. Even if a request is unclear to the agency, the agency must work together with the requestor to identify the records being sought by suggesting other documents that might help the requestor. When responding to a request, the agency must describe the “information technology and physical location” of the records being requested.

### Oakland Sunshine Law

The Oakland Sunshine Ordinance works in concert with the CA PRA to ensure that public, non-confidential information is made available promptly to those who request it. Generally, the Sunshine Ordinance favors the disclosure of records, and any refusal to disclose a record must be justified in writing. One of the unique features of the Oakland Sunshine Ordinance is its provisions that require “immediate disclosure” of certain records. Any person may request the immediate disclosure of a record that has been previously distributed to the public, such as past meeting agendas and agenda packages. The agency must provide a copy of the document immediately, but in no case longer than three business days. If additional time is necessary to respond, the requestor must be notified within

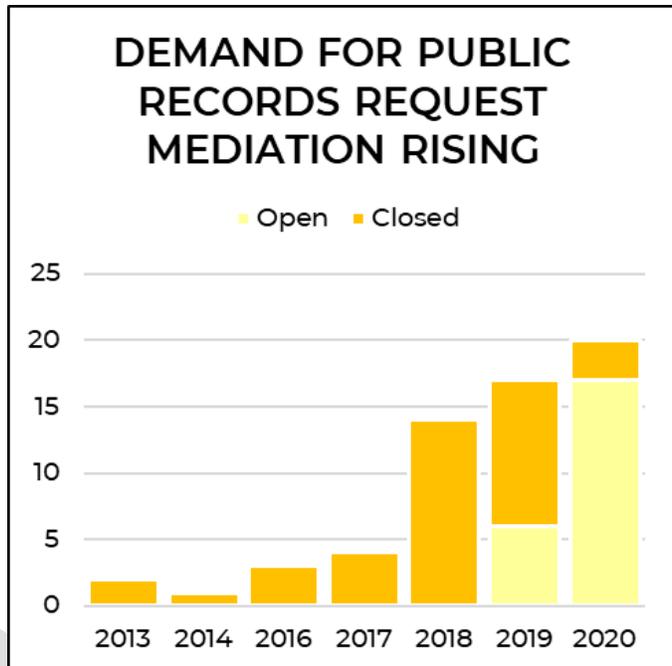
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<sup>1</sup> California Government Code § 6252(e).

that three business-day period and provided a determination of whether the documents will be disclosed within seven days of the request.

### Uptick in Requests for Mediation

The Sunshine Ordinance also provides for mediation before the PEC when a requestor is unsatisfied with the response from a City agency. During mediation, Commission staff attempt to resolve the dispute. Nevertheless, the mediator's recommendations are not binding on any party and the Commission does not have the authority to impose penalties for violations of the Sunshine Ordinance.



Over the last three years, the Commission's enforcement unit observed an uptick in mediation requests for unfulfilled requests for City records. In 2020 alone, the public submitted a record 20 mediation requests to the PEC. The increase in Sunshine matters highlighted the challenges Oakland residents face when seeking public information.

The determinations set forth in this report were based on the following indicators related to public records request compliance and quality of service:

- Volume of requests,
- Number of open versus closed requests,
- Number of requests receiving a response within ten days,
- Number of overdue requests,
- Average number of days to close a request,
- Number of requests fulfilled, and
- Number of requests requiring PEC mediation.

This report utilizes the data collected by the City of Oakland's online public records request system<sup>2</sup>, Next Request. The indicators listed above were compiled for the 14 City departments receiving 100 or more requests between 2018 and 2020.<sup>3</sup> The comparison is intended to capture a broad sense of where the system is working and where there is the greatest need for improvement to provide City leaders with basic performance benchmarks to assist underperforming departments and build accountability where improvement is needed.

<sup>2</sup> The data used for this report comes from the City of Oakland public records request portal (<https://oaklandca.nextrequest.com>) retrieved by PEC staff from <https://oaklandca.nextrequest.com/api/v2> on 3/25/2021. Only public records requests entered in the NextRequest system were used for this analysis. NextRequest includes both requests entered by requestors and requests received by staff outside of the NextRequest system and then entered by staff. Requests made outside NextRequest that have not been entered by staff are not included in these calculations.

<sup>3</sup> Aggregation by department is based on normalized department names assigned by PEC Staff. Requests to individual council members have been combined under "City Council."

## What the Data Shows

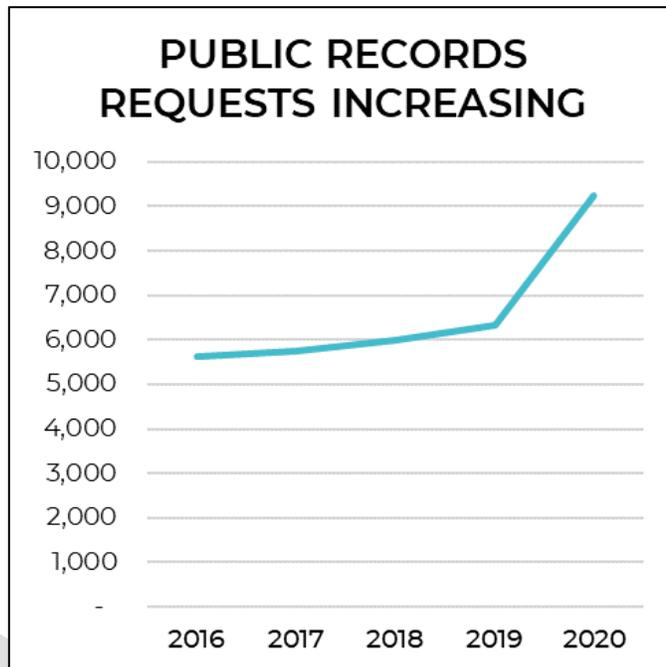
### Public Records Request Process

To improve the City's process for managing and tracking public records requests, the City of Oakland partnered with the civic technology non-profit Code for America in 2013. A pilot system created by Code for America fellows went live in 2013 and subsequently evolved into the City's current system, NextRequest. NextRequest enables users to submit a request for public records as well as search through previous records requests and City responses. City staff use NextRequest to manage and track department responses to public records requests.

### Public Records Requests Increase

The City of Oakland has received almost 50,000 public records requests since going live online in 2013.<sup>4</sup> In 2020 alone, over 9,000 public records requests were submitted, a 46 percent increase over 2019.<sup>5</sup> The performance benchmarks were compiled from data for public records requests submitted between April 1, 2018 and December 31, 2020.<sup>6</sup>

As public records requests increase, the number of requests processed (recorded as closed) each year is also increasing. Just over half (56 percent) indicated that an initial response went to the requestor within the required ten days. While half of public records requests were closed within 20 days or less, nearly two-thirds fell into



### QUICK FACTS

Requests reviewed for report	19,949
Initial response within ten days	56 percent (11,184)
Overdue requests	17 percent (3,293)
Closed requests	80 percent (16,032)
Requests fulfilled	63 percent (10,180)
Requests fulfilled with redactions	46 percent (4,660)
Requests ever overdue	64 percent (12,773)
Average days to close	105 days
Requests for mediation	51

<sup>4</sup> Members of the public are not restricted to making requests for public records using the online system, as requests are often made in-person, by phone, mail and email. While best practice dictates that staff enter and track requests received by these other means through the NextRequest system, there is no way to ensure that City staff records all incoming requests that are received via phone, mail, email, or in person.

<sup>5</sup> Because the number of requests made outside of NextRequest and not entered in the database is unknown, the increase in requests may reflect more requests generally, greater adoption of the NextRequest system by the public and/or City staff, or a combination of factors.

<sup>6</sup> The city transitioned to the NextRequest system in early 2018. Not all attributes used for this report are available for records closed prior to March 19, 2018. Therefore, comparisons use only data for public records requests submitted between April 1, 2018 and December 31, 2020.

# Item #7 - Spotlight on Oakland's Public Records System Report

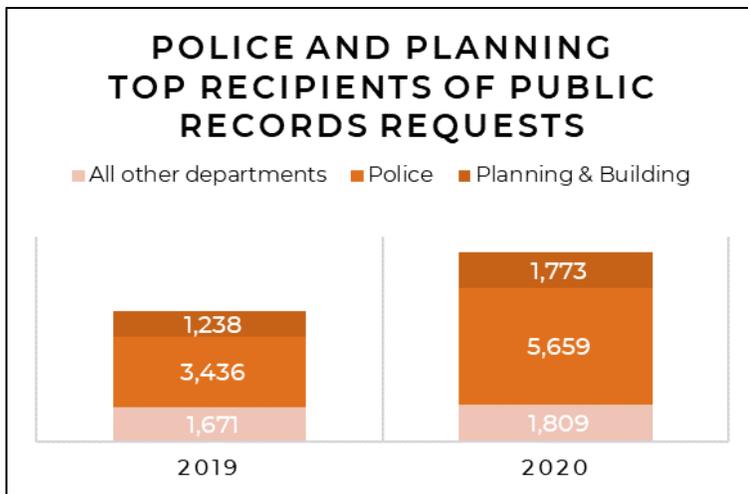
Public Ethics Commission

Spotlight on Oakland's Public Records System

overdue status. Requests that take months to close stretch the number of days to close to 105 on average. Sixty-three percent of closed requests were designated as fulfilled (meaning a document or information was provided to the requestor). Of fulfilled requests, nearly half included redacted information.

## Demand for Police, Planning, and Fire Department Records

Recent demand for public records is concentrated in three departments: The Police Department (58 percent), Planning and Building (19 percent), and the Fire Department (6 percent). Requests to most other departments have been stable or growing at a much slower rate. In addition to receiving the largest number of requests overall, the Police Department also accounts for most open public records requests (88 percent).



DEPARTMENT/AGENCY	PERCENTAGE OPEN REQUESTS	PERCENTAGE ALL REQUESTS
Police Department	87.83%	58.43%
Planning & Building	0.10%	18.88%
Fire Department	1.36%	5.51%
Public Works	0.23%	2.31%
Finance Department	0.26%	2.21%
Department of Transportation	0.51%	1.94%
City Administrator	2.68%	1.58%
City Clerk	0.36%	1.26%
City Attorney	0.05%	1.11%
Housing & Community Development	0.00%	1.10%
Animal Services	0.15%	1.05%
City Council	1.61%	0.90%
Office of the Mayor	0.26%	0.55%
Contracts & Compliance	1.99%	0.51%
Human Resources	0.26%	0.48%
Rent Adjustment Program	0.87%	0.32%
Health & Human Services	0.15%	0.28%
Economic & Workforce Development	0.20%	0.26%
Parks & Recreation	0.43%	0.24%
Cannabis/Special Activity Permitting	0.15%	0.24%
City Auditor	0.03%	0.24%
Public Ethics Commission	0.03%	0.20%
Police Commission	0.46%	0.16%
Information Technology	0.03%	0.15%
Library Services	0.00%	0.06%
Race & Equity	0.00%	0.03%
Department of Violence Prevention	0.00%	0.01%

### Police Department Requests Constitute Largest Backlog

Public records requests are summarized by department below. Notably, the largest backlog of open requests is concentrated in the police department, indicated in yellow.

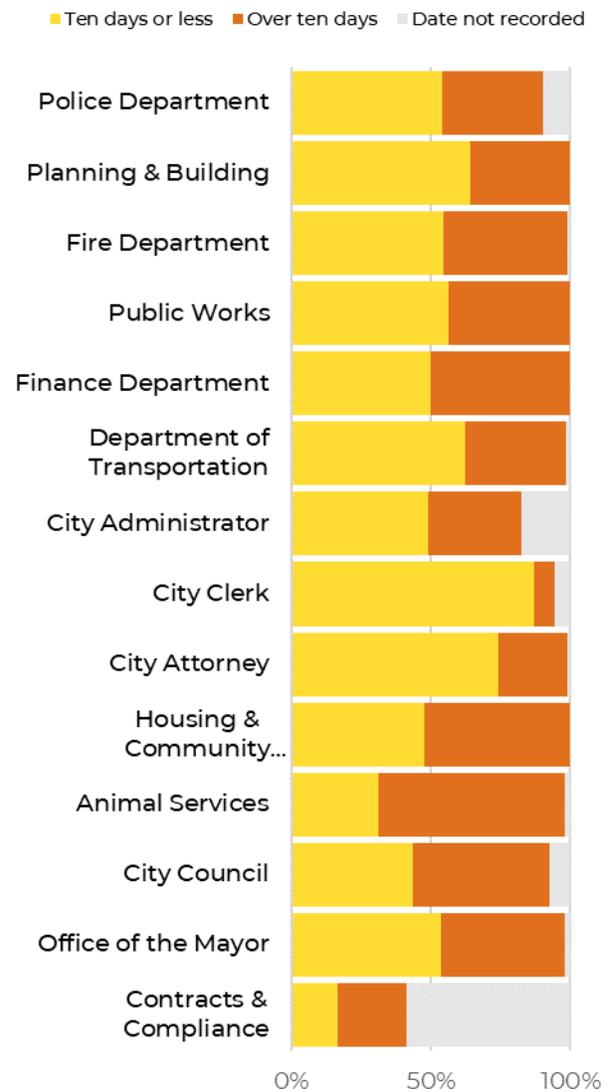
### Lengthy Response Times

As noted earlier, both state and local law require agencies respond to a public records request within ten days. If the agency is unable to provide the requested record within ten days, the agency must request an extension and provide an explanation. As shown in the graph below, many departments are failing to respond to requestors within the mandated period.<sup>7</sup>

**PUBLIC RECORDS REQUESTS BY DEPARTMENT**



**INITIAL RESPONSE WITHIN 10 DAYS**

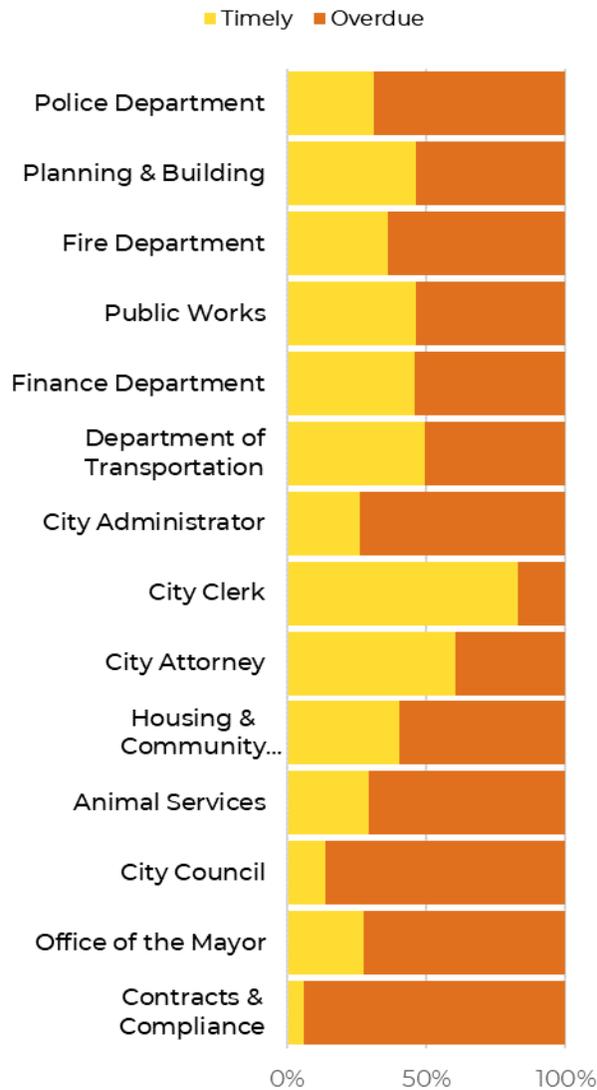


<sup>7</sup> The number of records that do not include a date for first response to the request is indicated by the gray areas in the chart.

### Large Number of Overdue Requests

NextRequest provides the agencies with tools to track numerous requests and any deadlines to respond. Further, NextRequest alerts assigned staff when responses are overdue. Although the default due date is ten days from the receipt of the request, the due date may be revised by staff when an extension is requested. The chart below shows requests that fell into overdue status.

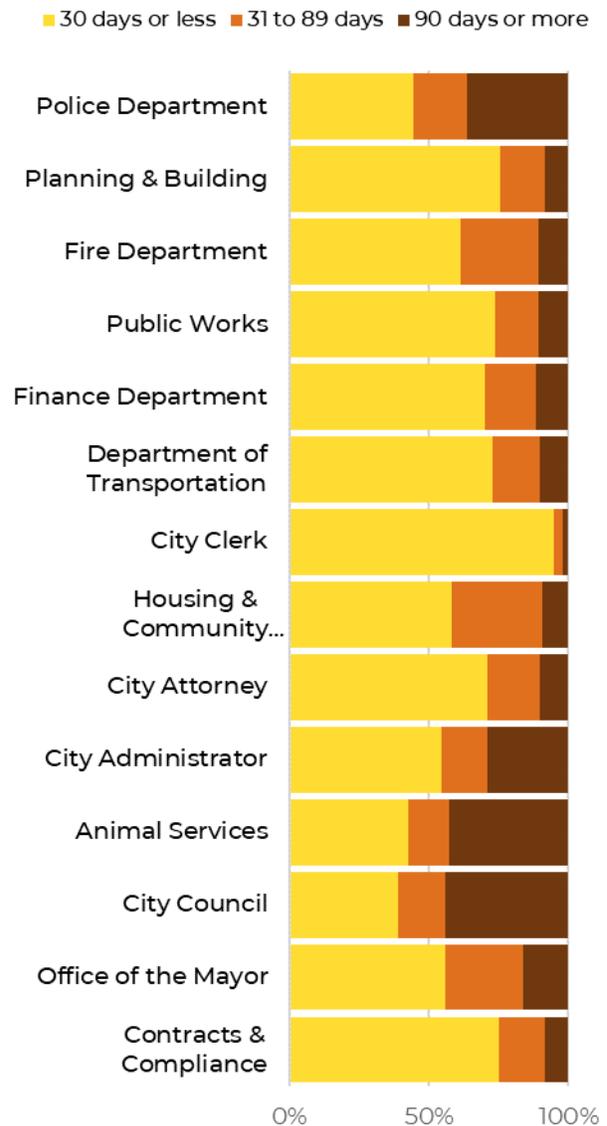
#### TIMELY V. OVERDUE REQUESTS



### Requests Take Months to Fulfill

The chart below sets forth the number of calendar days that it takes departments to fulfill a request. Additional analysis accounting for request size and complexity is needed to identify specific issues impacting response times. In addition, the closure of City offices and remote working arrangements necessitated by the COVID-19 pandemic likely contributed to extended processing times during 2020.

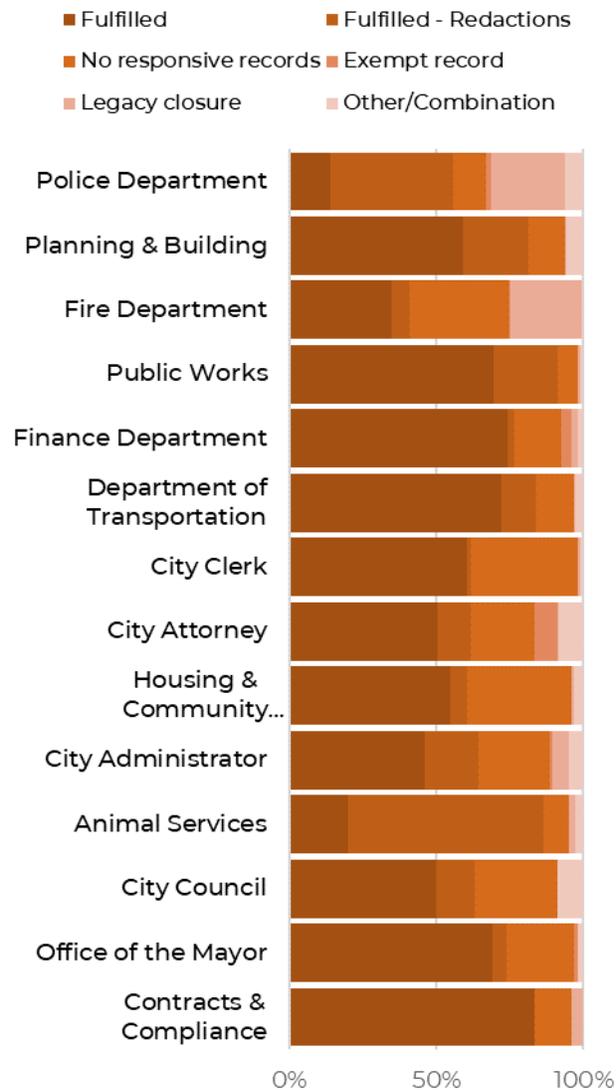
#### DAYS TO CLOSE REQUEST



### Tracking Must Improve

The graph below provides an overview of outcomes when agencies responded to public records requests based on "closure reasons" entered by City staff. Note that the designations (e.g., "Fulfilled," "Fulfilled-Redactions," "No responsive records") do not confirm that the requestor was satisfied by the results or that the agency provided responsive information.<sup>8</sup>

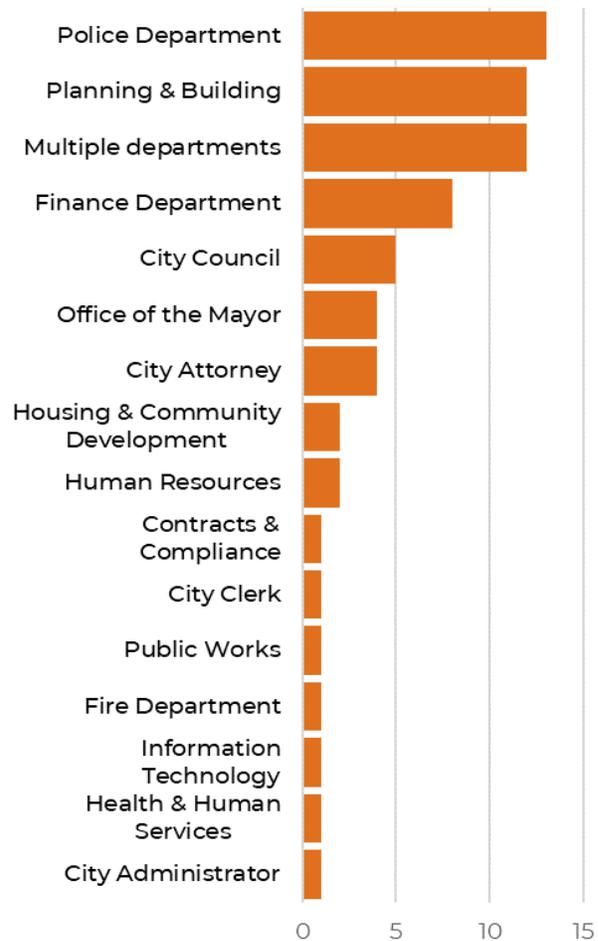
#### OUTCOMES BY DEPARTMENT



### Mediation Program

The chart below shows the distribution of mediation requests by department. Pursuant to the Sunshine Ordinance, the Commission's mediation program seeks to resolve matters between any person whose request to inspect or copy public records has been denied, delayed, or not completely fulfilled and the department that controls the records. A summary of the mediation is provided to the Commission and staff can also recommend further Commission action.

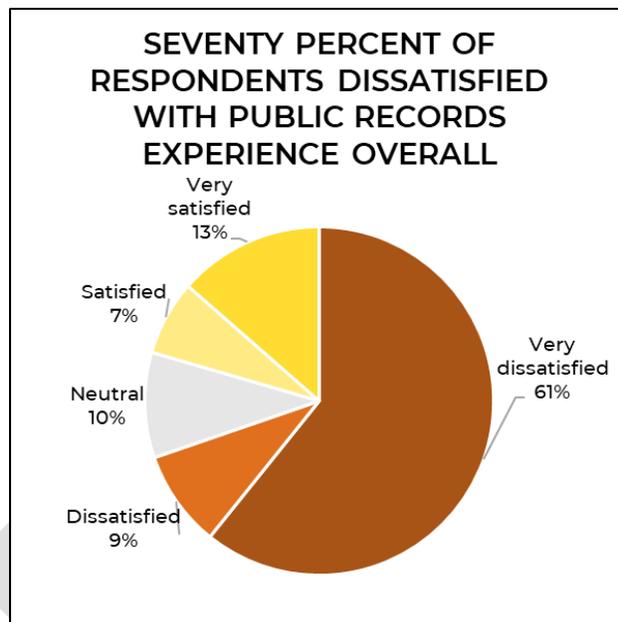
#### PUBLIC RECORDS MEDIATIONS BY DEPARTMENT 2013 - 2020



<sup>8</sup> Outcome categories were assigned based on the entry "closure\_reason." "Legacy closure" indicates a request carried over from the earlier system, RecordTrac, used by staff when it was determined the requestor was no longer interested or no longer needed the record. "Other/Combination" was used when records did not clearly fall into one of the main categories.

### Oaklanders Dissatisfied

In addition to analyzing the internal data, the Commission also sought input from the community to understand the public's view of how Oakland responds to public records requests and obtain suggestions on how the City can improve. The PEC circulated a user satisfaction survey to over 14,000 NextRequest users and posted the survey on the Commission's website and social media. The PEC received almost 1,000 responses within two days with the following results:



- While 69 percent of respondents reported using the NextRequest system, many also reported making requests by other means such as email (40 percent), in person (18 percent), and by phone (18 percent).
- Crime/incident reports, arrest reports or other police records (67 percent) and land use, permit or other property records (27 percent) were the most common type of records requested – consistent with the NextRequest data.
- Nearly two-thirds of requestors stated they had not received a response to their request within ten days.
- A paltry 28 percent reported receiving information that satisfied their request and over half reported receiving no documents or information. The low level of satisfaction with request results highlights the disconnect between public expectations and the City's perception of fulfilled or closed requests as well as the need for methods to verify that responsive records were produced or that no such records exist.
- Only 11 percent found it easy to get the information they sought, and the majority (59 percent) described it as very difficult.
- 70 percent of users described themselves as dissatisfied with their experience requesting records overall.

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*I requested police records to prove that my car was stolen when it received three handicapped parking tickets, that was months ago, and I still can't clear the tickets because I have not received the police reports.—User satisfaction survey respondent*

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### What the Data Does Not Show

It is important to note that, as currently collected, the NextRequest data does not easily identify important factors, such as the size or complexity of requests that may entail different lengths of time to produce. While the law requires that a request be responded to within ten days, in practice, it often takes much longer to search for documents. For example, it may take an agency longer to produce a

document if a submitted request is very broad (uses terms such as “any and all” or covers records spanning decades), involves several City departments, or requires legal review and redaction.

Departments also vary greatly in terms of size, staffing levels, and complexity of records. On one hand, some departments store records electronically that are in high demand, which may make timely response easier. Other departments produce large amounts of physical records that are much more time-consuming to search and inspect.

In addition, overlapping responsibilities can cause delay: One department may be the custodian of a particular record but require approval from another prior to disclosure. For instance, some records must be reviewed by the City Attorney's office for redaction or legal disclosure (in other words, need to be assessed on a case-by-case basis). In other instances, a department may be the “owner” of a record but still require technical assistance from the City's IT Department to search and identify responsive electronic records, such as email correspondence. These contextual factors must be considered when assessing performance and mapping effective paths to improvement.

### Questions Remain

While the data analysis for this report provides a broad overview of the City's public records request performance, it is preliminary. Important questions remain unanswered, including:

- How can the City make data from NextRequest more easily accessible both internally and to the public?
- How can the City ensure essential attributes, such as the first staff response date, closure date, and reason for closure, are included for every record?
- How can the City identify records requests that constitute an immediate disclosure request under the Sunshine Ordinance?
- How can the City track the record custodian, in addition to the department liaison, who can speak to any bottlenecks present in the process?
- How can the City track when an extension is requested and whether the record was delivered within the time frame of the extension?
- How can the City ensure extension requests include why an extension was necessary?
- How can the City categorize requests to identify the most frequently requested records and the level of complexity of each request?
- When a request involves more than one department, how can the City better track where the response lies and determine processing time by agency?

### Need Outpaces Resources

Government transparency relies on City staff who are well-trained on City policy and equipped with processes and tools to support timely and efficient responses. The Commission surveyed City staff tasked with responding to public records requests to account for City staff perspectives.

In addition to the NextRequest online system, City staff reported receiving requests by several other methods including email (64 percent), in person (29 percent), and by phone (21 percent), among others. As noted above, City staff must enter any incoming requests into the NextRequest system.

However, responding to incoming public records requests is not the primary duty for most of the City staff tasked to respond. Many City staff (57 percent) spend fewer than eight hours per week processing requests. Not surprisingly, all respondents affirmed the importance of responding to public records requests. One City worker stated, "it's important to be a transparent and responsive government," and another affirmed public records requests "handled correctly and timely, create increased community trust in our City Government."

Staff respondents noted the challenges they face when trying to meet the obligations tied to public records requests. Several respondents stated that the ten-day response time was not practical given their resources. Staff respondents also pointed out the length of time spent determining the custodian of a requested record and difficulties when the person in direct possession of the requested records puts the task "on the back burner" and must be repeatedly reminded about the request. One commenter advocated a centralized public records department to shift the work away from staff whose core duties are demanding and peripheral to records as one way to address complaints that "staff is untrained... or unresponsive."

As noted above, when requested, PEC staff mediate between records requestors and specific department staff to determine whether the records can be produced. Lack of compliance attributed to under staffing and staff turnover is addressed and acknowledged in the mediation process as well.

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*Staff is habitually late and rarely deliver records on time, but not for lack of effort. The amount of requests consumes workdays and weekends for some employees and contributes to work-flow bottlenecks in other areas. It's inefficient for everyone.—  
Respondent to survey of City staff.*

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Ninety-three percent of staff survey respondents reported receiving training on both the legal responsibilities associated with public records requests and using the NextRequest system. When asked whether additional training would be helpful, staff suggested regular check-ins for records liaisons, in-depth written guides, and more resources that help staff address complex and sensitive requests, including determining what information is subject to redaction. Providing technological tools to process documents that commonly require redaction should be explored. The City's campaign finance reporting software, for example, automatically redacts bank account numbers and other personal information from campaign statements available online for public inspection.

While generally satisfied with the ease of the NextRequest system, staff suggested easier navigation and search tools to help both staff and the public retrieve information and documents already in the system. If the search interface is improved for public and staff users, workload could be reduced. Staff also suggested better tools to communicate with requestors, such as automated updates to notify requestors as staff works on the response.

## **NEXT STEPS AND OPPORTUNITIES FOR IMPROVEMENT**

All the above data and user input suggests that the Commission should dig deeper to understand the issues specific to each department and identify the best solutions to improve outcomes. Clearly, the system is not meeting the needs of Oaklanders who are requesting public records. The data that is currently available through NextRequest provides a good initial assessment of City performance on public records; more work is needed to further illuminate the challenges and leverage opportunities for overall performance improvement.

From here, the Commission recommends the following steps to continue its work and collaborate with City leaders and staff to ensure that Oakland's public records request system is effective and complies with state and local law:

1. Partnership with NextRequest and the City's IT Department to create a tool, such as a report card-style performance evaluator, so that staff and the public may monitor the City's records request performance and express areas of concern to City administration;
2. Creation of a training team made up of PEC, City Attorney, and City Administration staff to conduct an orientation for new public records requests liaisons at the start of their service in addition to ongoing regular training;
3. Continuing analysis of available data and ongoing discussions with departments and City administrators to better understand specific workflows and issues common to high-volume and/or underperforming departments;
4. Collaboration between PEC staff, the City Attorney's office, and Next Request to resolve questions and address gaps in the data identified by this report. It will be helpful to understand how staff uses the system, and whether data entry problems, training needs, or technical issues within the system contribute to incomplete information;
5. Identification of City staff who will lead and manage the public records system and be responsible for aligning practices across departments, supporting public records liaisons, coordinating training, monitoring performance, identifying problems, and allocating additional resources.

## **CONCLUSION**

Overall, this report shows what many Oaklanders already know: that the City must do better to comply with the spirit and the letter of state and local law. The PEC is committed to collaborating with City administration to improve systemic processes and culture using data, education, and operational tools to achieve better outcomes. The steps identified above will help the Commission, and ultimately the City, better understand the changes needed to achieve real progress in this area. In this spirit, the Commission will stay focused on this work and asks for continued partnership from all the contributors to this report thus far. Together, we can develop a more effective public records response system, and reputation, for Oakland.

## APPENDIX 1 – REQUESTS BY DEPARTMENT

Department/Agency Name	Requests Reviewed	Open	Closed	Average Days to Close	Median Days to Close	Response in Ten days or less	Ever Overdue
Animal Services	210	6	204	129	49	65	149
Cannabis/Special Activity Permitting	47	6	41	288	96	25	30
City Administrator	315	105	210	109	25	155	233
City Attorney	222	2	220	35	8	165	88
City Auditor	47	1	46	41	20	33	27
City Clerk	251	14	237	9	1	219	43
City Council	179	63	116	120	68	78	155
Contracts & Compliance	102	78	24	51	18	17	96
Department of Transportation	386	20	366	39	11	241	195
Department of Violence Prevention	2	-	2	20	20	1	1
Economic & Workforce Development	52	8	44	53	23	20	37
Finance Department	441	10	431	39	15	221	240
Fire Department	1,098	53	1,045	40	18	601	704
Health & Human Services	55	6	49	49	12	23	28
Housing & Community Development	220	-	220	40	20	105	131
Human Resources	95	10	85	43	18	62	57
Information Technology	30	1	29	204	135	11	26
Library Services	12	-	12	3	1	11	1
Office of the Mayor	110	10	100	66	25	59	80
Parks & Recreation	48	17	31	82	26	21	43
Planning & Building	3,765	4	3,761	29	13	2,422	2,030
Police Commission	32	18	14	139	34	29	26
Police Department	11,653	3,435	8,218	165	44	6,282	8,045
Public Ethics Commission	40	1	39	13	4	39	4
Public Works	461	9	452	39	14	260	248
Race & Equity	6	-	6	100	59	2	4
Rent Adjustment Program	64	34	30	216	64	17	52
<b>Total</b>	<b>19,943</b>	<b>3,911</b>	<b>16,032</b>	<b>2,161</b>	<b>838</b>	<b>11,184</b>	<b>12,773</b>

DATA SOURCE: Next Request, City of Oakland public records request portal, requests submitted between April 1, 2018 and December 31, 2020. Retrieved by PEC staff from <https://oaklandca.nextrequest.com/api/v2> on 3/25/2021.

## APPENDIX 2 – REQUEST OUTCOMES BY DEPARTMENT

Department/Agency	Fulfilled	Fulfilled - Redactions	No responsive records	Exempt record	Legacy closure	Other/Combination	Total
Animal Services	41	135	18		5	5	204
Cannabis/Special Activity Permitting	18	9	13			1	41
City Administrator	97	38	51	2	12	10	210
City Attorney	111	25	48	17	1	18	220
City Auditor	22		12			12	46
City Clerk	143	3	87		2	2	237
City Council	58	15	33			10	116
Contracts & Compliance	20		3		1	-	24
Department of Transportation	264	43	48		2	9	366
Department of Violence Prevention	1	1				-	2
Economic & Workforce Development	31		11	1		1	44
Finance Department	321	8	69	15	10	8	431
Fire Department	363	63	356	4	255	4	1,045
Health & Human Services	41	1	7			-	49
Housing & Community Development	120	13	78		2	7	220
Human Resources	52	11	18	1		3	85
Information Technology	12	1	10	1		5	29
Library Services	3		9			-	12
Office of the Mayor	69	5	23	1		2	100
Parks & Recreation	19	2	8		1	1	31
Planning & Building	2,217	845	462	4	26	207	3,761
Police Commission	13		1			-	14
Police Department	1,142	3,433	929	121	2,096	497	8,218
Public Ethics Commission	24	9	5	1		-	39
Public Works	315	98	31		3	5	452
Race & Equity			6			-	6
Rent Adjustment Program	17	4	7			2	30
<b>Total</b>	<b>5,534</b>	<b>4,762</b>	<b>2,343</b>	<b>168</b>	<b>2,416</b>	<b>809</b>	<b>16,032</b>

DATA SOURCE: Next Request, City of Oakland public records request portal, requests submitted between April 1, 2018 and December 31, 2020. Retrieved by PEC staff from <https://oaklandca.nextrequest.com/api/v2> on 3/25/2021.

### APPENDIX 3 – MEDIATIONS BY DEPARTMENT

Department/Agency	2013	2014	2016	2017	2018	2019	2020	Total
Multiple departments				1	4	4	2	11
Planning & Building			1			1	9	11
Police Department		1	2		1	4	1	9
Finance Department					7		1	8
City Council				2		2	1	5
Office of the Mayor	1					2	1	4
City Attorney	1				1	1	1	4
Housing & Community Development					1	1		2
Human Resources						1	1	2
Information Technology							1	1
Fire Department							1	1
City Clerk						1		1
Contracts & Compliance							1	1
Health & Human Services				1				1
<b>Total</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>14</b>	<b>17</b>	<b>20</b>	<b>61</b>

DRAFT

## APPENDIX 4 – OAKLAND SUNSHINE LAW (PUBLIC RECORDS SECTION)

### 2.20.180 Definitions.

Whenever in this Article the following words or phrases are used, they shall mean:

- A. "Agency" means an agency of the city of Oakland.
- B. "Department" means a department of the city of Oakland or a department of the Port Department of the city of Oakland.
- C. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.18, 1997)

### 2.20.190 Release of documentary public information.

Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of Government Code Section 6253.9 are incorporated herein by reference.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.19, 1997)

### 2.20.200 Release of oral public information.

Release of oral public information shall be accomplished as follows:

- A. Every Agency director for the city and Redevelopment Agency, and department head for the Port shall designate a person or persons knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The name of every person so designated under this section shall be filed with the City Clerk and posted online.
- B. It shall be the duty of every designated person or persons to provide information on a timely and responsive basis to those members of the public who are not requesting information from a specific person. It shall also be the duty of the person or persons so designated to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- C. Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the agency or department and does not materially misrepresent the agency or department position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.21, 1997)

**2.20.210 Public review file—Policy body communications.**

Every local body specified in Section 2.20.030(E)(1) shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing which the clerk or secretary of such local body has distributed to, or sent on behalf of, a quorum of the local body concerning a matter that has been placed on the local body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. Excepted from the communications file shall be commercial solicitations, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this chapter. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file provided that the letter or memorandum of transmittal is included in the communications file.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.22, 1997)

**2.20.220 Non-exempt public information.**

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

- A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning contracts, memoranda of understanding or other matters subject to negotiation and pending a local body's approval need not be subject to disclosure until final action has been taken.
- B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a local body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.
- C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):
  - 1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:
    - a. Sex, age and ethnic group;
    - b. Years of graduate and undergraduate study, degree(s) and major or discipline;
    - c. Years of employment in the private and/or public sector;
    - d. Whether currently employed in the same position for another public agency;
    - e. Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
  - 2. The professional biography or curriculum vitae of every employee who has provided such information to the city, Redevelopment Agency or the Board of Port Commissioners excluding the home address, home telephone number, social security number, date of birth, and marital status of the employee.
  - 3. The job description of every employment classification.
  - 4. The exact gross salary and paid benefits available to every public employee.

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5. Any adopted memorandum of understanding between the city or Board of Port Commissioners and a recognized employee organization.
- D. Law Enforcement Information. The Oakland Police Services Agency shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Such redacted information may include:
  - a. The names of juvenile witnesses or suspects;
  - b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
  - c. The identity of a confidential source;
  - d. Secret investigative techniques or procedures;
  - e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
  - f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.
2. The Oakland Police Services Agency shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.
- E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city, Redevelopment Agency and Board of Port Commissioners and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract until and unless that person is awarded the contract. All bidders and contractors shall be advised that information covered by this subdivision will be made available to the public upon request.
- F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:
  1. Any proposed or adopted budget for the city, Redevelopment Agency and the Port Department, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the City Council, Redevelopment Agency or Board of Port Commissioners or their standing committees.
  2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.23, 1997)

**2.20.230 Immediate disclosure request.**

- A. Notwithstanding any other provision of law and subject to the requirements of this section, a written request to inspect or obtain copies of public records that is submitted to any department or agency or to any local body shall be satisfied no later than three business days unless the requestor is advised within three business days that additional time is needed to determine whether:
  - 1. The request seeks disclosable public records or information;
  - 2. The requested records are in the possession of the agency, department or local body;
  - 3. The requested records are stored in a location outside of the agency, department or local body processing the request;
  - 4. The requested records likely comprise a voluminous amount of separate and distinct writings;
  - 5. Reasonably involves another agency, department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request; or,
  - 6. There is a need to compile data, to write programming language or a computer program or to construct a computer report to extract data.
- B. All determinations made pursuant to Section 2.20.230(A)(1)-(6) shall be communicated in writing to the requestor within seven days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than fourteen (14) days after the written determination pursuant to 2.20.230(A)(1)-(6) is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. All written requests to inspect or copy documents within three business days must state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state "Immediate Disclosure Request" and a number by which the requestor may be contacted.
- C. An Immediate Disclosure Request is applicable only to those public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials. All Immediate Disclosure Requests shall describe the records sought in focused and specific language so they can be readily identified.
- D. The person seeking the information need not state a reason for making the request or the use to which the information will be put.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.24, 1997)

**2.20.240 Minimum withholding.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.25, 1997)

**2.20.250 Justification for withholding.**

Any withholding of information shall be justified, in writing, as follows:

- A. A withholding under a permissive exemption in the California Public Records Act or this ordinance shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.26, 1997)

**2.20.260 Fees for duplication.**

- A. No fee shall be charged for making public records available for inspection.
- B. No fee shall be charged for a single copy of a current meeting agenda.
- C. A fee may be charged for: 1) single or multiple copies of past meeting agenda or any agenda-related materials; 2) multiple copies of a current meeting agenda; and, 3) any other public record copied in response to a specific request.
- D. The agency, department or the city may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.
- E. No charge shall be made for a single copy of a Draft or Final Environmental Impact Report and Environmental Impact Statement.
- F. All fees permitted under this section shall be determined and specified in the city of Oakland Master Fee Schedule, as amended.
- G. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with State law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.27, 1997)



## **ACKNOWLEDGMENTS**

The Commission thanks the ad-hoc subcommittee chair Michael MacDonald and members Jill Butler, Avi Klein, and Joe Tuman for conducting the review and initial drafts for this report. The Commission thanks its staff, including Lead Analyst Suzanne Doran and Enforcement Chief Kellie Johnson for their work drafting the report and compiling the supporting data. Thanks also go out to the City Attorney's Office and NextRequest for their cooperation and assistance providing the raw data that made this performance review possible, and Oakland resident and data scientist Richard K. Belew for acting as pro bono technical consultant.

DRAFT



Michael B. MacDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joe Tuman

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Suzanne Doran, Lead Analyst  
Jelani Killings, Ethics Analyst  
Whitney Barazoto, Executive Director  
DATE: April 23, 2021  
RE: Disclosure and Engagement Report for the May 3, 2021, PEC 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 needed. 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

**Lobbyist Registration and Reporting Program** – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Public Ethics Commission and submit quarterly reports disclosing their lobbying activities. April 30, 2021, marks the deadline for first quarter lobbyist activity reports. Lobbyist activity reports may be viewed online at the PEC's [Lobbyist Dashboard and Data](#) webpage.

## Advice and Engagement

**Advice and Technical Assistance** – In April, Commission staff responded to 11 requests for information, advice or assistance regarding campaign finance, ethics, lobbyist registration or public records issues.

**Form 700 Filers** – April 1 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. Nine out of 11 officials filed their statements on time. Staff contacted the two officials that did not file statements by the deadline and both responded immediately to staff's outreach.

**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 21, staff trained 20 new employees on GEA provisions.

**Social Media** – Each month Commission staff post social media content to highlight specific PEC policy areas, activities or client-groups. In April, our posts focused on Commissioner recruitment.

# Item #10a - Enforcement Report



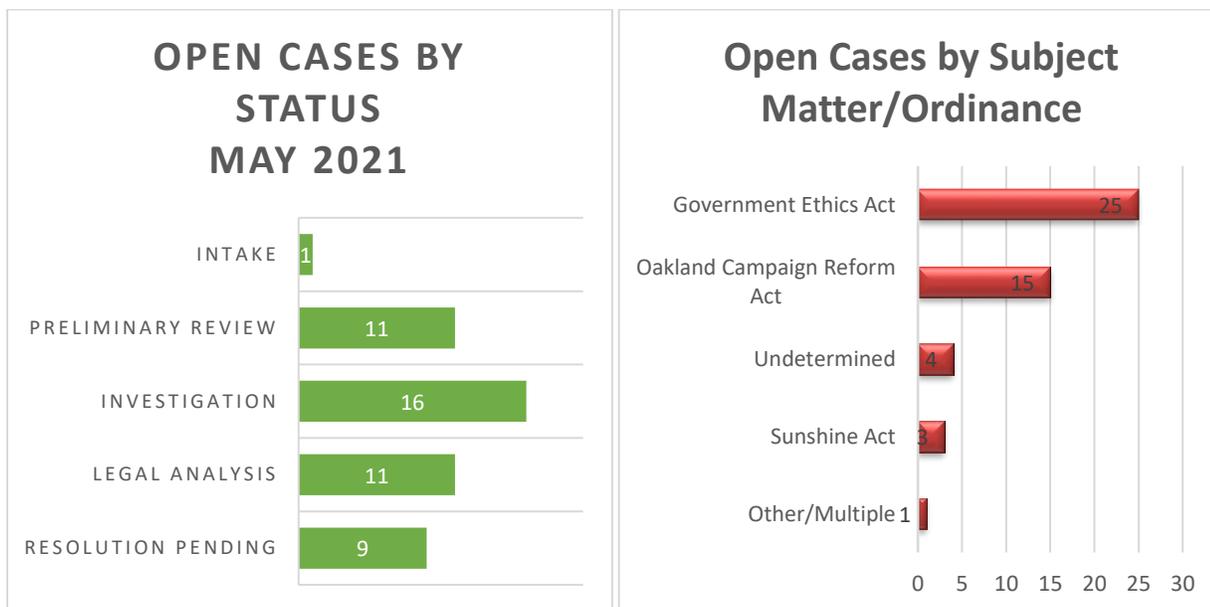
Michael McDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission  
FROM: Kellie Johnson, Enforcement Chief  
DATE: April 21, 2021  
RE: Enforcement Program Update for the May 3, 2021, PEC Meeting

## Current Enforcement Activities:

Since the last Enforcement Program Update on April 5, 2021, Commission staff received one complaint. This brings the total Enforcement caseload to 48 open cases: 12 matter(s) in the intake or preliminary review stage, 16 matters under active investigation, 11 matters under post-investigation analysis, and 9 matters in settlement negotiations or awaiting an administrative hearing.



## Summary of Current Cases:

Since the last Enforcement Program Update in April 2021, the following status changes have occurred.

1. ***In the Matter of Everett Cleveland Jr. (Case No. 20-03 (a))***. On or about January 7, 2020, Former Assistant City Administrator Maraskeisha Smith reported to the PEC Staff that the City Attorney had contacted her about Housing Development Coordinator, Everett Cleveland Jr.'s alleged violation of the Government Ethics Act. She was notified by letter from the Oakland City Attorney that Everett Cleveland Jr. violated conflicts of interest ordinances when he decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 "Notice of Funding Availability" (NOFA) program. Cleveland had taken part in the decision-making process regarding NOFA applications submitted by a nonprofit housing development company called Community Housing Development Corporation, whose executive director, Don Gilmore is Cleveland's father-in-law. The PEC investigation found that Cleveland influenced or attempted to influence the review of NOFA applications submitted by CHDC. The investigation also found that Cleveland, although required to file an annual Statement of Economic Interest in 2019, failed to file a Form 700. At its April 5, 2021, meeting the Commission approved the Staff's request to offer a Diversion agreement to the Respondent. After reviewing the facts, Staff recommends that the PEC approve a Diversion Agreement and require an \$600 Diversion payment. (See Action Items)
2. ***In the Matter of Norma Thompson (Case No. 20-03(b))***. On or about January 7, 2020, this matter was referred to the PEC by the City of Oakland's Assistant City Administrator Marakiesha Smith. Smith had received a letter from the Oakland City Attorney that informed her that Norma Thompson, a City of Oakland Housing Community Development staff member, violated conflicts of interest rules when she decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 "Notice of Funding Availability" (NOFA) program. The allegation was that Thompson was working as a paid consultant for Community Housing Development Corporation at the time that she took part in the decision-making process regarding CHDC's 2019 NOFA applications. The investigation also found that Thompson failed to file a Form 700 when she rejoined the City in 2019; that she failed to file a Form 700 upon leaving office; and that she violated the City of Oakland revolving-door provisions of the Government Ethics Act through her consulting work with CHDC. At its April 5, 2021, meeting the Commission declined to approve the Staff's request to offer a Diversion agreement to the Respondent. The Commission, instead, suggested changes to provisions of the Diversion agreement. After reviewing the facts, the law and taking into consideration the Commission suggestions, the Staff recommends that the PEC approve a Diversion Agreement and require an \$800 Diversion payment. (See Action Items)

3. ***In the Matter of the City of Oakland Building and Planning Department and Jeremy Stroup (Case No.21-03)***. On February 8, 2021, the Public Ethics Commission received a complaint that alleged the City Planning and Building Department with a representative from the Verizon Telephone Company, Jeremy Stroup violated a provision of the Government Ethics Act when hosting a community meeting about a neighborhood antenna installation. The Complaint further alleged that Stroup and Verizon placed signs at the entrance of the meeting that implied that the City was in partnership or agreement with the projects being discussed at the meeting prior to the Planning Department approving the plans. Staff completed its review and investigation of the matter and after reviewing the facts, relevant law and Enforcement Procedures, and contacted the complainant about the preliminary review at which time the Complainant made a request to withdraw the Complaint. The Complaint was withdrawn. (See Attachments)



CITY OF OAKLAND

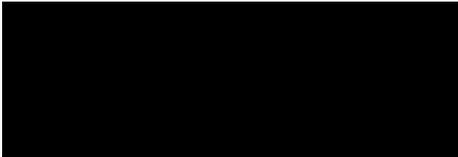
ONE FRANK H. OGAWA PLAZA • CITY HALL • 1<sup>ST</sup> FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission  
Enforcement Unit

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

April 13, 2021

Alexis Schroeder



*Via e-mail*

**Re: PEC Complaint No. 21-03; Notice of Withdrawn Complaint**

Dear Ms. Schroeder:

The City of Oakland Public Ethics Commission would like to notify you that it is closing your complaint(s) (#21-03) for alleged Oakland Government Ethics Act violations against Mr. Stroup and the City of Oakland Planning and Building Department. This is in response to our telephone conversation on April 12, 2021, in which you made a request to withdraw your complaint.

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

Sincerely,

A handwritten signature in blue ink that reads "Kellie Johnson".

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

# Item #11a - Executive Director's Report



Michael B. MacDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joe Tuman

Whitney Barazoto, Executive Director

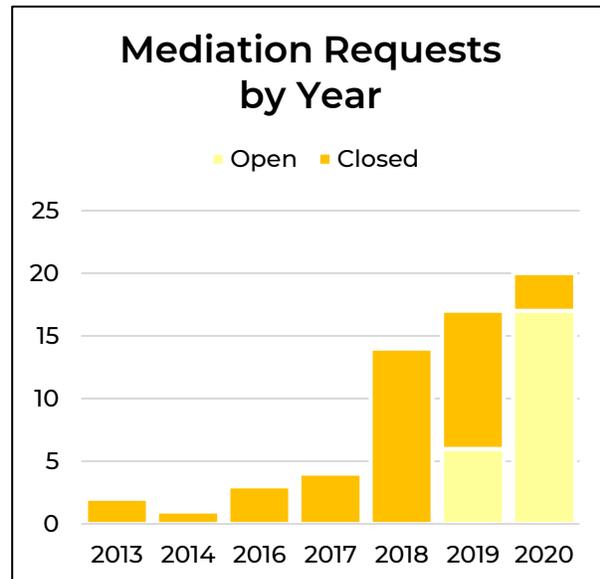
TO: Public Ethics Commission  
FROM: Whitney Barazoto, Executive Director  
DATE: April 20, 2021  
RE: Executive Director's Report for the May 3, 2021, PEC Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities this past month that are not otherwise covered by other program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and key projects for 2020-21 for each program area. (Commission Programs and Priorities attached)

## Mediations

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. Following the mediation, Commission staff provides a written summary of the mediation to the Commission and can also make recommendations for further Commission action. The following two mediations were conducted by staff and subsequently closed this past month (reports attached):

1. In the Matter of the Planning and Building Department (Case No. M2020-07); (Mediation Summary attached)
2. In the Matter of the Planning and Building Department (Case No. M2020-14); (Mediation Summary attached)



## Process Improvements

In April, Commission staff engaged in consultations with the Human Services Department and the Planning and Building Department to assist with the development and refining of disclosure tools intended to help employees understand and disclose potential conflicts that may arise in grant, contract, and other application processes where employees are participating in the proposal evaluation process. Likewise, staff will reach out to the Housing and Community Development Department to engage with program supervisors to incorporate similar tools following closure of the enforcement items on the May PEC meeting agenda.

**Budget and Staffing**

As part of the Budget process, Commission staff proposed to the City Administrator that Form 700 filing officer duties be transferred from the City Clerk's Office to the Public Ethics Commission so that all filing officer duties (campaign finance, lobbyist registration, etc) are consolidated with the Commission. Commission staff met with the City Clerk to discuss the option, and both offices agreed to shift the filing duty for Board and Commission members to the Commission, and the City Clerk will retain the filing duty for elected officials and City staff. The two offices will meet with the vendor, Netfile, in the coming months to discuss logistics of the split duty, with the planned transition anticipated to occur by January 1, 2022.

In addition, Commission staff have been participating in budget discussions regarding its budget proposal, which included new position requests to address increased enforcement unit needs and to implement equity changes in campaign finance. The Mayor's budget proposal is scheduled for release on May 1, to go through City Council through the end of June.

**PUBLIC ETHICS COMMISSION**  
**Programs and Priorities 2021**

<b>Program</b>	<b>Goal</b>	<b>Desired Outcome</b>	<b>Key Projects for 2021</b>
<b>Lead/ Collaborate (Policy, Systems, Culture)</b>	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> <li>1. Oakland Sunshine Report Card, ongoing compliance</li> <li>2. Campaign Finance Redesign</li> <li>3. Form 700 Filing Officer Duty Transition</li> </ol>
<b>Educate/ Advise</b>	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> <li>1. Ethics training and advice: a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants</li> <li>2. Sunshine training</li> <li>3. New trainings as needed for diversion</li> </ol>
<b>Outreach/ Engage</b>	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> <li>1. Sunshine mediations</li> <li>2. Communications/outreach to client groups</li> <li>3. PEC social media outreach</li> </ol>
<b>Disclose/ Illuminate</b>	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> <li>1. Filing Officer/Compliance – assess, follow-up, and refer</li> <li>2. Government Integrity E-Data Project – Lobbyist Registration, Form 700, Form 803, Show Me the Money App</li> <li>3. Open Disclosure – continue coordination and development</li> </ol>
<b>Detect/ Deter</b>	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> <li>1. Investigations</li> <li>2. Add part-time investigator to assist</li> <li>3. Collaborate with other government law enforcement agencies</li> </ol>

## Item #11a - Executive Director's Report

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	
<b>Prosecute</b>	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> <li>1. Conduct legal analyses, assess penalty options, negotiate settlements, make recommendations to PEC</li> <li>2. Case priority: 1) the extent of Commission authority to issue penalties, 2) the impact of a Commission decision, 3) public interest, timing, and relevancy, and 4) Commission resources.</li> <li>3. Resolve all 2016 cases</li> </ol>
<b>Administration/ Management</b>	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> <li>1. Annual Report</li> <li>2. Budget – new positions</li> <li>3. Enforcement database upgrade</li> <li>4. Review data to adjust activities throughout the year</li> <li>5. Ongoing: professional development and staff reviews</li> </ol>



Michael B. MacDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joe Tuman

Whitney Barazoto, Executive Director

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TO: Whitney Barazoto, Executive Director  
FROM: Jelani Killings, Ethics Analyst  
DATE: April 20, 2021  
RE: *In the Matter of the Planning and Building Department (Case No. M2020-07); Mediation Summary*

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## I. INTRODUCTION

On March 5, 2020, the Commission received a request for mediation alleging that the Oakland Planning and Building Department failed to disclose records in response to three public records requests made by the Requester on January 9, 2020, January 24, 2020, and February 13, 2020, respectively. On March 5, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided all responsive documents per the requests, Staff closed the mediation without further action.

## II. SUMMARY OF LAW

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

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

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

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

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

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

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

## Item #11b - Mediation Summary M2020-07

### III. SUMMARY OF FACTS

On January 9, 2020, the City received, via NextRequest, the following public records request (No. 20-142):

All documents related to the application DRX 200056 for 4511 Lincoln Avenue.

Including complete application, communications (between city and applicants or others) and all submitted attachments and reports.

On January 24, the City received, via NextRequest, an additional public records request from the Requester (20-411):

Please provide by February 17, 2020 the following documents from the Planning and Building Department.

For all the Verizon, AT&T AND T-Mobile cell antenna projects at 5650 Balmoral.

All file contents including planning department application documents, RF emission report, written communications between applicant and the City, and planning commission approval letter.

All file contents including building department application, documents, attachments, RF emission reports, written communications between applicant and the City, final building permit sign-off.

These files include but are limited to:

PLN19244 - Verizon (application documents and to-date written communications only)

DS190341 - T Mobile

B1903761 - T Mobile

DS180223 - ATT

B1803798 - ATT

DS170351 - Verizon

B1704009 - Verizon

DS160109

B1602185

DS150412

B1504583

CMDV10257

B1400614 - ATT

E1102562 - ATT

B1100941 - ATT

B1003670 - T Mobile

E1100467 - T Mobile

Thank you. Please remit documents as they become available.

## Item #11b - Mediation Summary M2020-07

On February 13, 2020, the City received, via NextRequest, a third public records request from the Requester (20-801):

Please provide all planning and building documents, RF Emission reports and communications between interested parties regarding the roof-top cell antenna installations at 1425 Leimert Blvd. Thank you.

On March 5, 2020, the Commission received a mediation request seeking the following:

My public records requests 20-142, 20-411, 20-801 have gone unfulfilled and missed their deadlines.

Subsequently, on March 5, 2020, Staff initiated its mediation program and notified the Planning and Building Department (PBD) of the mediation request.

On March 24, 2020, the Planning and Building Department released responsive documents to the requester for request 20-142. Subsequently, the PBD closed the request stating:

We released all of the requested documents.

On April 20, 2020, the Planning and Building Department released responsive documents to the requester for request 20-411. Subsequently, the PBD closed the request stating:

We have redacted personal information, including but not limited to, telephone numbers, social security numbers, credit card numbers and other personal identifying information pursuant to the constitutional rights of privacy and to protect against identity theft pursuant to Government Code Section 6254(c).

On April 20, the Planning and Building Department closed request 20-801 stating that:

The requested documents do not exist.

On April 16, 2021, Staff followed up with the Requester and inquired if she had received all the responsive documents to her public record requests and, if so, notified her that the PEC would be closing the mediation. The Requester responded:

Yes, you can close M2020-07.

#### **IV. RECOMMENDATION**

Because the Planning and Building Department provided the responsive records for the public records requests, and because the Requester indicated that she had received all of the responsive documents, Staff closed the mediation without further action.



Michael B. MacDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Joe Tuman

Whitney Barazoto, Executive Director

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TO: Whitney Barazoto, Executive Director  
FROM: Jelani Killings, Ethics Analyst  
DATE: April 20, 2021  
RE: *In the Matter of the Planning and Building Department (Case No. M2020-14); Mediation Summary*

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## I. INTRODUCTION

On September 10, 2020, the Commission received a request for mediation alleging that the Planning and Building Department failed to provide records in the requested format in response to a public records request made by the Requester on September 1, 2020. On September 14, 2020, Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responding department has provided the responsive documents per the request, Staff has closed the mediation without further action.

## II. SUMMARY OF LAW

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

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

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

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

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

<sup>3</sup> O.M.C. § 2.20.270(C)(1).

<sup>4</sup> O.M.C. § 2.20.270(F).

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

## Item #11c - Mediation Summary M2020-14

### III. SUMMARY OF FACTS

On September 1, 2020, the City received, via NextRequest, the following public records request (No. 20-5824):

Please provide a different format for this document released in Request 19-2604. The current format can not be opened or accessed.

RE Planning Question - 1720 Macarthur Blvd (inside Alternheim Senior Center) Oakland CA 94602 APN...

Please provide the following pdf documents as an original **color** pdf that were released in Request 19-2604.

DS190182 statements.pdf

DS15 COMPLIANCE.pdf

On September 7, 2020, the Planning and Building Department released seven responsive documents to the Requester.

On September 10, 2020, the Commission received a mediation request stating the following:

Records provided were not in the format requested or missing.

On September 14, 2020, Staff initiated its mediation program and notified the Planning and Building Department of the mediation request.

On September 23, 2020, the Planning and Building Department released an additional document in response to the records request.

The additional record released to the Requester appears to provide the accessibility that the Requester was seeking.

On April 16, 2021, Staff followed up with the Requester and inquired if she had received all the responsive documents to her public record request and, if so, notified her that the PEC would be closing the mediation. The Requester responded:

Yes, you can close M2020-14.

### IV. RECOMMENDATION

Because the Planning and Building Department provided the responsive records for the public records request, Commission Staff closed the mediation without further action.