

1 KARL OLSON, Cal. Bar No. 104760
AARON FIELD, Cal. Bar No. 310648
2 CANNATA O'TOOLE FICKES & OLSON LLP
100 Pine Street, Suite 350
3 San Francisco, CA 94111
Telephone: 415.409.8900
4 Facsimile: 415.409.8904
Email: kolson@cofolaw.com
5 afield@cofolaw.com

6 Attorneys for Petitioner SAN JOSÉ SPOTLIGHT

7 DAVID E. SNYDER, Cal. Bar No. 262001
DAVID LOY, Cal. Bar No. 229235
8 MONICA N. PRICE, Cal. Bar No. 335464
FIRST AMENDMENT COALITION
9 534 4th Street, Suite B
San Rafael, CA 94901-3334
10 Telephone: 415.460.5060
Email: dsnyder@firstamendmentcoalition.org
11 dloy@firstamendmentcoalition.org
mprice@firstamendmentcoalition.org

12 Attorneys for Petitioner
13 FIRST AMENDMENT COALITION

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SANTA CLARA

17
18 SAN JOSÉ SPOTLIGHT and FIRST
AMENDMENT COALITION,

19 Petitioners,

20 v.

21 CITY OF SAN JOSÉ and MAYOR SAMUEL
22 THEODORE LICCARDO, in his official
capacity and his personal capacity

23 Respondents.
24
25
26
27
28

Case No. 22CV394443

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF MANDATE**

Date: March 27, 2023

Time: 1:30 p.m.

Place: Dept. 18 (Hon. Julie A. Emede)

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. FACTS AND PROCEDURAL HISTORY 2

III. RESPONDENTS CANNOT OVERCOME THE PRA’S MANDATE OF
TRANSPARENCY, ESPECIALLY AS TO NUMEROUS RECORDS THAT
CANNOT BE EXEMPT FROM DISCLOSURE AS A MATTER OF LAW 4

A. The PRA Represents a Constitutional Mandate for Open Government 4

B. Under the PRA, Public Records Are Defined Broadly, Exemptions Are
Construed Narrowly, and Agencies Bear a Demanding Burden, Which
Respondents Have Not Carried 5

C. Respondents Cannot Prove that Numerous Withheld Records Qualify as
“Preliminary Drafts” or “Deliberative Process,” Both of Which Require
Detailed Factual Showings 7

1. Preliminary Drafts 7

2. Deliberative Process 8

3. Draft Press or Public Relations Materials and Communications with
Lobbyists or Developers Cannot Qualify as “Preliminary Drafts” or
“Deliberative Process
..... 11

D. Respondents Cannot Withhold “Settlement Communications” About a Case
that Has Already Been Settled 14

E. Respondents Have Not Met Their Burden to Prove Attorney-Client Privilege
Applies, Especially for Records Not Authored or Received by Lawyers 15

IV. RESPONDENTS MAY NOT INVOKE IN CAMERA REVIEW AS A SUBSTITUTE
FOR THEIR FAILURE TO CARRY THEIR BURDEN TO JUSTIFY
NONDISCLOSURE OF PUBLIC RECORDS 16

V. THE COURT SHOULD GRANT DECLARATORY RELIEF REQUIRING THE CITY
TO COMPLY WITH GOVERNMENT CODE SECTION 34090’S TWO-YEAR
RETENTION REQUIREMENT AND REQUIRING OFFICIALS TO USE OR COPY
GOVERNMENT ACCOUNTS. 16

VI. CONCLUSION 20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

American Civil Liberties Union Foundation v. Superior Court,
3 Cal. 5th 1032 (2017) 8

American Civil Liberties Union of Northern California v. Superior Court,
202 Cal. App. 4th 55 (2011)..... 6

Board of Trustees of California State University v. Superior Court,
132 Cal. App. 4th 889 (2005)..... 15

Cal. First Amendment Coalition v. Superior Court,
67 Cal. App. 4th 159 (1998)..... 5

Caldecott v. Superior Court,
243 Cal. App. 4th 212 (2015)..... 10,15

Citizens for a Better Env't. v. Dept. of Food & Agriculture,
171 Cal. App. 3d 704 (1985)..... 7,8,11,13

Citizens for Open Government v. City of Lodi,
205 Cal. App. 4th 296 (2012)..... 9,10

City of San Jose v. Superior Court,
2 Cal. 5th 608 (2017) passim

Connell v. Superior Court,
56 Cal. App. 4th 601 (1997)..... 8

County of Los Angeles v. Superior Court,
82 Cal. App. 4th 819 (2000)..... 15

Doe 2 v. Superior Court,
32 Cal. App. 4th 1504 (2005)..... 15

Ecological Rights Found. v. United States EPA,
U.S. Dist. LEXIS 104760 (N.D. Cal. June 3, 2021) 12

Golden Door Properties, LLC v. Superior Court,
53 Cal. App. 5th 733 (2020)..... 6

Int'l Fed'n of Prof'l & Tech. Engineers, Local 21, AFL-CIO v. Superior Court,
42 Cal. 4th 319 (2007) 4

Nissen v. Pierce County,
183 Wash. 2d 863 (2015)..... 17

People v. Pearson,
111 Cal. App. 2d 9 (1952)..... 18

Register Div. of Freedom Newspapers v. County of Orange,
158 Cal. App. 3d 893 (1984)..... 16

Roberts v. City of Palmdale,
5 Cal. 4th 363 (1993) 15

San Gabriel Tribune v. Superior Court,
143 Cal. App. 3d 762 (1983)..... 4

Sierra Club v. Superior Court,
57 Cal. 4th 157 (2013) 5

1	<i>Stockton Newspapers v. Redevelopment Agency</i> , 171 Cal. App. 3d 95 (1985).....	9
2	<i>The Recorder v. Commission on Judicial Performance</i> , 72 Cal. App. 4th 258 (1999).....	9
3	<i>Times Mirror Co. v. Superior Court</i> , 53 Cal. 3d 1325 (1991)	8,9,11
4	<i>Volkswagen of America, Inc. v. Superior Court</i> , 139 Cal. App. 4th 1481 (2006).....	14

6

STATUTES

7	44 U.S.C. § 2911	17
8	Code Civ. Proc. § 2018.030	15
9	Evid. Code § 915.....	16
10	Evid. Code §§ 950–54.....	15
11	Evid. Code § 956.....	16
11	Evid. Code § 1152.....	14
12	Govt. Code § 54952.2	9
13	Govt. Code § 34090	16,18,19,20
14	Govt. Code § 6200	15,18,19
14	Govt. Code § 7920.530	5
15	Govt. Code § 7922.000	5,6,8,14
16	Govt. Code § 7922.525	5
16	Govt. Code § 7922.530	5
17	Govt. Code § 7923.105	16
18	Govt. Code § 7927.500	7

19

OTHER AUTHORITIES

20	San Jose Municipal Code § 12.12.010.....	14
21	San Jose Municipal Code § 12.12.420.....	13
22	San Jose Municipal Code § 12.12.430.....	13

23

CONSTITUTIONAL PROVISIONS

24	Cal. Const., Art. I, § 3	5,9
----	--------------------------------	-----

25

26

27

28

1 **I. INTRODUCTION**

2 Almost six years ago, in a case arising from San José, the California Supreme Court held
3 “e-mails and text messages ‘sent or received on private electronic devices used by’ the mayor,
4 two city council members, and their staffs” were public records when they “related to the conduct
5 of public business.” *City of San Jose v. Superior Court*, 2 Cal. 5th 608, 615, 625 (2017).
6 The court rejected any evasion of disclosure obligations “simply by the use of a personal account”
7 and confirmed that under the California Public Records Act (“PRA”), it “is for the *public*” to
8 determine whether “public officials conduct official business in the public’s best interest,” and
9 “[o]pen access to government records is essential to *verify* that government officials are acting
10 responsibly and held accountable to the public they serve.” *Id.* at 625.

11 Although the court suggested “agencies might require that employees use or copy their
12 government accounts for all communications touching on public business,” *id.* at 628, it became
13 clear that former Mayor Sam Liccardo was ignoring that guidance during his term, which ended
14 at the beginning of this year. As a result, Petitioners *San José Spotlight* (“Spotlight”) and First
15 Amendment Coalition (“FAC”) made PRA requests to uncover the extent to which Liccardo did
16 public business on private devices or accounts and with whom, including but not limited to Carl
17 Guardino, a lobbyist and friend of Liccardo’s who raised over \$500,000 for his campaign.

18 After delays and inconsistencies in the City’s responses, it became clear Respondents had
19 not fully complied with their disclosure obligations under the PRA, especially in failing to
20 produce text messages for which Respondents have yet to account. As a result, Petitioners filed
21 this action. Once the Petition for Writ of Mandate (“Petition”) was filed and Petitioners moved to
22 compel a privilege log, Respondents belatedly disclosed over 100 pages of requested records.
23 Nonetheless, Respondents continue to withhold over 300 additional records based on conclusory
24 assertions without the specific factual basis necessary to carry their heavy burden to justify
25 nondisclosure. In particular, they are withholding numerous records that cannot be exempt from
26 disclosure as a matter of law, including (among many others) communications with Guardino and
27 documents relating to a city-funded public relations campaign for Liccardo’s benefit. For those
28

1 reasons, Petitioners are entitled to judgment that Respondents are violating the PRA and an order
2 compelling them to disclose withheld records.

3 Given Respondents' track record of doing public business on "private" devices and
4 accounts and the concomitant hazards to transparency accompanying that practice, including
5 deletion of records, the Petition also seeks an order requiring city officials and staff to use or copy
6 government servers on all communications about public business, as suggested by the California
7 Supreme Court in *City of San Jose*, 2 Cal. 5th at 628, and not to delete such communications for
8 at least two years. This Petition should be granted.

9 **II. FACTS AND PROCEDURAL HISTORY**

10 This case stems from four PRA requests submitted to Respondents, dated December 2020
11 to May 2021. Respondents continue to withhold 326 documents in their entirety, and portions of
12 several additional documents, largely based on conclusory assertions of "deliberative process" or
13 "draft," without any declaration or testimony establishing specific factual predicates for those
14 conditional exemptions, or indeed any other exemption asserted. Respondents have also failed to
15 produce or justify withholding of multiple text messages responsive to the requests.

16 On December 12, 2020, Spotlight submitted a PRA request for email and text
17 communications between Respondents and Bloom Energy officials, specifically including
18 lobbyist Carl Guardino ("Guardino Request"). Giwargis Decl. ¶ 10.¹ Despite lobbying reports
19 from Guardino that show the communications occurred, the city delayed complying with the
20 request for nine months before closing it without producing any records. *Id.* Respondents finally
21 produced some email records covered by the Guardino Request as part of the Personal Accounts
22 Requests described below. *Id.* Responsive text messages were not produced. *Id.*

23 On June 24, 2021, Spotlight submitted a PRA request for email and text messages
24 between Liccardo and Scott Largent ("Largent Request"). Giwargis Decl. ¶ 11. The City insisted
25 that there were no records and only provided them once Spotlight informed the City that Spotlight
26 had already independently obtained responsive records. *Id.* Significantly, in one message,
27

28 ¹ Undated declarations are filed herewith. Dated declarations were filed on the dates given.

1 Liccardo said he would “delete this email from [his] government account” and directed Largent to
2 email his private account. *Id.* In addition, responsive text messages were not disclosed. *Id.*

3 On July 26, 2021, FAC submitted a PRA request for all emails and other communications
4 on Liccardo’s personal accounts which discuss city business and are dated November 18, 2020, to
5 July 26, 2021. Price Decl. ¶ 2 & Ex. A. Spotlight submitted a request for similar email records
6 dated January 1, 2021, to July 30, 2021 (collectively, “Personal Accounts Requests”). Olson Decl.
7 ¶ 4 & Ex. C. Respondents have provided some emails and social media messages related to these
8 requests. Price Decl. ¶ 3. However, Respondents have provided only one text message (which
9 was in fact an email attachment) despite ample evidence from Liccardo’s own emails that more
10 responsive text messages exist. Price Decl. ¶¶ 4–5 & Ex. B-H. By Respondents’ own account,
11 only Liccardo was responsible for searching his own phone and producing text messages
12 responsive to PRA requests. 9/26/22 Henry Smith Decl. ¶ 6.

13 On February 3, 2022, the Petition was filed. Respondents answered with a bevy of denials.
14 Answer ¶¶ 2, 5, 15, 18, 21, 26, 28, 29, 32, 34, 38, 46. Respondents even denied that Liccardo
15 engages in extensive work-related correspondence on non-governmental devices, despite
16 producing numerous emails from his personal email account. Answer ¶ 1.

17 On July 6, 2022, Petitioners moved to compel the production of a privilege log. The Court
18 initially directed Respondents to produce declarations rather than a full log. On September 27,
19 2022, Respondents filed a declaration along with a partial log, which listed 326 records but did
20 not identify their authors or recipients. On the same date, Respondents disclosed 132 pages of
21 previously withheld records. 10/17/22 Nguyen Decl. ¶ 2. The Court later ordered Respondents to
22 produce a **complete** privilege log, which they did on December 7, 2022. According to the log,
23 Respondents contend most of the 326 documents they continue to withhold fall under
24 “preliminary draft” or “deliberative process,” although Respondents have not provided any
25 explanation beyond bare assertions of exemption. Olson Decl. ¶ 2 & Ex A. In addition, the log
26 does not include any text messages. *Id.* On October 17, 2022, Petitioners moved to compel
27 Liccardo’s deposition to inquire into issues within his personal knowledge regarding his deletion
28 of emails and failure to produce text messages responsive to Petitioners’ requests. The Court

1 denied that motion without prejudice.

2 **III. RESPONDENTS CANNOT OVERCOME THE PRA’S MANDATE OF**
3 **TRANSPARENCY, ESPECIALLY AS TO NUMEROUS RECORDS THAT**
4 **CANNOT BE EXEMPT FROM DISCLOSURE AS A MATTER OF LAW.**

5 **A. THE PRA REPRESENTS A CONSTITUTIONAL MANDATE FOR OPEN**
6 **GOVERNMENT.**

7 In California, access to public records is a constitutional mandate. “The people have the
8 right of access to information concerning the conduct of the people’s business, and, therefore ...
9 the writings of public officials and agencies shall be open to public scrutiny.... In order to ensure
10 public access to ... the writings of public officials and agencies ..., each local agency is hereby
11 required to comply with the California Public Records Act.” Cal. Const., Art. I, § 3(b)(1), (7).

12 The PRA reflects “legislative impatience with secrecy in government” and “safeguard[s]
13 the accountability of government to the public, for secrecy is antithetical to a democratic system
14 of ‘government of the people, by the people [and] for the people.’” *San Gabriel Tribune v.*
15 *Superior Court*, 143 Cal. App. 3d 762, 771–72 (1983). As the PRA declares, “access to
16 information concerning the conduct of the people’s business is a fundamental and necessary right
17 of every person in this state.” Govt. Code § 7921.000 (formerly Govt. Code § 6250).²

18 “Openness in government is essential to the functioning of a democracy.” *Int’l Fed’n of*
19 *Prof’l & Tech. Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319, 328 (2007)
20 (“*Local 21*”). “Implicit in the democratic process is the notion that government should be
21 accountable for its actions. In order to verify accountability, individuals must have access to
22 government files. Such access permits checks against the arbitrary exercise of official power and
23 secrecy in the political process.” *Id.* at 328–29. Disclosure of public records is necessary “to
24 expose corruption, incompetence, inefficiency, prejudice, and favoritism.” *Id.* at 333 (citation and
25 quotation marks omitted).

26 ² The PRA was recodified by A.B. 743, which took effect January 1, 2023. A disposition table
27 indicating how the PRA’s provisions have been renumbered is available at
28 <http://clrc.ca.gov/pub/Printed-Reports/Pub241-G400-Disposition.pdf>. The changes are “entirely
nonsubstantive.” Govt. Code § 7920.100. For the court’s convenience, the table is attached as
Exhibit B to this brief.

1 **B. UNDER THE PRA, PUBLIC RECORDS ARE DEFINED BROADLY, EXEMPTIONS ARE**
2 **CONSTRUED NARROWLY, AND AGENCIES BEAR A DEMANDING BURDEN, WHICH**
3 **RESPONDENTS HAVE NOT CARRIED.**

4 A public record is defined broadly as “any writing containing information relating to the
5 conduct of the public’s business prepared, owned, used, or retained by any state or local agency
6 regardless of physical form or characteristics.” Govt. Code § 7920.530(a). If they otherwise meet
7 this definition, records remain public regardless of whether “they are located in an employee’s
8 personal account.” *City of San Jose*, supra, 2 Cal. 5th at 623.

9 The PRA requires agencies to disclose public records on request except to the extent
10 records or portions thereof are expressly exempt from disclosure. Govt. Code §§ 7922.000,
11 7922.525, 7922.530(a); *City of San Jose*, 2 Cal. 5th at 616. In the *City of San Jose* case, the City
12 argued that courts should presume that public officials conduct official business in the public’s
13 best interest. A unanimous court resoundingly rejected that argument: “The Constitution neither
14 creates nor requires such an optimistic presumption. Indeed, the rationale behind the Act is that it
15 is for the *public* to make that determination, based on information to which it is entitled under the
16 law.” *City of San Jose*, 2 Cal. 5th at 625.

17 As amended by Proposition 59 in 2004, the California Constitution mandates that any
18 “statute, court rule, or other authority ... shall be broadly construed if it furthers the people’s right
19 of access, and narrowly construed if it limits the right of access.” *Sierra Club v. Superior Court*,
20 57 Cal. 4th 157, 166 (2013) (quoting Cal. Const., Art. I, § 3(b)(2)).

21 A threshold issue in any PRA case is whether the agency has identified or disclosed all
22 requested records that “can be located with reasonable effort.” *Cal. First Amendment Coalition v.*
23 *Superior Court*, 67 Cal. App. 4th 159, 166 (1998). Respondents have not satisfied that condition,
24 because they have not accounted for, identified, or disclosed readily available text messages to or
25 from Mayor Liccardo that are discussed in other communications. Price Decl. ¶ 5 & Ex. C-H.
26 Respondents should be required to disclose the missing text messages or properly account for
27 their failure to do so. By Respondents’ own evidence, only Liccardo is responsible for searching
28 for and producing his own text messages that are responsive to PRA requests, 9/26/22 Smith
 Decl. ¶ 6, and therefore only Liccardo can account for why he has failed to disclose responsive

1 text messages.

2 Petitioners submit evidence showing that Respondents regularly delete messages and
3 Liccardo’s primary method of communicating on public business is through use of his “personal”
4 electronic device, primarily through texting. Giwargis Decl. ¶ 16. If that evidence is disputed or
5 denied, Petitioners should be permitted to take appropriate depositions, including that of
6 Liccardo, which Petitioners will address by separate motion or application if necessary.

7 Apart from their failure to account for all responsive records, Respondents must prove that
8 each withheld record qualifies for an exemption from disclosure. Govt. Code § 7922.000; *Local*
9 *21*, 42 Cal. 4th at 329 (“The party seeking to withhold public records bears the burden of
10 demonstrating that an exception applies.”). Because “only the agency knows” the content of
11 withheld records, “the plaintiff’s lack of knowledge seriously distorts the traditional adversary
12 nature of our legal system’s form of dispute resolution.” *American Civil Liberties Union of*
13 *Northern California v. Superior Court*, 202 Cal. App. 4th 55, 82 (2011) (“*ACLU of N. Cal.*”)
14 (citation and quotation marks omitted). Therefore, “the agency’s affidavits and descriptions of the
15 documents ... must be specific enough to give the requester a meaningful opportunity to contest
16 the withholding of the documents and the court to determine whether the exemption applies.” *Id.*
17 at 83 (citation and quotation marks omitted).

18 Respondents “must describe each document or portion thereof withheld, and for each
19 withholding it must discuss the consequences of disclosing the sought-after information.
20 Conclusory or boilerplate assertions that merely recite statutory standards are not sufficient.” *Id.*
21 An agency cannot carry its burden with “speculative, self-serving opinions designed to preclude
22 the dissemination of information to which the public is entitled.” *Cal. State Univ., Fresno Assn.,*
23 *Inc. v. Superior Court*, 90 Cal. App. 4th 810, 835 (2001) (“*CSU*”).

24 Respondents have not carried their burden. They have provided no declarations justifying
25 any exemption, and their log merely gives the dates, authors, and recipients of records with
26 cursory descriptions of subject matter. Olson Decl. ¶ 2 & Ex. A. The log lacks “reasonably
27 specific detail” to “demonstrate that the information withheld is within the claimed privilege or
28 exemption.” *Golden Door Properties, LLC v. Superior Court*, 53 Cal. App. 5th 733, 790 (2020)

1 (agency did not carry burden merely by producing similar log). Whatever Respondents may offer
2 with their opposition, they cannot carry their burden to withhold a significant number of
3 documents listed on the privilege log.

4 **C. RESPONDENTS CANNOT PROVE THAT NUMEROUS WITHHELD RECORDS**
5 **QUALIFY AS “PRELIMINARY DRAFTS” OR “DELIBERATIVE PROCESS,” BOTH OF**
6 **WHICH REQUIRE DETAILED FACTUAL SHOWINGS.**

7 According to the log, Respondents are withholding the vast majority of the disputed
8 records under assertions of “preliminary draft” or “deliberative process.” Each alleged exemption
9 is highly fact-intensive and cannot be justified with mere boilerplate assertions. Whatever
10 Respondents may later assert, certain records cannot qualify as drafts or deliberative process.

11 **1. Preliminary drafts**

12 The CPRA exempts from disclosure “[p]reliminary drafts, notes, or interagency or intra-
13 agency memoranda that are not retained by the public agency in the ordinary course of business,
14 if the public interest in withholding those records clearly outweighs the public interest in
15 disclosure.” Govt. Code § 7927.500. To justify this exemption, Respondents must prove *each* of
16 its “statutory conditions”: “(1) The record sought must be a preliminary draft, note, or
17 memorandum; (2) which is not retained by the public agency in the ordinary course of business;
18 and (3) the public interest in withholding must clearly outweigh the public interest in disclosure.”
19 *Citizens for a Better Env't. v. Dept. of Food & Agriculture*, 171 Cal. App. 3d 704, 711–12 (1985).

20 Not every “draft” qualifies for this narrow exemption, the purpose of which “is to provide
21 a measure of agency privacy for written discourse concerning matters pending administrative
22 action” and to “foster robust discussion within the agency of policy questions attending pending
23 administrative decisions.” *Id.* at 712–13. The exemption can cover “advisory opinions,
24 recommendations, and policy deliberations” but not “compiled factual material or purely factual
25 material” that can be segregated from exempt content. *Id.* at 713.

26 Respondents must show the withheld records are in fact “drafts ... produced in the course
27 of a determinate process” that “results in administrative action,” and they must also prove their
28 “policy and custom concerning retention of preliminary materials.” *Id.* at 713-14. “If preliminary

1 materials are not customarily discarded or have not in fact been discarded as is customary they
2 must be disclosed.” *Citizens for a Better Environment*, 171 Cal. App. 3d at 713–14.

3 Apart from those issues, Respondents must meet the heavy burden of showing that “the
4 public interest in withholding the records clearly outweigh[s] the public interest in disclosure.” *Id.*
5 By necessity, “[i]f the records sought pertain to the conduct of the people’s business there is a
6 public interest in disclosure. The weight of that interest is proportionate to the gravity of the
7 governmental tasks sought to be illuminated and the directness with which the disclosure will
8 serve to illuminate.” *Id.* at 715.

9 Any interest in withholding records as “preliminary drafts” must be justified by reference
10 to “the specific policy domain of the statutory exemption,” which is “the policy fostering robust
11 agency debate” about specific policy decisions, not protecting records “consisting of factual
12 material” or “severable factual material contained in memoranda” or other records “along with
13 deliberative material.” *Id.* at 716. Where it is possible “to separate the factual descriptions of what
14 went on ... from the recommendations made on the basis of these facts,” any “severable factual
15 information with no recommendatory content” must be disclosed. *Id.* at 717. So far, Respondents
16 have offered nothing to carry their burden on any of these points.

17 **2. Deliberative Process**

18 “Deliberative process” is not an express statutory exemption. Instead, it is a conditional
19 application of the PRA’s “catchall” exemption, which allows withholding only if an agency can
20 prove that “on the facts of the particular case *the public interest served by not disclosing the*
21 *record clearly outweighs the public interest served by disclosure of the record.*” *Times Mirror*
22 *Co. v. Superior Court*, 53 Cal. 3d 1325, 1338 (1991) (quoting then-Govt. Code § 6255(a), now §
23 7922.000). Under the catchall exemption, the “proponent of nondisclosure” must “demonstrate a
24 clear overbalance on the side of confidentiality.” *American Civil Liberties Union Foundation v.*
25 *Superior Court*, 3 Cal. 5th 1032, 1043 (2017). “A mere assertion of possible endangerment does
26 not ‘clearly outweigh’ the public interest in access to these records,” and “speculation” cannot
27 carry an agency’s burden. *Connell v. Superior Court*, 56 Cal. App. 4th 601, 613 (1997).

28 After Proposition 59’s passage in 2004, cases invoking deliberative process under the

1 catchall exemption must be construed narrowly and confined to their specific facts. *Sierra Club*,
2 57 Cal. 4th at 166. Indeed, Proposition 59, which resulted in the enactment of article I, section
3 3(b) of the California Constitution, was supported by a ballot argument which stated that the
4 measure would allow the public to “see and understand the deliberative process through which
5 decisions are made.” See Official Voter Information Guide, Pres. Gen. Elec. (Nov. 2, 2004),
6 Argument in Favor of Prop. 59.³ The ballot argument can be considered in resolving ambiguities
7 about the scope of the measure and shedding light on the voters’ intent in enacting it. *The*
8 *Recorder v. Commission on Judicial Performance*, 72 Cal. App. 4th 258, 269 (1999) (discussing
9 and considering ballot argument in support of a measure aimed at increasing transparency). There
10 can be no doubt that the voters—83 percent of whom voted for Proposition 59—intended to place
11 strict limits on assertions of “deliberative process,” if not to do away with it completely.⁴

12 A claim of deliberative process must establish at a minimum “whether the disclosure of
13 materials would expose an agency’s decisionmaking process in such a way as to discourage
14 candid discussion within the agency and thereby undermine the agency’s ability to perform its
15 functions” on the particular facts of each case. *Times Mirror*, 53 Cal. 3d at 1342. But that bare
16 minimum prerequisite is not enough to justify the exemption. In many circumstances, “the public
17 interest in nondisclosure does *not* clearly outweigh the public interest in disclosure, whatever the
18 incidental impact on the deliberative process.” *Id.* at 1345–46. Bare and conclusory assertions of a
19 need for “candid discussion” cannot carry the day. Thus, “[n]ot every disclosure which hampers
20 the deliberative process implicates the deliberative process privilege. Only if the public interest in
21 nondisclosure clearly outweighs the public interest in disclosure does the deliberative process
22 privilege spring into existence.” *Citizens for Open Government v. City of Lodi*, 205 Cal. App. 4th
23 296, 306 (2012); see also *ACLU of N. Cal.*, *supra*, 202 Cal. App. 4th at 75.

24 ³ <https://vigarchive.sos.ca.gov/2004/general/propositions/prop59-arguments.htm>.

25 ⁴ Also, the *Times Mirror* decision, on which the City has relied, involved the Governor, a unitary
26 decision-maker, while this case involves Mayor Liccardo, who was simply one among many City
27 Council members forbidden to engage in “serial meetings” with other City Council members by
28 the Brown Act, Government Code § 54952.2(b)(1); *Stockton Newspapers v. Redevelopment*
Agency, 171 Cal. App. 3d 95, 102–03 (1985). A member of the City Council is required by the
Brown Act to deliberate openly, not by means of a cell phone.

1 Courts apply the deliberative process standard skeptically and stringently. An agency must
2 do more than merely recite “a policy statement about why the privilege in general is necessary....
3 While the policy behind the privilege makes sense, invoking the policy is not sufficient to explain
4 the public’s specific interest in nondisclosure of the documents,” because the “policy could apply
5 to almost any decisionmaking process.” *Citizens for Open Government v. Lodi, supra*, 205 Cal.
6 App. 4th. at 307 (holding agency “failed to carry its burden” with boilerplate); *see also Golden*
7 *Door*, 53 Cal. App. 5th at 791-92 (rejecting claim of deliberative process where agency’s
8 “declaration makes broad conclusory claims” that “merely echo public policies underlying claims
9 of privilege generally” and contains “no specific explanation of the role played by any of the
10 1,900 documents in the deliberative process, or why disclosure would be harmful—other than
11 these generalities”); *Caldecott v. Superior Court*, 243 Cal. App. 4th 212, 225–26 (2015) (rejecting
12 “conclusory statement” that document “contains the substance of or excerpts from actual
13 discussions or debate, or information showing how government policy was formed,” or “will
14 interfere with discussions or debate”).

15 While it remains for Respondents to attempt to explain any alleged interest in concealing
16 the withheld documents, the public interest in disclosing them is compelling because it goes
17 directly to the PRA’s core purpose to prevent “corruption, incompetence, inefficiency, prejudice,
18 and favoritism.” *Local 21*, 42 Cal. 4th at 333. Documents withheld by Respondents expose the
19 extent to which “personal and political relationships are at play” in municipal government.
20 Nguyen Decl. ¶ 5. For example, one email “concerns a potential audit of San Jose Water
21 Company,” which “donated \$25,000 to Liccardo’s private 501(c)(4) nonprofit” and whose board
22 includes “[o]ne of Liccardo’s closest allies.” Nguyen Decl. ¶ 5. Other emails relate directly to
23 whether “an ally of the Mayor [Carl Guardino] was granted undue influence and special access to
24 the city’s decision-making by being allowed to essentially write an exemption benefitting his
25 employer,” Bloom Energy, or whether a company known as Revolution Foods “won millions of
26 dollars in city contracts because of its ties to an ally of the mayor.” Nguyen Decl. ¶¶ 6–7. Other
27 examples abound, as explained in Ms. Nguyen’s declaration. These concerns are magnified by the
28 City’s history of transparency violations. Giwargis Decl. ¶¶ 3–9.

1 **3. Draft Press or Public Relations Materials and Communications with**
2 **Lobbyists or Developers Cannot Qualify as “Preliminary Drafts” or**
3 **“Deliberative Process.”**

4 Whatever Respondents may assert, certain records cannot qualify as “preliminary drafts”
5 or “deliberative process” as a matter of law. A threshold requirement of each exemption is that
6 the record is “predecisional” and “deliberative” in that it was “prepared in order to assist an
7 agency decisionmaker in arriving at his decision, rather than to support a decision already made.”
8 *ACLU of N. Cal.*, 202 Cal. App. 4th at 76; *Citizens for a Better Env’t.*, 171 Cal. App. 3d at 713
9 (noting preliminary drafts are “pre-decisional” and “deliberative materials”). “The deliberative
10 process privilege does not justify nondisclosure of a document merely because it was the product
11 of an agency’s decisionmaking process; if that were the case, the PRA would not require much of
12 government agencies.” *ACLU of N. Cal.*, 202 Cal. App. 4th at 76 (deliberative process did not
13 apply to “*implementation* of the policy,” as opposed to “*formulation* of policy”).

14 The log describes numerous records as “[d]raft press statement ... [d]raft letter ... [d]raft
15 op-ed ... [d]raft statement ... [d]raft quotes ... [d]raft notes re state of the City ... [d]iscussion re:
16 op-ed ... CNN op-ed edits ... [e]dits to op-ed ... talking points ... announcement,” and the like.
17 Olson Decl. ¶ 2 & Ex. A (documents 8, 12, 18, 21, 22, 27, 29, 30, 33–35, 38, 46–49, 65, 67, 68,
18 87, 155, 156, 163, 165, 166, 179–182, 187, 192, 200, 202–206, 209, 210, 219, 220, 224–226, 228,
19 229, 233–236, 242–244, 257, 258, 262, 263, 266, 267, 294–296, 298, 300, 301, 324, 325).⁵
20 Several of these documents “involve D.C.-based PR professional Stephanie Craig, who was hired
21 by the Mayor’s office to boost Liccardo’s national profile.” Nguyen Decl. ¶ 14 (citing documents
22 27, 29, 38, 65, 179, 181, 187, 294, 324, 325). These “draft quotes and op-eds” apparently reflect a
23 “media plan and publicity strategies to respond to certain scandals and news articles, including
24 issues related to homelessness and Liccardo’s state of the city speech.” *Id.* Such documents
25 cannot be exempt because they are generated to describe or defend a decision already made, not
26 to make the decision itself. *Times Mirror*, 53 Cal. 3d at 1341 (“[C]ourts have uniformly drawn a

27 ⁵ Attached hereto as Exhibit A is a demonstrative chart highlighting for the Court’s convenience
28 the documents Petitioners have explicitly noted in this brief as subject to disclosure. The notation
 of such documents does not waive the right to disclosure of any other withheld documents.

1 distinction between predecisional communications, which are privileged ... and communications
2 made after the decision and designed to explain it, which are not”). In short, there is a fatal
3 disconnect between communications involving such things as public relations, quotes and op-
4 eds—which are by definition intended to reach the public—and an assertion that emails about such
5 public-facing communications can somehow be deemed confidential.

6 Therefore, the foregoing records cannot be exempt from disclosure because they are
7 neither predecisional nor deliberative. *Ecological Rights Found. v. United States EPA*, No. 18-cv-
8 00394-DMR, 2021 U.S. Dist. LEXIS 104760, *22 (N.D. Cal. June 3, 2021) (rejecting assertion of
9 deliberative process over “discussions about how to communicate decisions that EPA and Pruitt
10 had already made and actions they had already taken,” such as how to respond to audits or
11 questions from lawmakers or media); *Council on American-Islamic Relations-Wash. v. United*
12 *States Customs & Border Prot.*, 492 F. Supp. 3d 1158, 1166 (W.D. Wash. 2020) (deliberative
13 process did not apply to documents that “relate to the release of a public-facing statement
14 describing events after a decision was made”); *Leopold v. United States DOJ*, 411 F. Supp. 3d
15 1094, 1106 (C.D. Cal. 2019) (deliberative process cannot protect “press guidance and suggested
16 talking points”); *First Resort, Inc. v. Herrera*, No. CV 11-5534 SBA (KAW), 2014 U.S. Dist.
17 LEXIS 34077, *12-13 (N.D. Cal. Mar. 10, 2014) (holding that even if “draft press release was
18 never finalized or released,” it was “not predecisional” because it was not “prepared in order to
19 assist in the making of any decision,” and it was “not deliberative” because “it would expose only
20 a description of the legislation and quotes” from elected official, “not any decision-making
21 process” or “policy formulation”).

22 Indeed, the very notion that a public agency or official could withhold from public
23 disclosure such public-facing things as op-ed articles generated at public expense is both counter-
24 intuitive and offensive. The so-called “deliberative process” privilege does not shield
25 communications whose sole purpose is to make an officeholder look good and position himself
26 for his next campaign; there is an overwhelming public interest in knowing whether officeholders
27 are serving the public or only their own self-interest, and, in the Supreme Court’s words,
28 exposing “corruption, incompetence, inefficiency, prejudice and favoritism.” *Local 21*, 42 Cal.

1 4th at 333.

2 In addition, at least two documents are not exempt as preliminary drafts or deliberative
3 process because they were emails sent by Carl Guardino, a lobbyist with Bloom Energy, to Mayor
4 Liccardo. Olson Decl. ¶ 2 & Ex. A (documents 279, 287). They cannot qualify as preliminary
5 drafts, because that exemption applies only to “discussion within the agency of policy questions”
6 or “internal policy discussion,” not external communications. *Citizens for a Better Env't.*, 171 Cal.
7 App. 3d at 713, 717. For similar reasons, they cannot qualify as part of any agency “deliberative
8 process.” The public interest in disclosing them is overwhelming given that Guardino is “[o]ne of
9 Liccardo’s closest allies” and “raised more than \$500,000 to get Liccardo elected mayor in 2014.”
10 Nguyen Decl. ¶ 5. In addition, Guardino lobbied heavily for an exemption from the City’s natural
11 gas ban that benefitted his then-employer, Bloom Energy, and in fact essentially drafted the
12 exemption adopted by the City. Nguyen Decl. ¶ 6. The public has a strong interest in finding out
13 the extent to which one of Liccardo’s biggest donors and closest friends leveraged his relationship
14 with Liccardo. This is a quintessential example of the “favoritism” which “public access” to
15 records “makes it possible for members of the public” to expose. *Local 21*, 42 Cal. 4th at 333.⁶

16 Apart from the specific facts of this case, the public always has a compelling interest in
17 disclosure of communications between lobbyists and officials to assess whether officials entrusted
18 with the public good are subject to undue private influence. *CSU*, 90 Cal. App. 4th at 833 (noting
19 “disclosure allows the public to discern whether its resources have been spent for the benefit of
20 the community at large or only a limited few” and the “public should also be able to determine
21 whether any favoritism or advantage has been afforded certain individuals or entities”).

22 As a lobbyist, Guardino is subject to stringent disclosure requirements for his contacts
23 with city officials. San Jose Municipal Code §§ 12.12.420(G), 12.12.430; Olson Decl. Ex. B.
24 Indeed, it was from one such report that Petitioners previously identified emails the City had

25 _____
26 ⁶ The Supreme Court in the *Local 21* case considered newspaper articles about specific examples
27 of questionable public employee salaries in reaching its decision that named public employees’
28 salaries must be disclosed. 42 Cal. 4th at 334 (noting “numerous examples of articles published
throughout the state that used information concerning public employee salaries to illustrate
claimed nepotism, favoritism, or financial mismanagement in state and local government”).

1 failed to disclose. Giwargis Decl. ¶ 10. The City’s lobbying ordinance ensures “the highest ethical
2 work environment for the residents of the city and the city’s elected officials and employees,” and
3 “[i]n the spirit of open and transparent government, to allow the public to know and better
4 understand the relationship between its elected officials, lobbyists, and lobbyist's clients.” San
5 Jose Municipal Code § 12.12.010(B). Under the City’s own principles, there can be no “interest
6 served by not disclosing” a lobbyist’s email that “clearly outweighs the public interest served by
7 disclosure of the record.”⁷ Govt. Code § 7922.000.

8 A similar principle applies to document 37, Olson Decl. ¶ 2 & Ex. A, an email from a
9 “prominent developer,” C.J. Toeniskoetter, to Mayor Liccardo, about “St. Claire,” a “six-story
10 landmark structure” in downtown San Jose. Nguyen Decl. ¶ 8. There can be no interest in
11 concealment that overrides the compelling public interest in assessing whether the Mayor was
12 subject to undue influence from a “private powerful developer.” *Id.*

13 **D. RESPONDENTS CANNOT WITHHOLD “SETTLEMENT COMMUNICATIONS” ABOUT**
14 **A CASE THAT HAS ALREADY BEEN SETTLED.**

15 Document no. 2 is a November 30, 2020, email from Bert Robinson, an editor for the Bay
16 Area News Group, to Mayor Liccardo about “[s]ettlement discussions.” Respondents assert
17 “Evid. Code section 1152” as the basis for withholding the email. Olson Decl. ¶ 2 & Ex. A.
18 However, that statute establishes a rule of admissibility in a court proceeding, not an exemption
19 from disclosure in a PRA case. Evid. Code § 1152(a) (person’s settlement communication “is
20 inadmissible to prove his or her liability”). The statute “is directed at the admissibility of
21 evidence, not its discovery” or disclosure. *Volkswagen of America, Inc. v. Superior Court*, 139
22 Cal. App. 4th 1481, 1491 (2006). It is not one of the “provisions of the Evidence Code relating to
23 privilege” or another “federal or state law” making disclosure of public records “exempted or
24 prohibited.” Govt. Code § 7927.705.

25 _____
26 ⁷ In addition, document 287 appears merely to comment on a “Fareed Zakaria interview” and thus
27 bears no resemblance to the kind of policy discussion at issue for preliminary drafts or
28 deliberative process. It also relates to whether and “how a private citizen could influence the
policy positions, national relevance and perspective of San Jose’s top political leader.” Nguyen
Decl. ¶ 10.

1 Perhaps confidential “settlement communications” between parties to a pending lawsuit
2 may be exempt from disclosure under the pending litigation exception of Govt. Code § 7927.200,
3 but they “are subject to disclosure under the PRA once the litigation has ended.” *Board of*
4 *Trustees of California State University v. Superior Court*, 132 Cal. App. 4th 889, 899 (2005).
5 Respondents have not shown that Robinson and Liccardo had any “intent to keep such
6 correspondence confidential” or that it pertains to any pending litigation, and the fact that
7 Robinson is a newspaper editor belies any claim of confidentiality. *Id.* at 901. Indeed, it appears
8 the relevant litigation has settled. *See San Jose agrees to quicker police records releases after*
9 *media lawsuit*, [https://www.mercurynews.com/2020/12/26/san-jose-agrees-to-quicker-police-](https://www.mercurynews.com/2020/12/26/san-jose-agrees-to-quicker-police-records-releases-broader-force-definitions-to-settle-lawsuit/)
10 [records-releases-broader-force-definitions-to-settle-lawsuit/](https://www.mercurynews.com/2020/12/26/san-jose-agrees-to-quicker-police-records-releases-broader-force-definitions-to-settle-lawsuit/). Respondents are also withholding
11 purported “settlement discussions” in documents 56 and 57. Olson Decl. ¶ 2 & Ex. A. For similar
12 reasons, they have not carried their burden to conceal those records.

13 **E. RESPONDENTS HAVE NOT MET THEIR BURDEN TO PROVE ATTORNEY-CLIENT**
14 **PRIVILEGE APPLIES, ESPECIALLY FOR RECORDS NOT AUTHORED OR RECEIVED**
15 **BY LAWYERS.**

16 Respondents assert attorney-client privilege and attorney work product doctrine to
17 withhold various records. Olson Decl. ¶ 2, Ex. A. Those exemptions apply only to the extent
18 Respondents can prove the elements of each as to specific records. Govt. Code § 7927.705; Evid.
19 Code §§ 950–54; Code Civ. Proc. § 2018.030; *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 370
20 (1993); *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 833 (2000).

21 Not “all communications with attorneys are subject” to attorney-client privilege.
22 *Caldecott*, 243 Cal. App. 4th at 227. A “communication which was not privileged to begin with
23 may not be made so by subsequent delivery to the attorney.” *Doe 2 v. Superior Court*, 132 Cal.
24 App. 4th 1504, 1522 (2005). Respondents bear the burden to demonstrate that each record at issue
25 genuinely qualifies for attorney-client privilege or work product. It appears at least two
26 documents, 82 and 83, may not do so if they do not involve any active attorneys. Moreover, to the
27 extent Liccardo may have sought the services of counsel to enable or aid him to commit or plan to
28 commit the crime of destruction of public records, Govt. Code § 6200, no privilege would attach

1 to those communications because of the crime-fraud exception to the attorney-client privilege.
2 Evid. Code § 956.

3 **IV. RESPONDENTS MAY NOT INVOKE IN CAMERA REVIEW AS A**
4 **SUBSTITUTE FOR THEIR FAILURE TO CARRY THEIR BURDEN TO**
5 **JUSTIFY NONDISCLOSURE OF PUBLIC RECORDS.**

6 Unless in camera review is precluded for certain claims of privilege, the PRA allows the
7 Court to examine withheld records in camera, Govt. Code § 7923.105(a); Evid. Code § 915;
8 *Register Div. of Freedom Newspapers v. County of Orange*, 158 Cal. App. 3d 893, 901 (1984).
9 However, “a trial court’s prerogative to inspect documents in camera is not a substitute for the
10 government’s burden of proof, and should not be resorted to lightly.” *ACLU of N. Cal.*, 202 Cal.
11 App. 4th at 87 (citation and quotation marks omitted). If Petitioners “cannot effectively contest
12 the claim” that records are exempt because Respondents have not produced sufficient
13 information, “an in-camera examination by the court is least reliable and cannot be dispositive.”
14 *Id.* In that case, the agency has not carried its burden of proof, and “the court shall order”
15 Respondents “to make the record[s] public.” Govt. Code § 7923.110(a). If Respondents submit
16 additional information with their opposition, Petitioners reserve the right to request in camera
17 review as appropriate.

18 **V. THE COURT SHOULD GRANT DECLARATORY RELIEF REQUIRING THE**
19 **CITY TO COMPLY WITH GOVERNMENT CODE SECTION 34090’S TWO-**
20 **YEAR RETENTION REQUIREMENT AND REQUIRING OFFICIALS TO USE**
21 **OR COPY GOVERNMENT ACCOUNTS.**

22 The Petition seeks Declaratory Relief along with a Writ of Mandate seeking an order
23 compelling the disclosure of withheld records. Paragraph 9 of petitioners’ Prayer for Relief seeks
24 an order prohibiting the City from allowing employees to use only non-government accounts to
25 communicate about public business, *i.e.*, an order that employees must at a minimum copy
26 government accounts.

27 This request comes from the Supreme Court’s decision in *City of San Jose v. Superior*
28 *Court*, 2 Cal. 5th at 628. The Supreme Court stated, “agencies can adopt policies that will reduce
the likelihood of public records being held in employees’ private accounts... ‘Agencies are in the

1 best position to implement policies that fulfill their obligations’ under public records laws ‘yet
2 also preserve the privacy rights of their employees.’” *Id.* at 628 (quoting *Nissen v. Pierce County*,
3 183 Wash. 2d 863, 357 P.3d 45, 57 (2015)) .

4 Our Supreme Court in *City of San Jose* went on to explain, “agencies might require that
5 employees use or copy their government accounts for all communications touching on public
6 business. Federal agency employees must follow such procedures to ensure compliance with
7 analogous FOIA requests.” 2 Cal. 5th at 628 (citing 44 U.S.C. § 2911(a), which prohibits use of
8 personal electronic accounts for official business unless messages are copied or forwarded to an
9 official account).

10 The Supreme Court stopped short of a holding on the point, stating, “We do not hold that
11 any particular search method is required or necessarily adequate. We mention these alternatives to
12 offer guidance on remand and to explain why privacy concerns do not require categorical
13 exclusion of documents in personal accounts from CPRA’s ‘public records’ definition.” *Id.* at
14 629. But the Court’s explicit reference to a federal regulation prohibiting employees from using a
15 “personal” electronic account unless messages are copied or forwarded to an official government
16 account makes clear that the Supreme Court was offering more than an idle suggestion.

17 Moreover, this case epitomizes the dangers of officials such as Mayor Liccardo
18 communicating routinely on a “private” phone without copying a government account. As the
19 record shows, Liccardo’s production of emails and texts in response to a PRA request for emails
20 and texts on his personal account was woefully incomplete. Respondents provided only one text
21 message in response to the Personal Accounts Requests, and it is apparent from what
22 Respondents did produce that many additional text messages exist but were not produced. Price
23 Decl. ¶ 5 & Ex. C-H.

24 Liccardo is not the only public official who texts extensively on his private phone, nor is
25 he the only example of a public official whose texting leads to problems of missing texts. Peele
26 Decl. ¶¶ 5-6; Amaro Decl. ¶¶ 7-9; Wilson Decl. ¶¶ 5-8. Indeed, former Stockton City Manager
27 Dr. Kurt Wilson attests to the widespread use throughout the state of “private” phones to conduct
28 public business and to the problem of deletion of such texts from “private” phones. Wilson Decl.

1 ¶¶ 5-6. The fact that this is not just a San José problem but a statewide issue is an important
2 reason for this Court to grant declaratory relief ordering that San Jose officials “use or copy”
3 government accounts to conduct public business, and not delete them before two years have
4 expired, as required by Government Code section 34090(d). This Court should follow the
5 Supreme Court’s lead, *City of San Jose*, 2 Cal. 5th at 628, and require that San José officials who
6 use a private phone or account to communicate about public business copy their government
7 account, as federal officials must do and as the California Supreme Court encouraged.⁸

8 The absence of texts produced by Liccardo appears not to be an accident. Officials within
9 the Mayor’s office, including the Mayor’s chief of staff Jim Reed, consistently stressed to
10 employees within the office the importance of “good email hygiene,” which they explained meant
11 deleting emails every week. Giwargis Decl. ¶¶ 13-18. And it is well known both within
12 Liccardo’s office and to outsiders that the best way to communicate with him was via texts to his
13 “private” phone. Giwargis Decl. ¶¶ 22-24. The city has admitted that Liccardo was the only
14 person tasked with reviewing his texts. 9/26/22 Smith Decl. ¶ 6. The absence of text messages
15 from Liccardo in the records produced by Respondent suggests he routinely deleted his texts, or
16 is unlawfully withholding them, so as not to leave a trail of communications which might be
17 embarrassing or incriminating. *See also* Giwargis Decl. ¶ 25.

18 Deleting or destroying public records isn’t just a bad practice discouraged by the Supreme
19 Court in the *City of San Jose* case; it can be a crime. Government Code section 6200 states that a
20 public official who destroys certain records has committed a crime punishable by imprisonment
21 ranging from two to four years. *People v. Pearson*, 111 Cal. App. 2d 9 (1952).⁹

22 ⁸ As the Supreme Court explained in *City of San Jose*, federal employees and officials are
23 prohibited from using “private” phones to conduct public business unless messages are copied or
24 forwarded to an official account, and federal regulations require that agencies ensure official
25 email messages in employees’ personal accounts are preserved in the agency’s recordkeeping
26 system. 2 Cal. 5th at 628. Liccardo’s widespread deletion of texts, and the practice of others,
demonstrates the wisdom of that policy, and Dr. Wilson explains that copying government
accounts makes things easier for public officials too. Wilson Decl. ¶ 8.

27 ⁹ While there have not been many prosecutions of public officials under that statute, an aide to
28 one former San Bernardino County Supervisor, Bill Postmus, was charged with destroying public

1 Interestingly, Spotlight surveyed candidates for the City Council and Mayoralty in the
2 2022 election about whether they would commit to using or copying government accounts when
3 they communicate on public business, and the only candidates who responded—including Matt
4 Mahan, who was elected Mayor in November to succeed Liccardo—committed to using or
5 copying a government account with communications about public business. Giwargis Decl. ¶ 12.
6 An order from this court would simply require San José officials to do something they have
7 committed to do and something which the California Supreme Court has encouraged them to
8 do.¹⁰

9 A corollary of requiring that officials use or copy government account is a requirement
10 that public records not be deleted within two years. Government Code section 34090 explicitly
11 states, “This section does not authorize the destruction of ... (d) Records less than two years old.”
12 The section applies to city records. Indeed, the League of California Cities guide to the Public
13 Records Act cites section 34090(d) in stating, “Local agencies generally must retain public
14 records for a minimum of two years.” (Olson Declaration paragraph 6 and Exhibit D.) Section
15 34090(d)’s explicit command is echoed in the federal law which the California Supreme Court
16 cited approvingly in *City of San Jose* as “requiring that agencies ensure official email messages in
17 employees’ personal accounts are preserved in the agency’s recordkeeping system” and
18 “encouraging a policy that official emails be preserved in employees’ personal accounts as well.”
19 2 Cal. 5th at 628–29. And, as noted above, Government Code section 6200 provides for criminal
20 penalties for those who destroy certain records.

21 _____
22 records as part of a scandal involving Postmus’ drug use spanning his tenure as a supervisor and
23 later a county assessor. Olson Decl. ¶ 7 & Ex. E. Liccardo’s support for favorable treatment for
24 an individual, Carl Guardino, who had heavily supported Liccardo’s Mayoral campaign and later
25 obtained favorable treatment for his company, Bloom Energy, raises questions about whether
26 Liccardo may have destroyed public records to cover up what our Supreme Court has referred to
27 as “corruption, incompetence, inefficiency, prejudice and favoritism.” *Local 21*, 42 Cal. 4th at
28 333.

¹⁰ The practice of public officials using their “private” phones to communicate about public
business, and not retaining the records, is a matter of statewide importance, and unfortunately
Liccardo is not the only public official who engages in the practice, as Pulitzer Prize-winning
journalist Thomas Peele explains in a declaration filed herewith.

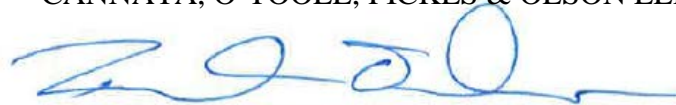
1 The apparent disappearance of Liccardo's texts dealing with public business, and his
2 apparent failure to copy government devices, underscore the importance of requiring that city
3 officials use or copy a government server with their communications, and that they not delete
4 records until at least two years have elapsed. As requested in paragraph 10 of petitioners' Prayer
5 for Relief, the Court should order that records less than two years old not be deleted, and that if
6 any such records were deleted within the two-year period, respondents violated Government Code
7 section 34090(d).

8 **VI. CONCLUSION**

9 The public has an overwhelming interest in knowing how public officials, including the
10 mayor of a large city, conduct public business, and the extent to which lobbyists and campaign
11 contributors call the shots. The City cannot meet its heavy burden of justifying the withholding
12 of the records identified above. Its claims of exemption have more to do with protecting
13 Liccardo's image than protecting any legitimate need for non-disclosure. Liccardo's habit of
14 texting and deleting his texts raises serious questions about his conduct that can only be answered
15 by disclosure of the records sought and a requirement that public officials use or copy a
16 government device and not delete records within two years. This Petition should be granted.

17 Dated: January 17, 2023

CANNATA, O'TOOLE, FICKES & OLSON LLP

18
19 

20 **KARL OLSON**
21 Attorneys for Petitioners
22 **SAN JOSÉ SPOTLIGHT and FIRST AMENDMENT**
23 **COALITION**

EXHIBIT A

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
1	7/28/2021	Email		Jim Reed	Sam Liccardo		Writing samples for job applicant	Privacy
2	11/30/2020	Email		Bert Robinson	Sam Liccardo		Settlement discussions	Evid. Code section 1152
3	1/10/2021	Email		Nathan Ho	Sam Liccardo	Mackenzie Mossing	Discussions re draft re commissions	Deliberative process privilege, draft
4	2/11/2021	Email		Scott Green	Rachel Davis	Jim Reed, Sam Liccardo	Draft notes re water rates	Deliberative process privilege
5	2/18/2021	Email		Scott Green	Sam Liccardo		Notes re big city mayors meeting	Deliberative process privilege, draft
6	11/24/2020	Email		Christopher Ratana	Sam Liccardo, Paul Pereira		Draft field data research	Deliberative process privilege
7	Undated	Document	X				Draft notes re gun harm research	Deliberative process privilege, draft
8	11/25/2020	Email		Rachel Davis	Sam Liccardo	Jim Reed	Draft press statement	Deliberative process privilege, draft
9	11/18/2020	Email		Kelly Kline	Sam Liccardo, Joel Devalcourt		Draft FBAR	Deliberative process privilege, draft
10	10/21/2019	Memo	X				Draft FBAR Memo	Deliberative process privilege, draft
11	2/10/2021	Email		Rachel Davis	Sam Liccardo, Jim Reed		Draft Trauma Training	Draft
12	2/5/2021	Letter	X*				Draft CSJ stimulus comment letter	Draft
13	9/21/2021	Email		Christopher Ratana	Sam Liccardo	Paul Pereira	Gun harm reduction strategy	Deliberative process privilege
14	Undated	Document	X				Draft gun harm reduction strategy	Deliberative process privilege, draft
15	11/22/2020	Email		Christopher Ratana	Sam Liccardo, Paul Pereira		Draft gun harm research	Deliberative process privilege, draft
16	Undated	Document	X				Draft gun harm reduction strategy	Deliberative process privilege, draft
17	1/29/2021	Email		Scott Green	Sam Liccardo, Nathan Ho		Notes re call on rental assistance	Deliberative process privilege
18	2/2/2021	Email		Scott Green	Sam Liccardo	Candace Le	Large urban school districts letter	Deliberative process privilege
20	2/9/2021	Email		Matt Mahan	Kelly Kline	Sam Liccardo, Jim Reed	Draft grocery hero pay memo	Deliberative process privilege
21	12/11/2020	Email		Mackenzie Mossing	Sam Liccardo		Draft letter re PG&E	Deliberative process privilege, draft
22	Undated	Letter	X				Draft letter re PG&E	Deliberative process privilege, draft
23	1/28/2021	Email		Julian Lake	Sam Liccardo		Notes for partnerships meeting	Deliberative process privilege, draft
24	2/8/2021	Email		Kelly Kline	Sam Liccardo	Joel Devalcourt	Mayor 1-1	Deliberative process privilege
25	Undated	Document	X				Mayor 1-1 notes	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
26	1/10/2021	Email		Kelly Kline	Nanci Klein	Sam Liccardo, Joel Devalcourt, Rosalynn Hughey, Kim Walesh, Leland Wilcox, Nora Frimann	North San Jose and Santa Clara	Deliberative process privilege, draft
27	11/19/2020	Email		Rachel Davis	Scott Green, Sam Liccardo	Stephanie Craig	Draft op-ed on building electrification	Deliberative process privilege, draft
28	12/6/2020	Email		Kip Harkness	Jordan Sun, Sam Liccardo	Clayton Garner	Privacy policy	Deliberative process privilege
29	12/1/2020	Email		Stephanie Craig	San Liccardo	Jim Reed, Rachel Davis	Draft statement Thanksgivingate	Deliberative process privilege, draft
30	12/18/2020	Email		Kaitlin Badagliacco	Sam Liccardo	Rachel Davis	Draft quotes	Deliberative process privilege, draft
31	12/8/2020	Email		Nathan Ho	Sam Liccardo	Mackenzie Mossing, Joel Devalcourt, Gabriel Young	Draft memo re JPA-issued bonds for moderate income housing	Deliberative process privilege, draft
32	12/11/2020	Memo	X	Sam Liccardo	City Council		Draft memo re JPA-issued bonds for moderate income housing	Deliberative process privilege, draft
33	2/8/2021	Email		Scott Green	Sam Liccardo		Draft letter re schools	Deliberative process privilege, draft
34	2/7/2021	Letter	X				Draft letter re schools reopening & vaccines	Deliberative process privilege, draft
35	2/6/2021	Email		Scott Green	Sam Liccardo		Draft letter re schools & vaccines	Deliberative process privilege, draft
36	12/26/2020	Email		Rachel Davis	Sam Liccardo	Paul Pereira, Jim Reed	Draft notes re litter pickup	Deliberative process privilege, draft
37	12/11/2020	Email		CJ Toeniskoetter	Sam Liccardo		St. Claire	Deliberative process privilege
38	12/19/2020	Email		Rachel Davis	Sam Liccardo	Stephanie Craig, Jim Reed, Esmeralda Bautista	Draft notes re state of the City	Deliberative process privilege, draft
40	12/16/2020	Email		Jordan Sun	Kelly Kline, Sam Liccardo	Jim Reed	Silicon Valley exodus	Deliberative process privilege
41	12/21/2020	Email		Sam Liccardo	Dave Sykes		Fallon statue	Deliberative process privilege

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
42	1/5/2021	Email		Kip Harkness	Sam Liccardo, Jordan Sun		CMO/EOC pitch	Deliberative process privilege
43	12/4/2020	Email		Henry Smith	Jim Reed, Sam Liccardo		Updated appointments link	Deliberative process privilege, draft
44	2/19/2021	Email		Scott Green	Sam Liccardo, Kat Wilson		Draft Council memo re recycling and garbage rates	Deliberative process privilege, draft
45	2/19/2021	Memo	X				Draft Council memo re residential recycling and garbage rates	Deliberative process privilege, draft
46	2/6/2021	Email		Scott Green	Sam Liccardo		Draft letter re vaccines	Deliberative process privilege, draft
47	Undated	Letter	X				Draft letter re vaccines to Governor from big city mayors	Deliberative process privilege, draft
48	2/8/2021	Email		Scott Green	Sam Liccardo		Draft letter re vaccines	Deliberative process privilege, draft
49	Undated	Letter	X				Draft letter re vaccines to Governor from big city mayors	Deliberative process privilege, draft
50	7/12/2021	Email		Kelly Kline	Sam Liccardo		Boston Properties notes	Deliberative process privilege
51	7/13/2021	Document	X				Boston Properties Almaden Blvd Notes	Deliberative process privilege, draft
52	7/9/2021	Email		Sam Liccardo	Nicholas Almeida, Jim Reed		Potential hire	Privacy
53	7/7/2021	Email		Nora Frimann	Sam Liccardo		Measure B litigation	Attorney-client privilege, attorney work product doctrine
54	12/23/2013	Document	X				Measure B ruling	Attorney-client privilege, attorney work product doctrine
55	Undated	Document	X*				Notes re San Jose Civic	Deliberative process privilege, draft
56	7/13/2021	Email		Kelly Kline	Sam Liccardo		St. James Park -- settlement discussions	Deliberative process privilege
57	7/13/2021	Document	X				St. James Park -- settlement discussions	Deliberative process privilege, draft, Evid. Code section 1152
58	7/17/2021	Email		Kelly Kline	Sam Liccardo		Adobe bridge ideas	Deliberative process privilege
59	7/17/2021	Email		Kelly Kline	Sam Liccardo	Joel Devalcourt	Flea market draft	Deliberative process privilege, draft
60	6/6/2021	Email		Dave Sykes	Sam Liccardo	Jennifer Maguire	Funding for arts organizations	Deliberative process privilege
61	6/10/2021	Email		Scott Green	Nora Frimann	Sam Liccardo	Assault weapons ban litigation	Attorney-client privilege, attorney work product doctrine

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
62	6/16/2021	Email		Sam Liccardo	Kelly Kline	Rachel Davis, Christina Guimera, Andy Lutzky	Berryessa flea market meeting notes	Deliberative process privilege, draft
63	6/16/2021	Email		Kelly Kline	Sam Liccardo		Flea market meeting	Deliberative process privilege, draft
64	Undated	Document	X				Flea market meeting - draft notes	Deliberative process privilege, draft
65	6/17/2021	Email		Stephanie Craig	Sam Liccardo	Andy Lutzky, Rachel Davis, Jim Reed, Scott Green	Discussion re op-ed	Deliberative process privilege
66	6/3/2021	Email		Scott Green	Sam Liccardo		SB 612 update	Deliberative process privilege
67	6/10/2021	Email		Sam Liccardo	Rachel Davis	Andy Lutzky	CNN op-ed edits	Deliberative process privilege, draft
68	Undated	Document	X				Draft op-ed with edits	Deliberative process privilege, draft
69	6/9/2021	Email		Jennifer Maguire	Sam Liccardo		Personnel matter -- City Manager	Privacy
70	Undated	Document	X				Personnel matter -- City Manager	Privacy
71	Undated	Document	X				Personnel matter -- City Manager	Privacy
72	Undated	Document	X				Personnel matter -- City Manager	Privacy
73	Undated	Document	X				Personnel matter -- City Manager	Privacy
74	6/24/2021	Email		Nora Frimann	Sam Liccardo		Litigation re eviction moratorium	Attorney-client privilege, attorney work product doctrine
75	6/3/2021	Email		Sam Liccardo	Allison Anderman	Christina Guimera, Paul Pereira	Draft gun harm reduction memo	Deliberative process privilege
76	6/28/2021	Email		Kelly Kline	Sam Liccardo		Draft memo re additional vendor negotiation	Deliberative process privilege, draft, attorney-client privilege, attorney work product doctrine
78	6/28/2021	Memo	X				Draft memo re additional vendor negotiation	Deliberative process privilege, draft, attorney-client privilege, attorney work product doctrine
79	6/13/2021	Email		Matt Mahan	Sam Liccardo, Jim Reed		Draft memo re June budget message	Deliberative process privilege, draft
80	6/26/2021	Email		Kelly Kline	Sam Liccardo		Draft memo re flea market	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
81	6/28/2021	Email		Kelly Kline	Sam Liccardo		Draft memo re flea market	Deliberative process privilege, draft
82	6/21/2021	Email		Kelly Kline	Joel Devalcourt, Sam Liccardo, Jim Reed		Flea market rezoning	Deliberative process privilege, attorney-client privilege, attorney work product doctrine
83	Undated	Document	X				Flea market rezoning	Deliberative process privilege, attorney-client privilege, attorney work product doctrine
84	6/18/2021	Email		Kelly Kline	Sam Liccardo		Flea market stats	Deliberative process privilege
85	Undated	Document	X				Flea market info	Deliberative process privilege, draft
86	6/15/2021	Email		Dolan Beckel	Sam Liccardo	Kip Harkness, Angel Rios, Neil Rufino, Jill Mariani	Revolution Foods	Deliberative process privilege, draft
87	Undated	Document	X	Scott (no last name)	John (no last name)		Draft letter re housing (City of Fresno)	Deliberative process privilege, draft
88	Undated	Document	X*				Draft re housing/homeless (City of Anaheim)	Deliberative process privilege, draft
89	3/27/2021	Document	X*				Update on state-funded projects to address homelessness (City of Bakersfield)	Deliberative process privilege, draft
90	Undated	Document	X*				Draft re housing/homeless (City of Long Beach)	Deliberative process privilege, draft
91	Undated	Document	X*				Draft re housing/homeless (City of Los Angeles)	Deliberative process privilege, draft
92	Undated	Document	X*				Draft re housing/homeless (City of Oakland)	Deliberative process privilege, draft
93	Undated	Document	X*				Draft re housing/homeless (City of Riverside)	Deliberative process privilege, draft
93.1	4/2/2021	Memo	X*				Housing/homeless funding (City of Sacramento)	Deliberative process privilege
94	Undated	Document	X*				City of San Diego homelessness strategies state funding overview	Deliberative process privilege, draft
95	Undated	Document	X*				State homelessness funding (San Francisco)	Deliberative process privilege, draft
96	Undated	Document	X*				Draft re housing/homeless (City of San Jose)	Deliberative process privilege, draft
97	Undated	Document	X*				Draft re housing/homeless (City of Santa Ana)	Deliberative process privilege, draft

Log of Documents Withheld

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
97.1	3/25/2002	Memo	X*				Homekey information request (City of Stockton)	Deliberative process privilege
98	3/19/2021	Document	X*				Riverside property summary report	Deliberative process privilege
99	6/21/2021	Email		Nora Frimann	Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, David Cohen, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley, Matt Mahan	Dave Sykes, Jennifer Maguire, Jennifer Schembri	Closed session (June 22, 2021)	Deliberative process privilege, attorney-client privilege, attorney work product doctrine, Gov. Code §54957.6
100	6/22/2021	Document	X				Closed session presentation	Attorney-client privilege, attorney work product doctrine, Gov. Code §54957.6, deliberative process privilege
101	6/11/2021	Email		Sandra Crawford	Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, David Cohen, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley, Matt Mahan		Closed session (June 15, 2021)	Deliberative process privilege, privacy, Gov. Code §54957(b)
102	6/11/2021	Document	X	David Sykes	Mayor and City Council		Personnel matter -- PBCE Director	Deliberative process privilege, privacy, Gov. Code §54957(b)

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
103	6/20/2021	Email		Jennifer Maguire	Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, David Cohen, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley, Matt Mahan	Nora Frimann	Personnel matter -- City Manager	Privacy, Gov. Code §54957(b)
104	Undated	Document	X				Personnel matter -- City Manager	Privacy, Gov. Code §54957(b)
105	6/17/2021	Email		Leslie Pollner	Sam Liccardo		Federal legislative strategy	Deliberative process privilege
106	6/2/2021	Email		Scott Green	Sam Liccardo, Isela Chaparro		Notes re homeless funding in 2021-22 budget	Deliberative process privilege
107	6/11/2021	Email		Amparo Sandoval	Nora Frimann, Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, David Cohen, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley, Matt Mahan	Dave Sykes, Jennifer Maguire, Vada Burrow, Veronica Martinez	Closed session agenda - June 15, 2021	Attorney-client privilege, attorney work product doctrine
108	6/11/2021	Document	X	Nora Frimann	Mayor and City Council		Closed session agenda -- June 15, 2021	Attorney-client privilege, attorney work product doctrine

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
109	6/18/2021	Email		Amparo Sandoval	Nora Frimann, Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, David Cohen, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley, Matt Mahan	Dave Sykes, Jennifer Maguire, Vada Burrow, Veronica Martinez	Closed session agenda - June 22, 2021	Attorney-client privilege, attorney work product doctrine
110	6/18/2021	Document	X	Nora Frimann	Mayor and City Council		Closed session agenda -- June 22, 2021	Attorney-client privilege, attorney work product doctrine
111	6/25/2021	Email		Amparo Sandoval	Nora Frimann, Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, David Cohen, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley, Matt Mahan	Dave Sykes, Jennifer Maguire, Vada Burrow, Veronica Martinez	Closed Session agenda - June 29, 2021	Attorney-client privilege, attorney work product doctrine
112	6/25/2021	Document	X	Nora Frimann	Mayor and City Council		Closed Session agenda -- June 29, 2021	Attorney-client privilege, attorney work product doctrine
113	6/4/2021	Email		Amparo Sandoval	Nora Frimann, Sam Liccardo, Chappie Jones, Sergio Jimenez, Raul Peralez, David Cohen, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley, Matt Mahan	Dave Sykes, Jennifer Maguire, Vada Burrow, Veronica Martinez	Closed Session agenda - June 8, 2021	Attorney-client privilege, attorney work product doctrine

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
114	6/4/2021	Document	X	Nora Frimann	Mayor and City Council		Closed Session agenda -- June 8, 2021	Attorney-client privilege, attorney work product doctrine
115	6/8/2021	Memo	X	Nora Frimann	Mayor and City Council		Closed session memo (Hernandez)	Privacy, attorney-client privilege, attorney work product doctrine
116	6/8/2021	Memo	X	Nora Frimann	Mayor and City Council		Closed session memo (DeGroen)	Privacy, attorney-client privilege, attorney work product doctrine
117	6/8/2021	Memo	X	Nora Frimann	Mayor and City Council		Closed session memo (Starkey)	Privacy, attorney-client privilege, attorney work product doctrine
118	6/9/2021	Email		Rhonda Hadnot	Sam Liccardo		Personnel matter	Privacy, deliberative process privilege
119	6/11/2021	Email		Scott Green	Rachel Davis; Sam Liccardo	Nora Frimann, Carolina Camarena	NHTSA preemption rule comment letter	Deliberative process privilege, draft, attorney-client privilege, attorney work product doctrine
120	6/18/2021	Email		Paul Pereira	Sam Liccardo		Reimagining community safety	Deliberative process privilege
121	6/17/2021	Memo	X	Vice Mayor Chappie Jones	Mayor and City Council		Reimagining community safety draft memo	Deliberative process privilege, draft
122	6/28/2021	Email		Christina Guimera	Sam Liccardo	Jim Reed, Andy Lutzky, Rachel Davis, Esmeralda Bautista, Gina Rodriguez, Paul Pereira	Draft re societal, governmental costs	Deliberative process privilege, draft
123	Undated	Document	X				Annual firearm injuries in San Jose	Deliberative process privilege, draft
124	Undated	Document	X				Gun liability insurance	Deliberative process privilege, draft
125	6/3/2021	Email		Jordan Sun	Sam Liccardo	Henry Smith	Format for Council memo	Deliberative process privilege
126	6/23/2021	Email		Sam Liccardo	Nora Frimann		Request for advice	Attorney-client privilege
127	6/22/2021	Email		Sam Liccardo	Nora Frimann		Request for advice re eviction moratorium	Attorney-client privilege
128	6/22/2021	Email		Sam Liccardo	Nora Frimann		Request for advice	Attorney-client privilege
129	6/13/2021	Email		Paul Pereira	Sam Liccardo		Straw purchase ordinance	Deliberative process privilege
130	6/21/2021	Email		Sam Liccardo	Toni Taber	Mackenzie Mossing, Nora Frimann, Leland Wilcox, Dave Sykes	Procedures for items on Rules agenda	Attorney-client privilege, attorney work product doctrine
131	6/2/2021	Email		Paul Pereira	Sam Liccardo		Draft for reimagining public safety memo	Deliberative process privilege

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
132	6/8/2021	Memo	X				Draft language for reimagining public safety memo	Deliberative process privilege, draft
133	6/16/2021	Email		Sam Liccardo	Nicholas Almeida		Resilience Corps - food boxing	Deliberative process privilege
134	6/24/2021	Email		Scott Green	Sam Liccardo		SB 612 targets	Deliberative process privilege
135	6/27/2021	Email		Nora Frimann	Sam Liccardo		Issue re motions	Attorney-client privilege, attorney work product doctrine
136	6/21/2021	Email		Leslie Pollner	Sam Liccardo		Call with Speaker Pelosi team	Deliberative process privilege
137	6/1/2021	Email		Nicholas Almeida	Sam Liccardo		Template for June message	Deliberative process privilege
138	5/25/2021	Memo	X	Councilmember Arenas	Mayor Liccardo		Budget document 96 - Children's Advocacy Center	Deliberative process privilege
139	5/21/2021	Document	X				Budget document cost estimate request -- Children's Advocacy Center	Deliberative process privilege
140	6/4/2021	Email		Scott Green	Sam Liccardo		Updated draft-- BART cooperative agreement	Deliberative process privilege
141	6/4/2021	Document	X	Councilmember Peralez, Mayor Liccardo	City Council		Memo re draft cooperative agreement with BART	Deliberative process privilege, draft
142	6/27/2021	Email		Kelly Kline	Sam Liccardo		Updated language for memo re flea market vendors	Deliberative process privilege, draft
143	6/4/2021	Email		Scott Green	Sam Liccardo		Draft updated BART cooperative agreement memo	Deliberative process privilege
144	6/4/2021	Memo	X	Councilmember Peralez, Mayor Liccardo	City Council		Draft BART cooperative agreement memo	Deliberative process privilege, draft
145	6/6/2021	Email		Nicholas Almeida	Sam Liccardo		Youth Development Office	Deliberative process privilege
146	5/21/2021	Email		Kelly Kline	Sam Liccardo		Memo re downtown west mixed-use plan	Deliberative process privilege
147	5/21/2021	Memo	X	Mayor Liccardo, Councilmember Davis, Councilmember Peralez	City Council		Memo re downtown west mixed-use plan	Deliberative process privilege, draft
148	5/10/2021	Email		Scott Green	Sam Liccardo, Rachel Davis		Bonta & big city mayors re hate crimes	Deliberative process privilege, draft
149	5/19/2021	Email		Kelly Kline	Sam Liccardo		Amended DSAP - DANG concerns	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
150	5/14/2021	Email		Johnny Phan	Sam Liccardo, Nanci Klein, Kelly Kline, Jessica Zenk	Alexandra Felton, Scott Green, Nora Frimann	Impact of pending legislation re Google	Attorney-client privilege, attorney work product doctrine
151	5/14/2021	Email		Johnny Phan	Nanci Klein, Cameron Day, Jessica Zenk	Sam Liccardo, Scott Green	Impact of pending legislation re Google	Attorney-client privilege, attorney work product doctrine
152	5/8/2021	Email		Nicholas Almeida	Sam Liccardo	Jim Reed, Rachel Davis	Average annualized salaries	Deliberative process privilege
153	5/8/2021	Document	X				Average annualized salaries	Deliberative process privilege
154	5/16/2021	Email		Kelly Kline	Sam Liccardo, Nicholas Almeida	Joel Devalcourt, Jim Reed	Budget notes	Deliberative process privilege, draft
155	5/13/2021	Email		Scott Green	Sam Liccardo		Draft letter re homeless funding	Deliberative process privilege
156	5/12/2021	Letter	X		Sen. Atkins, Sen. Skinner, AM Rendon, AM Ting		Draft letter re homeless funding	Deliberative process privilege, draft
157	5/15/2021	Email		Sam Liccardo	Rachel Davis	Esmeralda Bautista, Gina Rodriguez	Edits re Fallon statue	Deliberative process privilege, draft
158	4/30/2021	Email		Christina Guimera	Sam Liccardo	Kelly Kline, Mackenzie Mossing	Draft language for item 7.1 memo	Deliberative process privilege, draft
159	4/30/2021	Memo	X	Councilmember Davis	Mayor and City Council		Draft memo item 7.1	Deliberative process privilege, draft
160	5/20/2021	Email		Kelly Kline	Sam Liccardo		DSAP (Diridon Specific Area Plan) buffer	Deliberative process privilege
161	5/21/2021	Email		Kelly Kline	Sam Liccardo		Draft DSAP memo	Deliberative process privilege, draft
162	5/21/2021	Memo	X	Mayor Liccardo, Councilmember Perez, Councilmember Davis	Mayor and City Council		Draft Council memo item 10.2 (DSAP)	Deliberative process privilege, draft
163	5/22/2021	Email		Sam Liccardo	Esmeralda Bautista		Draft language re Fallon statue	Deliberative process privilege, draft
164	5/14/2021	Email		Scott Green	Sam Liccardo		AB 71	Deliberative process privilege

Log of Documents Withheld

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
165	5/20/2021	Email		Ragan Henninger	Rachel Davis, Nathan Ho, Mackenzie Mosing, Scott Green	Jeff Scott	Draft op ed re homeless funding	Deliberative process privilege
166	5/20/2021	Document	X				Draft op ed re homeless funding	Deliberative process privilege, draft
167	5/13/2021	Email		Paul Pereira	Sam Liccardo		Draft memo to Council re illegal dumping	Deliberative process privilege
168	Undated	Document	X				Draft memo to Council re illegal dumping	Deliberative process privilege, draft
169	5/19/2021	Email		Sam Liccardo	Dave Sykes, Nora Frimann	Paul Pereira	Legal issues re cleanups	Attorney-client privilege
170	5/21/2021	Email		Kelly Kline	Sam Liccardo		Draft notes re letter of intent framework re flea market vendors	Deliberative process privilege, draft
171	5/19/2021	Email		Christopher Ratana	Henry Smith, Sam Liccardo, Paul Pereira		Crime reports and May 25th draft deferral	Deliberative process privilege
172	Undated	Document	X				Draft deferral re item 4.1 (ordinance amending Title 16)	Deliberative process privilege, draft
173	5/24/2021	Email		Isela Chaparro	Jordan Sun, Sam Liccardo, Jim Reed		Personnel matter re candidate	Privacy
174	5/13/2021	Email		Jordan Sun	Sam Liccardo		Internet hotspots	Deliberative process privilege
175	5/10/2021	Email		Nathan Ho	Sam Liccardo		Notes re JPA moderate income housing bonds	Deliberative process privilege, draft
176	Undated	Document	X				Draft moderate housing term sheet	Deliberative process privilege, draft
177	Undated	Document	X				Rents Lynhaven, Silver, Centerra	Deliberative process privilege
178	5/10/2021	Email		Rachel Davis	Sam Liccardo	Jim Reed	Notes on SB 612/PCIA	Deliberative process privilege, draft
179	5/21/2021	Email		Sam Liccardo	Stephanie Craig, Rachel Davis	Scott Green, Lori Mitchell, Jim Reed	Op-ed on electricity rates	Deliberative process privilege
180	Undated	Document	X				Edits to op-ed re electricity rates & PCIA	Deliberative process privilege, draft
181	5/17/2021	Email		Sam Liccardo	Rachel Davis, Lori Mitchell, Stephanie Craig	Scott Green, Christina Guimera, Jim Reed	Op-ed on PCIA & SB 612	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
182	Undated	Document	X				Draft op-ed re electricity rates & PCIA	Deliberative process privilege, draft
183	5/14/2021	Email		Rachel Davis	Sam Liccardo	Jim Reed, Paul Pereira	PD reform tracker	Deliberative process privilege, draft
184	5/11/2021	Email		Sam Liccardo	Jim Reed, Chappie Jones	Jennifer Schembri, Dave Sykes	Proposed memo re holidays	Deliberative process privilege, draft
185	Undated	Document	X				Draft re holidays	Deliberative process privilege, draft
186	5/10/2021	Email		Paul Pereira	Sam Liccardo		Public safety/July 4/ordinance	Deliberative process privilege
187	5/12/2021	Email		Stephanie Craig	Sam Liccardo	Jordan Sun, Rachel Davis	Draft quote re broadband committee	Deliberative process privilege, draft
188	5/25/2021	Email		Kelly Kline	Sam Liccardo		San Jose Civic and Live Nation	Deliberative process privilege
190	Undated	Document	X				Notes re San Jose Civic and Live Nation	Deliberative process privilege, draft
191	5/18/2021	Email		Sam Liccardo	Mackenzie Mossing, Nathan Ho, Jim Reed		Sanctioned encampments	Deliberative process privilege, draft
192	Undated	Document	X				Draft language re sanctioned encampments May 2021	Deliberative process privilege, draft
193	5/13/2021	Email		Scott Green	Sam Liccardo, Nicholas Almeida		Notes for environment and transportation CSAs	Deliberative process privilege, draft
194	Undated	Document	X*				Chart re resource adequacy issues	Deliberative process privilege, draft
195	5/18/2021	Email		Ru Weerakoon	Sam Liccardo, Kelly Kline, Nanci Klein, Chris Burton		Silicon Valley and downtown development	Deliberative process privilege
196	Q1 2021	Map	X				Silicon Valley development map	Deliberative process privilege, draft
197	Q2 2021	Map	X				Downtown San Jose development	Deliberative process privilege, draft
198	Undated	Table	X				Silicon Valley market trends -- development activity	Deliberative process privilege, draft
199	Undated	Table	X				Silicon Valley office development pipeline	Deliberative process privilege, draft
200	5/28/2021	Email		Scott Green	Sam Liccardo		Draft letter re homeless funding	Deliberative process privilege, draft
201	Undated	Document	X				Draft legislation re housing with annotations	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
202	5/28/2021	Letter	X		Sen. Atkins, Sen. Skinner, AM Rendon, AM Ting		Draft letter re homeless funding	Deliberative process privilege, draft
203	5/5/2021	Email		Scott Green	Sam Liccardo, Eve		Draft mayors letter re inter-city rail funding	Deliberative process privilege
204	Undated	Letter	X		Rep. Pelosi, Rep. McCarthy, Sen. Schumer, Sen. McConnell		Draft letter re passenger rail funding	Deliberative process privilege, draft
205	5/12/2021	Email		Christopher Ratana	Sam Liccardo, Paul Pereira		Draft letter re Warm Springs grade crossings safety improvement project	Deliberative process privilege
206	Undated	Letter	X	Mayor Liccardo	Rep. Peter DeFazio		Draft letter re Warm Springs traffic safety improvement project	Deliberative process privilege, draft
207	5/25/2021	Email		Sam Liccardo	Nicholas Almeida, Magdalena Carrasco, Isela Chaparro, Jill Bourne, Candace Le, Angel Rios		Youth programs	Deliberative process privilege
208	4/22/2021	Email		Kelly Kline	Nanci Klein, Sam Liccardo, Rosalynn Hughey		Adobe bridge	Deliberative process privilege
209	4/28/2021	Email		Gina Rodriguez	Sam Liccardo	Rachel Davis, Jim Reed	Draft quote for big city mayor press release	Deliberative process privilege, draft
210	4/25/2021	Email		Gina Rodriguez	Sam Liccardo	Rachel Davis	Draft quote re Wells Fargo	Deliberative process privilege, draft
211	4/16/2021	Email		Sam Liccardo	John Ristow, Jessica Zenk, Scott Green	Dave Sykes, Jennifer Maguire	Bikeshare's future	Deliberative process privilege
212	3/29/2021	Email		Esmeralda Bautista	Sam Liccardo	Rachel Davis	Budget social media graphics	Deliberative process privilege, draft
213	4/26/2021	Email		Scott Green	Sam Liccardo		SB 612 status	Deliberative process privilege
214	4/23/2021	Email		Jim Reed	Sam Liccardo		Draft memo re Charter Review Commission	Deliberative process privilege
215	Undated	Document	X				Draft memo re Charter Review Commission	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
216	4/28/2021	Email		Kelly Kline	Sam Liccardo, Jim Reed, Mackenzie Mossing, Rhonda Hadnot, Henry Smith		Follow-up information on 3.1 and community recovery notes	Deliberative process privilege, draft
217	4/27/2021	Email		Sam Liccardo	Jim Reed, Henry Smith, Paul Meyere		Finalizing draft memo re Charter Review Commission	Deliberative process privilege
218	Undated	Document	X				Draft memo re Charter Review Commission funding	Deliberative process privilege, draft
219	4/21/2021	Email		Scott Green	Sam Liccardo, Kelly Kline		Draft budget advocacy letter re equitable economic recovery	Deliberative process privilege
220	9/13/2021	Letter	X		AM Skinner, AM Ting		Draft budget advocacy letter re equitable economic recovery	Deliberative process privilege, draft
221	5/1/2021	Email		Jordan Sun	Sam Liccardo		MOTI	Deliberative process privilege
222	4/26/2021	Email		Jordan Sun	Sam Liccardo		MOTI	Deliberative process privilege
223	4/20/2021	Email		Rachel Davis	Sam Liccardo		Police reform tracker	Deliberative process privilege, draft
224	4/26/2021	Email		Sam Liccardo	Sam Liccardo		Draft quote re Sharks	Deliberative process privilege, draft
225	4/27/2021	Email		Henry Smith	Rhonda Hadnot, Sam Liccardo		Draft Ramadan letter to SBIA	Deliberative process privilege
226	4/26/2021	Letter	X	Sam Liccardo	Iman Tahir Anwar		Draft Ramadan letter	Deliberative process privilege, draft
227	4/22/2021	Email		Sam Liccardo	Scott Green, Nicholas Almeida	Jim Reed	Resilience Corps funding status	Deliberative process privilege
228	4/26/2021	Email		Kelly Kline	Sam Liccardo, Rachel Davis, Jim Reed		Revised talking points	Deliberative process privilege
229	4/26/2021	Document	X				Sharks talking points	Deliberative process privilege, draft
230	5/4/2021	Email		Lori Mitchell	Sam Liccardo	Scott Green, Kari Smith	SB 612	Deliberative process privilege
231	4/30/2021	Document	X	CalCCA			SB 612 communications	Deliberative process privilege
232	Undated	Document	X				SB 612 summary	Deliberative process privilege, draft
233	4/26/2021	Email		Kelly Kline	Sam Liccardo, Jim Reed, Rachel Davis		Revised talking points	Deliberative process privilege
234	4/26/2021	Document	X				Edits to Sharks talking points	Deliberative process privilege, draft
235	4/26/2021	Email		Kelly Kline	Sam Liccardo, Jim Reed, Rachel Davis		Talking points	Deliberative process privilege
236	4/26/2021	Document	X				Sharks talking points	Deliberative process privilege, draft
237	5/5/2021	Email		Rosalynn Hughey	Sam Liccardo		Technology improvements in development services	Deliberative process privilege

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
238	Undated	Document	X				Draft development services transformation	Deliberative process privilege, draft
239	4/26/2021	Email		Sam Liccardo	Rachel Davis, Kelly Kline, Jim Reed		Updated Google project document	Deliberative process privilege, draft
240	Undated	Document	X				Redlined Google project document	Deliberative process privilege, draft
241	6/29/2020	Email		Nathan Ho	Sam Liccardo, Henry Smith		Notes re loan to Habitat for Humanity re 101 South Jackson	Deliberative process privilege, draft
242	4/14/2021	Email		Gina Rodriguez	Sam Liccardo	Rachel Davis	Draft quote re ServiceNow, SJ Aspires	Deliberative process privilege, draft
243	4/13/2021	Email		Kelly Kline	Sam Liccardo	Rhonda Hadnot	Draft San Jose Arts Advocates letter	Deliberative process privilege
244	3/5/2021	Letter	X	Sam Liccardo	San Jose Arts Advocates		Draft San Jose Arts Advocates letter	Deliberative process privilege, draft
245	4/7/2021	Email		Kelly Kline	Shelley Opsal, Sam Liccardo		Briefings with Western Digital & PayPal	Deliberative process privilege
246	Undated	Document	X				Draft PayPay and Western Digital briefing sheets	Deliberative process privilege
247	1/16/2021	Email		Marianne Salas	Sam Liccardo		Project involving Habitat for Humanity	Deliberative process privilege
248	4/7/2021	Email		Joel Devalcourt	Sam Liccardo		Encroachment memo draft	Deliberative process privilege, draft
249	4/9/2021	Memo	X	Mayor Liccardo	City Council		Draft encroachment memo	Deliberative process privilege, draft
250	4/13/2021	Email		Kelly Kline	Sam Liccardo	Joel Devalcourt	Encroachment memo	Deliberative process privilege
251	4/12/2021	Email		Scott Green	Isela Chaparro	Sam Liccardo	Draft notes for City Council Study Session - updates on SB 1383, residential recycling contamination, & residential recycling and garbage rates	Deliberative process privilege, draft
251.1	4/14/2021	Email		Sam Liccardo	Rhonda Hadnot		Transportation briefing	Deliberative process privilege
252	4/14/2021	Document	X				Transportation policy briefing	Deliberative process privilege, draft
253	4/8/2021	Email		Scott Green	Sam Liccardo		Homekey pipeline draft	Deliberative process privilege
254	Undated	Document	X				Immediate homekey pipeline for big cities draft	Deliberative process privilege, draft
255	4/7/2021	Email		Scott Green	Sam Liccardo		Homekey pipeline data	Deliberative process privilege
256	Undated	Table	X				Draft homekey pipeline data	Deliberative process privilege, draft
257	4/9/2021	Email		Scott Green	Sam Liccardo		Infrastructure letter	Deliberative process privilege

Log of Documents Withheld

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
258	4/6/2021	Letter	X		Sen. Feinstein, Sen. Padilla, Rep. Lofgren, Rep. Eshoo, Rep. Khanna		Draft federal infrastructure letter	Deliberative process privilege, draft
259	4/12/2021	Email		Sam Liccardo	Nora Frimann, Nathan Ho, Jacky Morales-Ferrand, Mackenzie Mossing, Rachel VanderVeen		Displacement protections under rent control ordinance	Deliberative process privilege, attorney-client privilege
260	4/9/2021	Email		Sam Liccardo	Scott Green, Jim Reed	Isela Chaparro, Emily Lee, Abigail Wilcox, Bena Chang	Mobilizing a regional effort for HSR advocacy	Deliberative process privilege
261	4/18/2021	Email		Kelly Kline	Sam Liccardo	Joel Devalcourt, Rachel Davis, Gina Rodriguez	Notes from roundtable re parking	Deliberative process privilege, draft
262	6/17/2020	Email		Rachel Davis	Sam Liccardo	Nathan Ho, Jim Reed	Draft quote re emergency housing	Deliberative process privilege, draft
263	4/14/2021	Email		Rachel Davis	Sam Liccardo	Candace Le	Draft quote re San Jose Aspires	Deliberative process privilege, draft
264	4/13/2021	Email		Scott Green	Sam Liccardo, Nicholas Almeida		Resilience Corps	Deliberative process privilege
265	Undated	Document	X				Resiliency Corps initial draft concept	Deliberative process privilege, draft
266	4/7/2021	Email		Scott Green	Sam Liccardo		Revised budget letter	Deliberative process privilege
267	4/7/2021	Letter	X	Big City Mayors	Sen. Atkins, Sen. Skinner, AM Rendon, AM Ting		Draft state budget letter re homelessness	Deliberative process privilege, draft
268	4/19/2021	Email		Sam Liccardo	Kelly Kline, Jim Reed		Draft questions for Planning Director selection	Deliberative process privilege, draft
269	4/12/2021	Email		Kelly Kline	Nanci Klein	Sam Liccardo, Chris Burton, Joel Devalcourt	Supermicro	Deliberative process privilege

Log of Documents Withheld

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
270	4/9/2021	Email		Sam Liccardo	Tau Leng	Charles Liang, Joel Devalcourt, Kelly Kline	Updates re Supermicro expansion	Deliberative process privilege
271	3/23/2021	Email		Paul Pereira	Sam Liccardo, Henry Smith		3/23 agenda item 3.4 -- semi-annual open audit recommendations	Deliberative process privilege
272	3/25/2021	Email		Nathan Ho	Sam Liccardo		Notes for BayHAC regulatory committee meeting	Deliberative process privilege, draft
273	3/17/2021	Email		Candace Le	Sam Liccardo		AB 288 -- request to sign letter of support	Deliberative process privilege
274	Undated	Document	X*				8 N. Almaden briefing notes	Deliberative process privilege, draft
275	9/4/2020	Document	X*	Matt Watson	Yen Bui		Carneghi Nakasako appraisal - N. Almaden Blvd.	Deliberative process privilege
276	3/23/2021	Email		Kelly Kline	Sam Liccardo	Joel Devalcourt	Berryessa flea market at Planning Commission	Deliberative process privilege, draft
277	3/24/2021	Email		Bena Chang	Scott Green, Sam Liccardo		Community funding project proposals	Deliberative process privilege, draft
278	3/24/2021	Table	X				Summary of community project proposals	Deliberative process privilege
279	3/1/2021	Email		Carl Guardino	Sam Liccardo		Hydrogen microgrid	Deliberative process privilege
280	Undated	Document	X				Hydrogen-powered microgrid	Deliberative process privilege
281	3/1/2021	Email		Kelly Kline	Sam Liccardo		Downtown recovery plan	Deliberative process privilege
282	3/1/2021	Document	X				Downtown recovery draft	Deliberative process privilege, draft
283	3/25/2021	Email		Henry Smith	Sam Liccardo, Jim Reed		Draft memo re effective discussion and debate	Deliberative process privilege
284	3/24/2021	Memo	X	Mayor Liccardo	City Council		Draft memo re effective discussion and debate	Draft
285	3/17/2021	Email		Henry Smith	Scott Green, Sam Liccardo	Nicholas Almeida	Draft re Resilience Corps	Deliberative process privilege, draft
286	3/16/2021	Email		Jim Reed	Sam Liccardo, Paul Pereira, Rachel Davis		Encampments near school sites	Deliberative process privilege
287	3/14/2021	Email		Carl Guardino	Sam Liccardo, Jim Reed		Fareed Zakaria interview	Deliberative process privilege, draft
288	3/29/2021	Email		Kat Wilson	Sam Liccardo, Scott Green		Potential audit of SJWC	Deliberative process privilege
289	4/5/2021	Email		Rachel Davis	Sam Liccardo	Jim Reed	Draft SAAG slides	Deliberative process privilege

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
290	4/5/2021	Slides	X				Draft Diridon Station Area Advisory Group slides	Deliberative process privilege, draft, attorney-client privilege, attorney work product doctrine
291	3/31/2021	Email		Nicholas Almeida	Sam Liccardo		Retirement Stakeholder Solutions Working Group report	Deliberative process privilege
292	Undated	Memo	X	Retirement Stakeholder Solutions Working Group Final Report	Mayor and City Council		Retirement Stakeholder Solutions Working Group, final report -- draft	Deliberative process privilege, draft
293	3/15/2021	Email		Nora Frimann	Sam Liccardo		Hazard pay ordinance	Deliberative process privilege, attorney-client privilege, attorney work product doctrine
294	3/10/2021	Email		Stephanie Craig	Scott Green	Sam Liccardo, Rachel Davis, Jim Reed	Homeless funding op-ed	Deliberative process privilege
295	3/4/2021	Email		Kelly Kline	Sam Liccardo	Rhonda Hadnot	Draft San Jose Arts Advocates letter	Deliberative process privilege
296	3/5/2021	Letter	X	Sam Liccardo	San Jose Arts Advocates		Draft San Jose Arts Advocates letter	Deliberative process privilege, draft
297	3/5/2021	Email		Kelly Kline	Sam Liccardo, Jim Reed		Recommended fund structure	Deliberative process privilege, draft
298	3/29/2021	Email		Sam Liccardo	Nathan Ho	Kelly Kline, Jim Reed, Rachel Davis, Mackenzie Mossing, Joel Devalcourt	North San Jose talking points	Deliberative process privilege, draft
299	4/2/2021	Email		Jim Reed	Sam Liccardo, Rachel Davis		Questions re Bloom Energy	Deliberative process privilege, draft
300	3/16/2021	Email		Rachel Davis	Sam Liccardo	Jim Reed	Police Chief announcement	Deliberative process privilege, draft, privacy
301	3/11/2021	Email		Gina Rodriguez	Sam Liccardo	Rachel Davis, Jim Reed	Draft quote re SJPD	Deliberative process privilege, draft
302	3/4/2021	Email		Kelly Kline	Sam Liccardo	Rhonda Hadnot, Jim Reed	Response to Arts Advocacy letter	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
303	3/30/2021	Email		Nathan Ho	Sam Liccardo	Kelly Kline, Jim Reed, Rachel Davis	Edited North San Jose document	Deliberative process privilege, draft
304	3/23/2021	Email		Kelly Kline	Jim Reed, Sam Liccardo		Updated document	Deliberative process privilege
305	Undated	Document	X				Fund administration, Community Advisory Committee, notes	Deliberative process privilege, draft
306	3/3/2021	Email		Nathan Ho	Sam Liccardo	Mackenzie Mossing	Guadalupe transitional housing, Pro Forma	Deliberative process privilege, draft
307	3/25/2021	Email		Scott Green	Sam Liccardo		Draft taxi memo	Deliberative process privilege, draft
308	Undated	Memo	X				Draft taxi memo	Deliberative process privilege, draft
309	3/22/2021	Email		Scott Green	Sam Liccardo		Updated draft re SJWC water rate increases	Deliberative process privilege
310	3/23/2021	Memo	X	Councilmember Mahan	City Council		Draft memo re SJWC water rate increases	Deliberative process privilege, draft
311	6/17/2021	Email		Kelly Kline	Sam Liccardo	Joel Devalcourt	Draft memo re flea market	Deliberative process privilege, draft
312	3/23/2021	Email		Kelly Kline	Sam Liccardo	Joel Devalcourt	Berryessa flea market at Planning Commission	Deliberative process privilege, draft
313	6/16/2021	Email		Sam Liccardo	Kelly Kline	Rachel Davis, Christina Guimera, Andy Lutzky	Berryessa flea market meeting notes	Deliberative process privilege, draft
314	6/16/2021	Email		Kelly Kline	Sam Liccardo		Draft Berryessa materials	Deliberative process privilege
315	Undated	Document	X				Draft notes for flea market meeting	Deliberative process privilege, draft
316	6/16/2021	Email		Sam Liccardo	Kelly Kline		Berryessa materials	Deliberative process privilege
317	6/28/2021	Email		Kelly Kline	Sam Liccardo		Draft memo from Cohen	Deliberative process privilege, draft
319	6/28/2021	Memo	X	Councilmember Cohen	Mayor and City Council		Draft memo re status of additional vendor negotiation	Deliberative process privilege, draft
320	6/26/2021	Email		Kelly Kline	Sam Liccardo		Draft language for memo re flea market vendors	Deliberative process privilege, draft
321	6/28/2021	Email		Kelly Kline	Sam Liccardo		Draft language for memo re flea market vendors	Deliberative process privilege, draft
322	5/21/2021	Email		Kelly Kline	Sam Liccardo		Draft letter of intent framework re flea market vendors	Deliberative process privilege, draft
323	4/2/2021	Email		Jim Reed	Sam Liccardo, Rachel Davis		Questions re Bloom Energy (Note: this is the same email as no. 299)	Deliberative process privilege, draft

No.	Date	File Type	Attachment	From	To	Copy to	Subject	Basis for Withholding
324	3/19/2021	Email		Sam Liccardo	Stephanie Craig	Scott Green, Rachel Davis, Jim Reed, Nathan Ho	Draft op-ed re Resilience Corps	Deliberative process privilege, draft
325	3/19/2021	Document	X				Draft op ed re Resilience Corps	Deliberative process privilege, draft
326	6/27/2021	Email		Kelly Kline	Sam Liccardo		Updated language for memo re flea market vendors	Deliberative process privilege, draft

EXHIBIT B

DISPOSITION OF FORMER LAW

Note. This table shows the proposed disposition of the following provisions of the California Public Records Act (Gov't Code §§ 6250-6276.48), as that law will exist on January 1, 2020. Unless otherwise indicated, all statutory references are to the Government Code.

Existing Provision(s)	Proposed Provision(s)
6250-6276.48	7920.000-7930.215
6250	7921.000
6251	7920.000
6252(a)	7920.510
6252(b)	7920.515
6252(c)	7920.520
6252(d)	7920.525(a)
6252(e)	7920.530
6252(f)	7920.540
6252(g)	7920.545
6252.5	7921.305
6252.6	7927.420
6252.7	7921.310
6253(a)	7922.525
6253(a) 1st sent	7922.525(a)
6253(a) 2d sent	7922.525(b)
6253(b)	7922.530(a)
6253(c)	7922.535
6253(c) 1st, 4th sent	7922.535(a)
6253(c) 2d, 3d sent	7922.535(b)
6253(c) 5th sent	7922.535(c)
6253(d) 1st sent	7922.500
6253(d)(1)	7922.530(b)
6253(d)(2)	7922.530(c)
6253(d)(3)	7922.540(b)
6253(e)	7922.505
6253(f) 1st sent	7922.545(a)
6253(f) 2d sent	7922.545(b)
6253.1(a)-(c)	7922.600
6253.1(d)	7922.605
6253.2	7926.300
6253.21	7927.305
6253.3	7921.005

Existing Provision(s)	Proposed Provision(s)
6253.31	7928.700
6253.4(a) 1st ¶	7922.630
6253.4(a) 2d ¶	7922.635
6253.4(b).....	7922.640
6253.5	7924.100-7924.110
6253.5(a) 1st sent.....	7924.110(a)-(b)
6253.5(a) 2d sent	7924.110(c)
6253.5(b).....	7924.110(d)
6253.5(c).....	7924.100
6253.5(d).....	7924.105
6253.6	7924.005
6253.8(a)-(e)	7924.900
6253.8(f)	not cont'd
6253.9	7922.570-7922.580
6253.9 intro cl 1st part.....	7922.570(a)
6253.9 intro cl 2d part.....	7922.570(b)
6253.9(a)(1)	7922.570(b)
6253.9(a)(2) 1st sent	7922.570(b)
6253.9(a)(2) 2d sent.....	7922.575(a)
6253.9(b).....	7922.575(b)
6253.9(c).....	7922.580(a)
6253.9(d).....	7922.570(c)
6253.9(e)	7922.580(b)
6253.9(f)	7922.580(c)
6253.9(g).....	7922.580(d)
6253.10	7922.680
6254(a)	7927.500
6254(b).....	7927.200
6254(c)	7927.700
6254(d).....	7929.000
6254(e)	7927.300
6254(f)	7923.600-7923.625
6254(f) 1st sent	7923.600(a)
6254(f) 2d sent	7923.605(a)
6254(f) 3d sent	7923.605(b)
6254(f) 2d ¶	7923.600(b)
6254(f) 3d ¶	7923.610, 7923.615(a), 7923.620(a)
6254(f)(1).....	7923.610
6254(f)(2)(A) 1st sent	7923.615(a)
6254(f)(2)(A) 2d, 3d sent.....	7923.615(b)
6254(f)(2)(B)	7923.615(c)

Existing Provision(s)	Proposed Provision(s)
6254(f)(3) 1st, 2d sent.....	7923.620(a)
6254(f)(3) 3d sent	7923.620(b)
6254(f)(3) 4th sent	7923.620(c)
6254(f)(4).....	7923.625
6254(g).....	7929.605
6254(h).....	7928.705
6254(i).....	7925.000
6254(j).....	7927.100
6254(k).....	7927.705
6254 (l)	7928.000
6254(m).....	7928.100
6254(n).....	7925.005
6254(o).....	7924.505
6254(p)(1)	7928.405
6254(p)(2)	7928.410
6254(q)(1)	7926.220(a)
6254(q)(2)	7926.220(b)
6254(q)(3)	7926.220(c)
6254(q)(4)	7926.220(d)
6254(r)	7927.000
6254(s)	7926.000
6254(t).....	7926.210
6254(u)(1)	7923.800
6254(u)(2)-(3)	7923.805
6254(v)(1)	7926.225(a)
6254(v)(2)	7926.225(b)
6254(v)(3)	7926.225(c)
6254(v)(4)	7926.225(d)
6254(w).....	7926.235
6254(w)(1)	7926.235(a)
6254(w)(2)	7926.235(b)
6254(w)(3)	7926.235(c)
6254(x).....	7925.010
6254(y)(1)	7926.230(a)
6254(y)(2)	7926.230(b)
6254(y)(3)	7926.230(c)
6254(y)(4)	7926.230(d)
6254(y)(5)	7926.230(e)
6254(z).....	7923.700
6254(aa)	7929.200
6254(ab).....	7929.205
6254(ab) 1st sent.....	7929.205(b)

Existing Provision(s)	Proposed Provision(s)
6254(ab) 2d sent	7929.205(a)
6254(ab) 3d sent	7929.205(c)
6254(ac)	7926.100
6254(ad)	7929.400-7929.430
6254(ad)(1)	7929.400
6254(ad)(2)	7929.405
6254(ad)(3)	7929.410
6254(ad)(4)	7929.415
6254(ad)(5)	7929.420
6254(ad)(6)	7929.425
6254(ad)(7)	7929.430
6254 next-to-last ¶	7921.500
6254 last ¶ (unlabeled)	7926.200
6254.1(a)	7927.415
6254.1(b)	7927.405
6254.1(c)	7929.600
6254.2	7924.300-7924.335
6254.2(a)	7924.300
6254.2(b)	7924.305(a)
6254.2(c)	7924.305(b)
6254.2(d)	7924.305(c)
6254.2(e)	7924.305(d)
6254.2(f)	7924.305(f)
6254.2(g)	7924.335
6254.2(h)	7924.310(a)-(b)
6254.2(i)	7924.315
6254.2(j)	7924.320
6254.2(k)	7924.310(c)
6254.2(l)	7924.330
6254.2(m)	7924.305(e)
6254.2(n)	7924.325
6254.3	7928.300
6254.4	7924.000
6254.4.5	7923.750
6254.5	7921.505
6254.5 1st sent	7921.505(b)
6254.5 2d sent	7921.505(a)
6254.5(a)-(i)	7921.505(c)
6254.6	7927.600
6254.7 (except (c))	7924.510
6254.7(a)	7924.510(a)
6254.7(b)	7924.510(b)

Existing Provision(s)	Proposed Provision(s)
6254.7(c)	7924.700
6254.7(d) 1st sent.....	7924.510(c)
6254.7(d) 2d sent	7924.510(f)
6254.7(e)	7924.510(d)
6254.7(f)	7924.510(e)
6254.8	7928.400
6254.9	7922.585
6254.10	7927.005
6254.11	7924.500
6254.12	7929.005
6254.13	7929.610
6254.14(a).....	7926.215
6254.14(a)(1)	7926.215(a)
6254.14(a)(2)	7926.215(b)
6254.14(a)(3)	7926.215(c)
6254.14(a)(4)	7926.215(d)
6254.14(a)(5)	7926.215(e)
6254.14(b).....	7926.220(d), 7926.225(d), 7926.230(d)
6254.15	7927.605
6254.16	7927.410
6254.17	7923.755
6254.18	7926.400-7926.430
6254.18(a).....	7926.405
6254.18(b).....	7926.400
6254.18(b)(1)	7926.400(a)
6254.18(b)(2)	7926.400(b)
6254.18(b)(3)	7926.400(c)
6254.18(b)(4)	7926.400(d)
6254.18(c).....	7926.410
6254.18(d).....	7926.415
6254.18(d) 1st sent.....	7926.415(a)
6254.18(d) 2d sent	7926.415(c)
6254.18(d) 3d sent	7926.415(b)
6254.18(e).....	7926.420
6254.18(f)	7926.425
6254.18(g).....	7926.430
6254.19	7929.210
6254.20	7927.400
6254.21 (except (f))	7928.200-7928.230
6254.21(a).....	7928.205
6254.21(b).....	7928.210

Existing Provision(s)	Proposed Provision(s)
6254.21(c)	7928.215-7928.225
6254.21(c)(1)	7928.215
6254.21(c)(1)(A)	7928.215(b)
6254.21(c)(1)(B)	7928.215(c)
6254.21(c)(1)(C)	7928.215(d)
6254.21(c)(1)(D)	7928.215(e)
6254.21(c)(1)(E)	7928.215(a)
6254.21(c)(2)	7928.225
6254.21(c)(3)	7928.220
6254.21(d)	7928.230
6254.21(e)	7928.200(b)
6254.21(f)	7920.500
6254.21(g)	7928.200(a)
6254.22	7926.205
6254.22 1st sent	7926.205(a)
6254.22 2d sent	7926.205(b)
6254.22 3d & 4th sent	7926.205(c)
6254.23	7929.215
6254.24	7920.535
6254.25	7927.205
6254.26	7928.710
6254.26(a)	7928.710(b)
6254.26(b)	7928.710(c)
6254.26(c)	7928.710(a)
6254.27	7922.205
6254.28	7922.210
6254.29	7922.200
6254.30	7923.655
6254.30 1st sent	7923.655(a)
6254.30 2d sent	7923.655(b)
6254.33	7928.715
6254.35	7929.010
6255(a)	7922.000
6255(b)	7922.540(a)
6257.5	7921.300
6258 1st sent	7923.000
6258 2d sent	7923.005
6259 (except (c) 1st sent intro cl)	7923.100-
.....	7923.500
6259(a) 1st sent	7923.100
6259(a) 2d sent	7923.105
6259(b)	7923.110

Existing Provision(s)	Proposed Provision(s)
6259(c) 1st sent intro cl	not cont'd
6259(c) remainder	7923.500
6259(d)	7923.115(a)-(b)
6259(e)	7923.115(c)
6260	7920.200
6261	7928.720
6262	7923.650
6263	7921.700
6264	7921.705
6265	7921.710
6267	7927.105
6268	7928.005, 7928.010
6268(a)	7928.005
6268(b)	7928.010(a)
6268(c)	7928.010(b)
6268.5	7928.015
6270	7921.010
6270.5	7922.700-7922.725
6270.5(a) 1st sent	7922.710(a)
6270.5(a) 2d sent	7922.715(a)
6270.5(a) 3d sent	7922.715(b)
6270.5(a) 4th sent	7922.720(a), (b)
6270.5(b)	7922.725(a)
6270.5(c)(1)	7922.700(a)
6270.5(c)(2)	7922.705
6270.5(c)(3)	7922.700(b)
6270.5(d)	7922.725(b)
6270.5(e)	7922.720(c)
6270.5(f)	7922.710(b)
6270.6	7928.800
6270.7	7926.500
6275-6276.48	7930.000-7930.215
6275	7930.000
6276	7930.005
6276.01	7930.100
6276.02	7930.105
6276.04	7930.110
6276.06	7930.115
6276.08	7930.120
6276.10	7930.125
6276.12	7930.130
6276.14	7930.135

Existing Provision(s)	Proposed Provision(s)
6276.16	7930.140
6276.18	7930.145
6276.22	7930.150
6276.24	7930.155
6276.26	7930.160
6276.28	7930.165
6276.30	7930.170
6276.32	7930.175
6276.34	7930.180
6276.36	7930.185
6276.38	7930.190
6276.40	7930.195
6276.42	7930.200
6276.44	7930.205
6276.46	7930.210
6276.48	7930.215
