

# Item 06 - Enforcement Report



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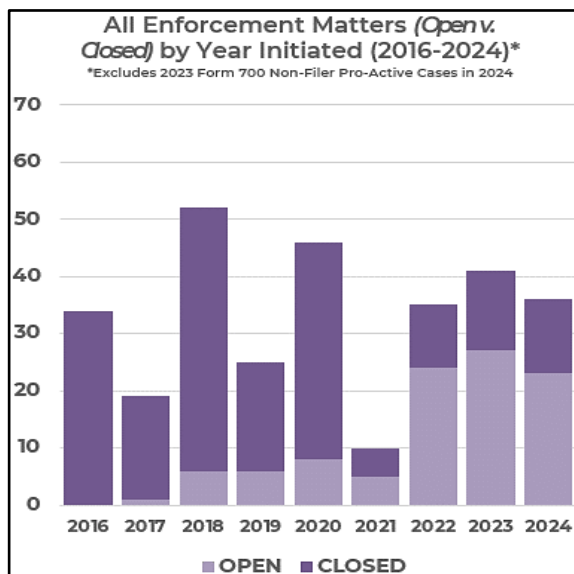
Nicolas Heidorn, Executive Director

**TO:** City of Oakland, Public Ethics Commission  
**FROM:** Nicolas Heidorn, Executive Director  
Alex Van Buskirk, Lead Analyst, Compliance and Disclosure  
**DATE:** January 14, 2025  
**RE:** Enforcement Program Monthly and 2024 Year-End Report for the January 29, 2025, Public Ethics Commission Meeting

## End of the Year Summary for Enforcement Matters

2024 was a year of successes and challenges for the Enforcement Unit. The Commission issued the largest fines in the Commission’s history last year, reflecting the Enforcement Unit’s prioritization of its most serious complaints. However, at the same time, the Commission’s complaint backlog has continued to grow, which is a direct result of the Enforcement Unit’s extreme understaffing. With Chief of Enforcement Simon Russell’s departure from the Commission in October of 2024, 2025 is set to be a rebuilding year for the Commission as a new Enforcement Chief is onboarded and the Commission continues to have to prioritize its limited enforcement resources.

### *Caseload Trends in 2024*



To begin, a priority for the Enforcement Unit has been to resolve outstanding cases or complaints. As shown in the visualization presented on the left – “All Enforcement Matters by Year initiated (2016-2024)” – the Enforcement Unit has maintained a steady resolution rate on cases since prioritizing this effort in 2022.

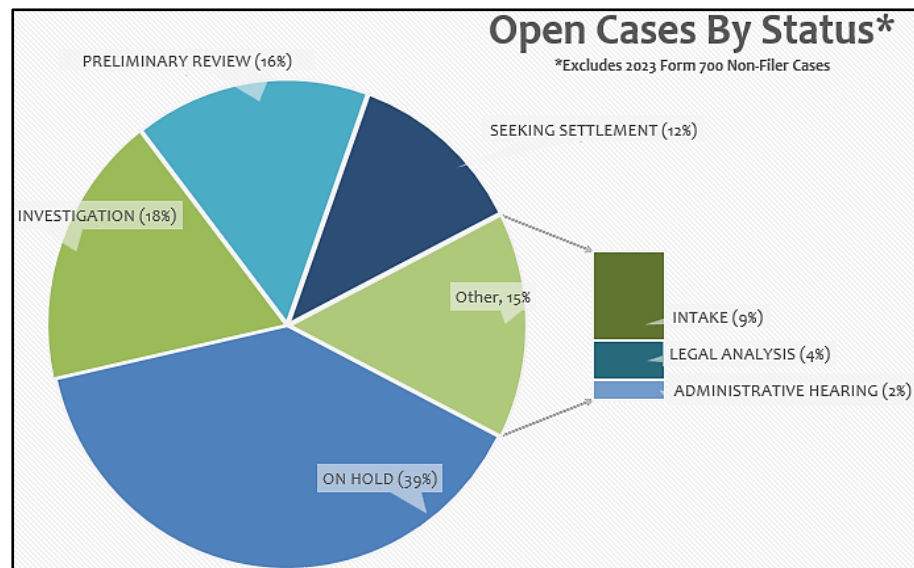
For 2024, Enforcement Unit staff received twenty-four (24) formal complaints. Of these, twelve (12) were reviewed and dismissed without proceeding to a full investigation; nine (9) are in the Intake Phase; one (1) is in the Legal

Analysis Phase; one (1) is in the Preliminary Review Phase; and one (1) has been placed On Hold.

Enforcement staff also received sixty-two (62) informal complaints in 2024. Of these, forty-seven (47) were rejected; six (6) were assigned a complaint number and escalated to our regular intake process; and nine (9) are awaiting a decision as to whether to accept or reject them.

Finally, Enforcement staff initiated seventy (70) proactive complaints in 2024. The majority – sixty (60) – were matters regarding Form 700 non-filers for the 2023 Form 700 filing due in April 2024. Of the remaining ten (10) non-Form 700-related proactive complaints, one (1) is Closed; two (2) are under Preliminary Review; five (5) are in the Investigation phase; and two (2) are in the Seeking Settlement phase.

The Enforcement Unit's processing rate for incoming, formal complaints in 2024 (meaning preliminary review was completed, resulting either in a dismissal or the opening of an investigation) stands at 50%. This is up from last year's processing rate of 43%; neither,



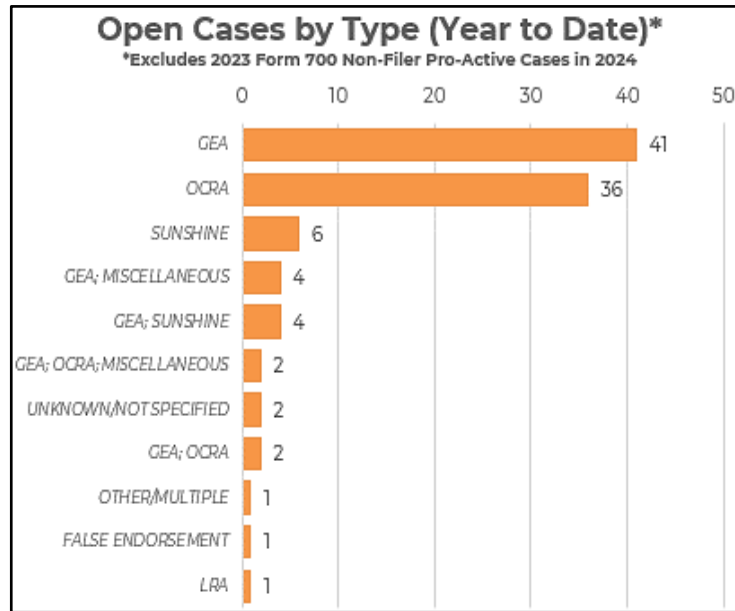
however, are ideal numbers. This is attributable to our short-staffing and resulting policy of putting most non-urgent complaints on hold. It should also be kept in mind that the length of a preliminary review does not depend solely upon Enforcement Unit staff's efforts; delays in obtaining documents or interviews from third parties are a common reason for preliminary reviews to take an extended amount of time.

By contrast, the Enforcement Unit's processing rate for informal complaints in 2024 (meaning we reviewed the complaint and determined whether or not to assign it a complaint number and proceed to our regular intake process) was 90%. This process is almost entirely within the Enforcement Unit's control. This is a further improvement from last year's processing rate of 78%. Because the Enforcement Unit did not begin tracking incoming informal complaints until late in 2022, comparisons for additional years are not available.

Over the course of 2024, the Enforcement Unit led by then-Enforcement Chief Simon Russell presented seven (7) cases to the Commission for a monetary penalty. This was despite short-staffing and largely due to the Enforcement Unit's decision to focus its limited resources on what we believe to be the most impactful cases (which also tend to be the most complex, and therefore take longer to bring to the Commission). In total, the Commission approved \$441,658 in monetary penalties across these seven cases (*PEC Case Nos. 19-01.01, 19-01.02, 19-18, 20-41.01, 20-41.02, 20-41.03, and 22-09.01*), the most in Commission history. The Enforcement Unit also has two (2) case for which probable cause has been found and administrative hearings are pending.

In sum, the numbers above provide a mixed picture. The Commission issued significant fines in several complex areas, demonstrating that the Commission is committed to its role as a vigorous enforcer of Oakland's ethics laws. However, short-staffing has clearly had a dramatic impact on Enforcement's ability to resolve most cases in a timely manner.

In light of the City's budget situation, it is unlikely that the Commission will be able to hire additional enforcement staff soon. In light of Chief Russell's departure late in 2024 and the need, at the start of the 2025, to onboard a new Enforcement Chief and bring them up to speed on the Commission's caseload, there is a strong possibility that the Commission's ability to resolve complaints may decrease in 2025. On the positive side, to supplement its enforcement program, the Commission has successfully moved some staff resources from other program areas to support the Enforcement Unit and used salary savings to bring on some additional consulting help, which has prevented the Commission's case backlog from growing even more dramatically. The voters also overwhelmingly passed Measure OO this past November, which will add an additional investigator to the PEC, beginning in July of 2026.



However, we must once again underscore the urgency of increasing Enforcement’s staff capacity if we are ever going to be able to fulfill the duties that the voters of Oakland gave us when they passed Measure CC in 2014. At minimum, the Commission estimates it will need two additional investigators (for a total of three) and one staff attorney to be able to resolve new complaints in a timely manner and begin to address its substantial complaint backlog.

### *Increased Form 700 Enforcement Efforts*

As noted by the Alameda County Grand Jury in its 2021-2022 Civil Grand Jury Final Report, the City of Oakland has a longstanding problem with public officials failing to file their Form 700s. These are forms that City staff and officials must file every year, listing all of their financial interests that could potentially form the basis of a conflict of interest in the execution of their City duties. In 2023, the Commission initiated a pilot program to enforce the annual Form 700 filing requirement as to high-level City officials. In 2024, the Enforcement Unit expanded this initiative to cover all Form 700 filers in the City.

The PEC has always had the authority to investigate and prosecute the non-filing of these forms. The challenge has always been twofold: (1) identifying all of the non-filers in the City, particularly in light of the fact that the PEC is not the filing officer for Form 700s (and therefore does not have direct access to the relevant data); and (2) handling a caseload of non-filer matters that potentially numbers in the hundreds.

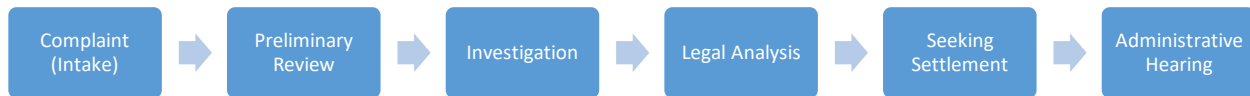
At the end of 2022, the PEC directed the Enforcement Unit and the City Clerk’s office (the filing officer for Form 700s) to collaborate more consistently in monitoring and enforcing Form 700 compliance. This resulted in the PEC getting select access to data on non-filers that it did not previously possess. In addition, the PEC had already developed a “streamline” program for handling low-level violations such as the non-filing of a Form 700. Prior to 2023, this program had never been used on a wide scale; but with greater access to non-filer data, the Enforcement Unit felt it was in a better position to make use of this tool for purposes of fostering a Citywide culture of compliance with the Form 700 laws. Some challenges remain.

The Enforcement Unit was not sure how reliable the City's data regarding Form 700 non-filers was, due, in part, to the City not having an automated Information Technology process for updating records of who is required to file these forms. In addition, we lacked the staff capacity to process a large number of these cases, even at the streamline level. But with an eye toward continued collaboration with the City Clerk, the PEC Enforcement Unit ran a "pilot" program of Form 700 enforcement in 2023 (focused on senior-level City officials). Our goal was two-fold: to enlist the help of other City departments in verifying the integrity of the City's non-filer data, and to work out streamlined enforcement procedures in the Form 700 context that could be easily replicated on a larger scale in 2024 (assuming we would have more staff to implement them).

After the 2023 "pilot" program, the Enforcement Unit launched a large-scale approach to the enforcement of Form 700 filings in April 2024 for 2023 Form 700 non-filers. In April 2024, the Enforcement Unit received records from the City Clerk indicating that 512 City officials (staff and Board Members/Commissioners) had failed to file their Form 700. Enforcement verified the accuracy of the City's non-filer data by contacting every City department and relevant Board/Commission with the non-filer information, which narrowed the list of potential Form 700 non-filers down by approximately over 450 (i.e., approximately 450 were removed from the list) because, for example, the PEC determined and received confirmation the staff or Board/Commission Member in question was no longer with the City and thus not required to file. Through individual contacts with non-filers or their Departments, the PEC was able to further narrow the list by roughly another a dozen, removing, for example, people who failed to file because they were out on extended medical leave. From the initial pool of 512, the PEC opened 60 proactive complaints against City officials for failing to file their 2023 Annual Form 700. Of these, 45 have since either filed a Form 700 or it was subsequently determined that they did not have to file, two are in the process of filing, and eight have not filed their 2023 Form 700 and may be subject to fines.

The 2024 enforcement effort has been successful in verifying the Form 700 status of City officials, providing a list to assist in cleaning up the City's rolls of required filers, and bringing more City officials into compliance. However, the process has proven labor intensive – which was further hampered by unexpected Enforcement Unit staff transitions and leave of absences – and illustrates shortcomings in the City's processes for ensuring that required filers are properly identified. The Enforcement Unit continues its work through the 2023 Form 700 non-filer case log and, due to lessons learned this cycle, is in a better position than previous years (expected to begin after the April 2025 Form 700 filing deadline) for providing compliance of new non-filers.

### Overview of the Enforcement Process



The PEC’s Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City’s ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. “Formal” complaints are submitted on the PEC’s official complaint form and are signed under penalty of perjury. “Informal” complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an investigation into a formal complaint. By contrast, the Enforcement Unit has the discretion not to review an informal complaint and does not have to report rejected informal complaints to the Commission. Commission staff may also initiate its own “proactive” complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called “Preliminary Review,” in which the Enforcement Unit determines whether there are sufficient legal and evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. The Enforcement Unit will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement

recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If the Enforcement Unit chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If the Enforcement Unit is unable to settle a case within a reasonable time or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that the Enforcement Unit wishes to prosecute, as well as supporting evidence. A majority of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in the Enforcement Unit’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

### **Current Enforcement Unit Caseload**

Since the last Enforcement Unit Program Update submitted to the Commission on November 26, 2024, Commission staff received one (1) formal (sworn) complaint and dismissed one (1) formal complaint. In the same time period, we also received two (2) informal complaints, both of which were rejected.

This brings the total Enforcement Unit caseload to one-hundred and forty-one (141) open complaints or cases (this total includes forty-one (41)<sup>1</sup> 2023 Form 700 non-filer proactive cases opened in 2024). Of the remaining one hundred (100) non-Form 700-related open complaints or cases, twenty-five (25) are in the intake or preliminary review stage; eighteen (18) are under active investigation; four (4) are under post-investigation legal analysis; twelve (12) are in the seeking settlement phase; and two (2) are awaiting an administrative hearing. An additional thirty-nine (39) are On Hold.

The Enforcement Unit's current budgeted staffing is: one (1) Enforcement Chief and one (1) Investigator. As of October 9, 2024, the Enforcement Chief position is vacant; however, the Commission expects to have a new Enforcement Chief hired by the end of January. Whitney Barazoto, the PEC's former Executive Director, was brought on as a consultant to assist the PEC in the interim on enforcement matters, with additional support from Ethics Analyst Alex Van Buskirk, who is also managing the PEC's Compliance and Disclosure Program responsibilities. The PEC is receiving additional support from the City Attorney's Office with the PEC's pending administrative hearing and assisting with the preliminary review of some complaints.

### **Case Resolutions or Submissions**

Since the last Enforcement Unit Program report on November 26, 2024, the following complaints or cases have been resolved or submitted to the Commission:

1. ***In the Matter of Sasha Ritzie Hernandez; Sasha Ritzie-Hernandez for District 5 School Board (PEC No. 24-31)***. On October 22, 2024, the PEC received a formal complaint alleging that Sasha Ritzie-Hernandez, Oakland School Board candidate, violated one or more laws under the PEC's jurisdiction when Ritzie-Hernandez allegedly improperly used school resources to campaign. The Enforcement Unit, with the assistance of the City Attorney's Office, conducted a preliminary review and determined that there was insufficient evidence of any violation of a law within the PEC's jurisdiction. The Government Ethics Act (GEA) prohibits the misuse of City resources for political purposes; however, GEA does not include the misuse of School District resources. As such, the complaint was dismissed with no further action; however, the complainant was directed to other officials to whom she could make her complaint and the Superintendent of OUSD was made aware of the complaint.

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<sup>1</sup> The PEC opened 60 Form 700 cases, but 19 have been closed, with 41 remaining as of this report.