

# Item 7 - Enforcement Report



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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission  
FROM: Simon Russell, Enforcement Chief  
DATE: May 28, 2024  
RE: Enforcement Program Report for the June 12, 2024, PEC Meeting

This memo discusses the Enforcement Program's caseload and major programmatic developments since the last Enforcement Report (submitted on March 26, 2024).

## 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, Enforcement 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 "pro-active" complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called "Preliminary Review," in which Enforcement determines whether there are sufficient legal

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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. Enforcement 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 Enforcement 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 Enforcement is unable to settle a case within a reasonable time (typically sixty days) 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 Enforcement 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 Enforcement’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

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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 Caseload**

Since the last Enforcement Unit Program Update submitted to the Commission on March 26, 2024, Commission staff:

- received two formal (sworn) complaints, which are currently in the preliminary review phase;
- received thirteen informal (unsworn) complaints, of which nine were rejected, two were assigned complaint numbers and escalated to the preliminary review phase, and two are awaiting a determination as to whether to reject or escalate them<sup>1</sup>; and
- filed six proactive (staff-generated) complaints, of which all six were assigned complaint numbers and escalated to the preliminary review phase.

In the same period of time, Commission staff:

- opened sixty-four complaints for a full investigation following preliminary review (of those, 59 were alleged 2023 Annual form 700 non-filers);
- initiated settlement negotiations in sixteen cases (of those, 15 were alleged 2023 Annual form 700 non-filers);
- reached final or proposed settlement agreements in nine cases (seven of which were streamlined and executed under PEC staff's authority, and two of which are pending Commission approval); and
- for administrative purposes, bifurcated one case into two; and bifurcated another case into 60 cases (alleged 2023 Annual form 700 non-filers).

This brings the total Enforcement caseload to one-hundred and forty-eight (148) open complaints or cases (of which 51 concern alleged 2023 Annual form 700 non-filers): twenty

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<sup>1</sup> Reasons for a delay in making this determination can include the need to contact the complainant and/or do further research in order to clarify the allegation(s) being made, and/or a decision to prioritize other matters that appear to be more time-sensitive or of greater public interest.

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(20) matters in the intake or preliminary review stage, thirteen (48) matters under active investigation, three (3) matters under post-investigation legal analysis, twenty-eight (28) matters in settlement negotiations, and two (2) matters awaiting an administrative hearing. The remaining forty-seven (47) matters are on hold pending additional staff resources and training (32% of the total, or 48% if the cases involving alleged 2023 Annual form 700 non-filers are excluded).

Enforcement's current staffing is: one (1) Enforcement Chief, one (1) permanent full-time Investigator, and one (1) temporary part-time Law Clerk. One of our Law Clerks, Chris Nardi, completed his clerkship with the PEC and is no longer on staff; we are sorry to see him go but wish him the best of luck in his future endeavors!

### Case Resolutions or Submissions

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

- 1. In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc.; Lyft Inc. (PEC # 20-41.2).** On February 22, 2021, the PEC opened an investigation into allegations that a campaign committee called "The Committee For An Affordable East Bay" had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled committees, including the prohibition on receiving contributions from City contractors at certain times. Respondents were a City contractor and its sponsored committee, who made a contribution to The Committee For An Affordable East Bay. Respondents have agreed to settle this matter with regard to their own alleged actions, without admitting liability. Enforcement staff has submitted a proposed settlement agreement to be heard at the June 12, 2024, meeting of the PEC.
- 2. In the Matter of Various 2022 Annual Form 700 Non-Filers (PEC ## 23-16.1, 23-16.2, 23-16.5, 23-16.6, 23-16.7).** On October 24, 2023, the PEC opened an investigation into allegations that various City officials had failed to timely file their 2022 Annual Form 700. Enforcement staff has completed its investigation into certain respondents and has submitted its Investigation Summary (Closure Recommendation) to be heard at the June 12, 2024, meeting of the PEC.
- 3. In the Matter of Michael Dabney (PEC # 23-28).** On October 2, 2023, the PEC opened an investigation into allegations that a mobile food vendor named Michael Dabney attempted to bribe a City inspector. Enforcement staff has completed its

investigation and has submitted its Investigation Summary (Probable Cause Report) to be heard at the June 12, 2024, meeting of the PEC.

4. **In the Matter of Jesse Boudart (PEC # 23-38).** On February 2, 2024, the PEC opened an investigation into allegations that City employee Jesse Boudart misused City resources and his City position when he used his City email account to campaign for election to a board seat with a private organization. Enforcement staff has completed its investigation and has submitted its Investigation Summary (Closure Recommendation) to be heard at the June 12, 2024, meeting of the PEC.
5. **In the Matter of Michelle Phillips (PEC # 24-04).** On March 15, 2024, the PEC initiated a proactive complaint alleging that Inspector General Michelle Phillips received a gift valued at \$300 from Campaign Zero, which was in excess of the local gift limit of \$250. Enforcement staff has submitted a proposed settlement agreement (streamlined) to be heard at the June 12, 2024, meeting of the PEC.
6. **In the Matter of Various 2023 Annual Form 700 Non-Filers (PEC ## 24-05.2, 24-05.7, 24-05.9, 24-05.15, 24-05.17, 24-05.20, 24-05.25, 24-05.48, 24-05.53, 24-05.64).** On April 18, 2024, the PEC opened an investigation into allegations that various City officials had failed to timely file their 2023 Annual Form 700. Enforcement staff has completed its investigation into certain respondents and has submitted its Investigation Summary (Closure Recommendation) to be heard at the June 12, 2024, meeting of the PEC.

We also entered “streamlined” settlement agreements for the following low-level violations. Pursuant to recent amendments to the Commission’s Complaint Procedures, the Executive Director has the authority to resolve these minor violations on their own authority, without a Commission vote, so long as they meet the specific requirements laid out in our Complaint Procedures (Section VI(D), (H)) and Penalty Guidelines.

Form 700 (2023 Annual) – Late Filing Violations <sup>2</sup> Streamlined Settlement Agreements				
Respondent	City Position	Days Late	Resolution	Case #
Castillo, Janny	Commissioner, Oakland Housing Authority	16	Diversion (training)	24-05.8
Harrison, Joey	Commissioner, Commission on Homelessness	20	Diversion (training)	24-05.18
Hicks, Tia	Member, Affordable Housing & Infrastructure	21	Diversion (training)	24-05.23

<sup>2</sup> Government Ethics Act section 2.24.040(B).

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	Bond Public Oversight Committee)			
Mayes, William	Commissioner, Oakland Housing Authority	24	Diversion (training)	24-05.38
Ortiz, Xochitl	Housing Development Coordinator, Housing & Community Development	26	Diversion (training)	24-05.49
Plair Cobb, Gay	Member, Police Commission Selection Panel	21	Diversion (training)	24-05.10
Su, Jinnhua	Real Estate Agent, Real Estate Asset Management	22	Diversion (training)	24-05.56

**Appendix: Current Caseload by Violation Type**

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than our number of total cases, since one case can involve multiple types of violations.

	On Hold	Intake	Preliminary Review	Investigation	Legal Analysis	Seeking Settlement	Administrative Hearing	Grand Total
<b>Campaign Finance</b>	<b>20</b>		<b>6</b>	<b>15</b>	<b>2</b>	<b>16</b>	<b>1</b>	<b>60</b>
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	5			2		2	1	10
Coordination Between Candidate And "Independent" Campaign			2	1			2	5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	1		1		4
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	4		2	3	1	4		14
Late Filing Of Campaign Finance Report	3			4				7
Making/Receiving Campaign Contribution Over The Legal Limit	1			1	1	3		6
Misuse Of Campaign Funds For Personal Purposes	1						1	2
Inaccurate or Missing Disclaimer On Campaign Ad	3		1	1		3		8
<b>Government Ethics</b>	<b>39</b>	<b>5</b>	<b>25</b>	<b>58</b>	<b>4</b>	<b>15</b>	<b>2</b>	<b>148</b>
Bribery	2		3	1		1	1	8
Financial Conflict Of Interest	1	1	4		1			7
Holding Incompatible Public Offices			1					1
Inaccurate Reporting On Financial Disclosure Form 700	2		3					5
Late or Non-Filing Of Financial Disclosure Form 700	1			53		13		67
Misuing Official Powers For Private Gain (Coercion/Inducement)	19	1	7	3	1		1	32
Misuse Of City Resources For Personal Or Campaign Purposes	9			1	2			12
Receiving An Improper Gift Based On Amount	1		3			1		5
Receiving An Improper Gift Based On Source	2		1					3
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")	1							1
Awarding City Contract To Oneself ("Self-Dealing")	1	1	2					4
Leak Of Confidential Info			1					1
Councilmember Interfering In City administration		1						1
Awarding City Job Or Contract To Family Member		1						1
<b>Lobbyists</b>							<b>1</b>	<b>1</b>
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
<b>Miscellaneous</b>	<b>5</b>		<b>3</b>	<b>1</b>	<b>1</b>	<b>3</b>		<b>13</b>
Failure To Produce Records To Police Commission Investigators	1							1
Lying Or Providing False Information To PEC Investigators	1				1	3		5
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower	2		3	1				6
<b>Open Meetings &amp; Public Records</b>	<b>7</b>		<b>1</b>	<b>1</b>				<b>9</b>
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	4		1					5