

Item 7 - Enforcement Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: June 26, 2024
RE: Enforcement Program Report for the July 10, 2024, PEC Meeting

Since the last Enforcement Unit Program Update submitted to the Commission on May 28, 2024, Commission staff:

- received six formal (sworn) complaints, of which five are currently in the intake or preliminary review phase, and one of which was dismissed; and
- received three informal (unsworn) complaints, all of which were rejected.

In the same period of time, Commission staff:

- opened full investigations into six complaints following preliminary review; and
- dismissed three complaints without opening an investigation.

The following complaints or cases have been resolved or submitted to the Commission:

1. **In the Matter of Loren Taylor (PEC # 24-07).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
2. **In the Matter of Unknown/Not Specified (PEC # 24-14).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
3. **In the Matter of Unknown/Not Specified (PEC # 24-16).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.

This brings the total Enforcement caseload to one-hundred and thirty-five (135) open complaints or cases (of which 41 concern alleged 2023 Annual form 700 non-filers), including: twenty-two (22) matters in the intake or preliminary review stage, fifty-three (53) matters under active investigation, two (2) matters under post-investigation legal analysis, fifteen (15) matters in settlement negotiations, and one (1) matter awaiting an administrative hearing.

The remaining forty-two (42) matters are on hold pending additional staff resources and training (31% of the total, or 45% 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. Our Law Clerk, Graham Willard, will be completing his clerkship with the PEC at the end of this week. We will be sorry to see him go but wish him the best of luck in his future endeavors!

Legal Actions/Litigation Update

Since the last Enforcement Unit Program Update submitted to the Commission on May 28, 2024, the following public court actions have been initiated or closed by or on behalf of the Enforcement Unit:

1. *City of Oakland Public Ethics Commission v. Anna Wong*, Alameda County Superior Court case no. RG20050135 (subpoena enforcement action, closed).
2. *City of Oakland Public Ethics Commission v. Bau Ung*, Alameda County Superior Court case no. RG20050137 (subpoena enforcement action, closed).
3. *City of Oakland Public Ethics Commission v. Marvin Thang*, Alameda County Superior Court case no. RG21108850, (subpoena enforcement action, closed).
4. *City of Oakland Public Ethics Commission v. Mon Kil Quan, ARDA, LLC AKA 9th Street Tea, LLC, and Teamac Imports, Inc.*, Alameda County Superior Court case no. RG20069070 (subpoena enforcement action, closed).
5. *City of Oakland Public Ethics Commission v. Oakland United to Recall Sheng Thao (OUST), Foundational Oakland United, and Foundational Oakland Unites (collectively "Oakland United")*, Alameda County Superior Court Case No. 24CV081048 (subpoena enforcement action, initiated).
6. *City of Oakland Public Ethics Commission v. Phuc Hong Tran*, Alameda County Superior Court case no. RG20051805 (subpoena enforcement action, closed).
7. *City of Oakland Public Ethics Commission v. Ping Ping Chen*, Alameda County Superior Court case no. RG20051399 (subpoena enforcement action, closed).
8. *City of Oakland Public Ethics Commission v. Sen Saechao*, Alameda County Superior Court case no. RG20051804 (subpoena enforcement action, closed).

9. *City of Oakland Public Ethics Commission v. Stacy Binh*, Alameda County Superior Court case no. RG20069061 (subpoena enforcement action, closed).

Except where otherwise noted, no allegations have yet been proved or admitted in any of the above matters, and the existence of these cases and associated litigation should not be taken as an indication that the respondent(s) necessarily violated any laws. This information is being provided for the PEC's informational purposes only.

Miscellaneous

At its last meeting, the Commission requested to see a copy of the advisory letter being issued upon the closure of case # 23-38. A copy of the letter is attached to this report.

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 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 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.

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
Campaign Finance	19		6	22	2	17	1	67
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	5			2			1	10
Coordination Between Candidate And "Independent" Campaign			2	1		2		5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	2		1		5
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	3		2	5	1	4		15
Late Filing Of Campaign Finance Report	3			8		1		12
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
Government Ethics	32	6	28	45	2	9		122
Bribery	2		3	1		2		8
Financial Conflict Of Interest	1	2	3		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			38		6		45
Misusing Official Powers For Private Gain (Coercion/Inducement)	17	1	8	4		1		31
Misuse Of City Resources For Personal Or Campaign Purposes	6		2	2	1			11
Receiving An Improper Gift Based On Amount	1		3					4
Receiving An Improper Gift Based On Source	1		1					2
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")			1					1
Awarding City Contract To Oneself ("Self-Dealing")	1	1	1					3
Leak Of Confidential Info			1					1
Council member Interfering In City Administration		1						1
Awarding City Job Or Contract To Family Member		1	1					2
Lobbyists				1			1	2
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Late Filing Of A Lobbyist Activity Report				1				1
Miscellaneous	3	1	4	2	1	3		14
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			4	2				6
Allegation Outside The Jurisdiction Of PEC		1						1
Open Meetings & Public Records	7		2	1				10
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	4		2					6



Item 7 - Enforcement Report

ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

June 25, 2024

Jesse Boudart
Department of Transportation
250 Frank Ogawa Plaza
Oakland, CA 94612

Re: Notice of Case Closure (Public Ethics Commission # 23-38); Advisory Letter

To Jesse Boudart:

At a meeting of June 12, 2024, the City of Oakland Public Ethics (PEC) staff recommended that the investigation against you (# 23-38) be closed with a finding that you did not violate any laws. The Commission voted to approve the recommendation, and the case is now closed. I have attached a copy of the closure recommendation for your records.

In the future, we advise that you seek the prior, written consent of your supervisors before using your City email account or other City resources for Institute of Transportation Engineers (ITE) board purposes. In general, City officials such as yourself are prohibited from using City resources (which includes email accounts and staff time) for private purposes.¹ Because your supervisors told us that ITE's work is closely related to your City job and that they would likely allow you to use compensated City time for ITE board purposes if asked, we are deferring to their judgment here and not considering this to be a use of City resources for a "private purpose," particularly given the minimal amount of City resources at issue.

To avoid any similar issues in the future, it would be a good idea to notify your supervisors in writing of (1) the specific City resources you wish to use, and (2) the particular purpose for which you wish to use them. Do not use the City resources until you have their approval in writing. If you or your supervisors have any questions about whether your proposal would violate any ethics laws, our advice staff is available to help at ethicscommission@oaklandca.gov or (510) 238-3593.

¹ Oakland Municipal Code sections 2.25.060(A)(1)-(2).

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PEC # 23-38
Notice of Closure (J. Boudart)

Thank you for your cooperation in resolving this matter. Please let me know if you have any questions.

Respectfully,

SIMON RUSSELL | Enforcement Chief
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