

Item 08 - Enforcement Report



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TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: September 6, 2024
RE: Enforcement Program Report for the September 16, 2024, PEC Meeting

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

- received seven formal (sworn) complaints which are currently in the intake phase; and
- received thirteen informal (unsworn) complaints, of which six were rejected, one was referred to another agency, and the remainder are still awaiting a determination whether to escalate to a formal complaint or reject;

In the same period of time, Commission staff:

- reached proposed settlement agreements in five cases following an investigation; and
- dismissed six complaints without opening an investigation.

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

1. **In the Matter of Lynette Gibson McElhaney (PEC # 19-17).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
2. **In the Matter of Michael Hunt and the Oakland Fire Department (PEC # 24-17).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
3. **In the Matter of Unknown/Not Specified (City Attorney's Office; George Hills Company, Inc.) (PEC # 24-18).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
4. **In the Matter of Bay Area Community Services (PEC # 24-19).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.

5. **In the Matter of Unknown/Not Specified (Oakland Police Department and the City of Oakland) (PEC # 24-20).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
6. **In the Matter of Mark Forte; Christopher Tan; Unknown/Not Specified (Official(s) at Planning & Building Department) (PEC # 24-21).** Dismissed for failure to pursue mediation; referred to mediation program.

This brings the total Enforcement caseload to one-hundred and forty open complaints or cases.

Enforcement's current staffing is: one (1) Enforcement Chief and one (1) permanent full-time Investigator.

Legal Actions/Litigation Update

Since the last Enforcement Unit Program Update submitted to the Commission on June 26, 2024, the following public court actions have been initiated or closed by or involving the Enforcement Unit:

1. *Andy Duong v. City of Oakland Public Ethics Commission*, Alameda County Superior Court case no. 24CV084262 (petition to quash subpoena, filed).

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	8	28	45	2	9		124
Bribery	2		3	1		2		8
Financial Conflict Of Interest	1	3	3		1			8
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	1		38		6		46
Misuing 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			1	3
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Late Filing Of A Lobbyist Activity Report		1		1				2
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