



Item 10 - Hearing Options

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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: June 27, 2024
RE: Selecting a Hearing Officer for In the Matter of Michael Dabney (PEC # 23-28).

On October 2, 2023, the Public Ethics Commission (Commission or PEC) opened an investigation into allegations that a mobile food vendor named Michael Dabney attempted to bribe a City inspector. At its June 12, 2024, regular meeting, the Commission voted (A) to find probable cause that the violations described in the Investigation Summary occurred and (B) to direct staff to return to the Commission with a nominee or potential list of nominees to serve as the hearing officer in this case to be able to schedule a hearing.

Staff is recommending that the Commission vote to (A) authorize the Executive Director to appoint a hearing officer from a list of former PEC Commissioners who are current or former attorneys to conduct the hearing or (B), if the Executive Director is unable to appoint a hearing officer within a reasonable period of time, to appoint Commissioner _____ (TBD) as the hearing officer.

Background

Section VII.A of the Commission's Complaint Procedures provide that:

Selection of Hearing Panel or Officer. If the Commission decides to schedule a hearing pursuant to Section VI(B)(3), the Commission shall decide whether to sit as a hearing panel or to delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing officer.

1. If the Commission decides that the full Commission will not sit as a hearing panel, the Commission shall appoint the hearing officer(s).
2. If the Commission elects to use a hearing officer(s) provided by an outside entity, that entity shall appoint the hearing officer(s).
3. The selected hearing officer shall disclose any actual or potential conflicts of interest, as defined by the Oakland Government Ethics Act 2.25.040.A, he or she might have with the City of Oakland, the parties, or a Commissioner, in which case, the appointing authority shall consider whether to appoint an alternative hearing officer(s).

In the past, when the PEC has voted to appoint an outside hearing officer (other than contracting for an Administrative Law Judge), the Executive Director has selected the hearing

officer from a list that included former PEC Commissioners. In one case, the PEC assigned a single current Commissioner to serve as the hearing officer.

Current List of Potential Hearing Officers

The PEC does not presently have a current list of potential hearing officers. After the June meeting, Executive Director Heidorn reached out to four former PEC Commissioners who are attorneys, including one attorney who has previously served as a hearing officer for the PEC, about their interest in serving. As of the writing of this memo, two former Commissioners have expressed potential interest in serving, one has declined, and one has not responded. Staff expects it may take a few more weeks to confirm if someone is willing and has the capacity to take on this responsibility.

Staff Recommendation

Because it will likely take a few weeks to determine if a former Commissioner is able to serve as a hearing officer, staff recommends that the Commission authorize the Executive Director to select the hearing officer from the list he is putting together of interested, former Commissioners who are attorneys, similar to prior practice. Staff does not recommend that the Executive Director return with a nominee for the Commission's approval because the Commission's next scheduled meeting is not until September, which will significantly delay the Commission's ability to hold an administrative hearing.

If the Executive Director is unable to appoint a suitable hearing officer within a reasonable period of time, staff recommends that the Commission appoint in advance a current Commissioner as an alternate to serve as hearing officer, to be determined based on interest and availability of current Commissioners at the July meeting.