

Item 13 - Form 700 Enforcement Update and Closure Recommendation



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TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: May 29, 2024
RE: Update on Form 700 Enforcement Efforts (PEC ## 23-16, 24-05)

Every year, many City officials need to file what is called a “Form 700.” On this form, they report any financial or business interests that might affect their impartiality when performing their City duties. Among the things that need to be reported are outside sources of income, stock and real estate holdings, community property, and gifts from persons other than family and friends.¹ Though not every City official needs to file a Form 700, a broad range of officials fall within the annual filing requirement, from Councilmembers and Commissioners to administrative and frontline staff.²

Form 700s are filed with the City Clerk’s office. The list of persons required to file a Form 700 is generated through data provided by Human Resources, which in turn relies upon timely and accurate hiring and leave data from individual departments and commissions. The Public Ethics Commission (PEC) and the state Fair Political Practices Commission (FPPC) enforce the filing requirement, usually after receiving notices from the City Clerk or complaints from the public that a particular official has missed the filing deadline.

A grand jury report recently found that many Oakland officials were not filing their required Form 700s.³ In response, the PEC initiated a pilot program last year to (1) obtain comprehensive data from the City Clerk on which required filers had not filed the Form 700 due that year (called the “2022 annual” because it covered officials’ finances from 1/1/22 – 12/31/22) and (2) bring enforcement actions on any elected official, commissioner, or senior-

¹ This is a simplified description of what is required to be reported. For details, see the California Government Code sections 87200-87210 and the accompanying regulations.

² The complete list of City positions required to file a Form 700 can be found in the City’s Conflict of Interest Code, OMC Chapter 3.16.

³ “2021-2022 Alameda County Grand Jury Final Report,” section titled “Oakland Fails to Enforce Financial Disclosure Rules to Protect the Public,” pp. 33-46.

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level department staff who had not filed. The idea behind focusing on a subset of officials last year was to allow the PEC to build the internal processes to do a more comprehensive, City-wide enforcement program this year.

In accordance with that plan, the PEC has initiated its City-wide monitoring and enforcement program for compliance with this year's Form 700 filing requirement (called the "2023 annual" because it covers officials' finances from 1/1/23 – 12/31/23). That form was due on April 2, and anyone who missed the deadline is subject to penalties ranging from diversion training to gradually-increasing fines of up to \$5,000.

This report provides an update on both last year's pilot program and this year's ongoing, City-wide Form 700 enforcement program. The idea behind these programs is not only to foster a greater culture of compliance with the Form 700 filing requirement, but also to identify the particular weak points in the City's data collection, notification and enforcement practices regarding Form 700s filers.

Ongoing Results of the "Pilot" Program for Senior-Level Filers of the 2022 Annual Form 700

PEC staff initially identified eight senior-level officials who had not filed their 2022 Annual Form 700, according to the City' data.

However, three of these officials turned out to be Commissioners with the Oakland Housing Authority (OHA). OHA is a semi-autonomous body that does fall within the City's Form 700 filing requirements, but also acts as its own filing officer for Form 700s rather than filing with the City Clerk. The PEC learned that OHA was not notifying the City Clerk when their Commissioners had filed, resulting in those officials turning up as "false positives" on the City's non-filer data. In addition, OHA does not make its Commissioners' Form 700s available online, so there is no way to independently verify whether OHA Commissioners had met their filing requirement.⁴

In addition, PEC staff learned that two of the other senior-level officials on the non-filer list had either been on long-term leave or actually resigned their position earlier in the year (2023).

⁴ PEC staff also learned that there is a similar issue with the Oakland Port Authority Board of Commissioners, which also acts as its own filing officer. However, we flagged this issue before opening any Form 700 non-filer cases regarding Port Commissioners.

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PEC staff is therefore recommending that the Commission vote to close the following 2022 Annual Form 700 non-filer cases with a finding that no violation occurred (we have omitted the officials' names for their privacy):

2022 Annual Form 700 Non-Filer Cases Recommended For Closure			
Case #	City Position	Date Filed	Notes
23-16.1	Assistant Chief, Fire Department	(not filed)	Has been on long-term leave or modified duty since Q1 2022
23-16.2	Commissioner, Cannabis Regulatory Commission	(not filed)	Stopped attendings meetings in Q1 2023 due to caretaker responsibilities; officially resigned 2024
23-16.5	Commissioner, Oakland Housing Authority	3/31/2023	Timely filed with OHA but not reported to City Clerk, so they were a "false positive" on the non-filer list
23-16.6	Commissioner, Oakland Housing Authority	3/31/2023	Timely filed with OHA but not reported to City Clerk, so they were a "false positive" on the non-filer list
23-16.7	Commissioner, Oakland Housing Authority	3/31/2023	Timely filed with OHA but not reported to City Clerk, so they were a "false positive" on the non-filer list

Of the remaining three cases from the "pilot" program, two are still under investigation. The remaining respondent entered an agreement to resolve their case via diversion.

Simultaneous enforcement of these matters could also be handled by the FPPC upon referral from the City Clerk's office. The FPPC informed the PEC that no Form 700 enforcement referrals were received from the City of Oakland in 2023 (covering 2022 Annual non-filers).

Ongoing Results of the Citywide Enforcement of 2023 Annual Form 700 Non-Filers

The initial list of 2023 Annual Form 700 non-filers (as of April 12, 2024) provided to the PEC included 512 names. Of those, PEC staff determined that 416 were likely no longer with the City anymore, and therefore did not need to file. We provided this information to the City Clerk.

Of the remaining names, we sent notifications and gave them a short grace period to file without opening an enforcement action. We also kept track of filers who responded and told us that they had been on leave or otherwise had some other serious extenuating circumstance. A number of filers also told us that they had filed paper copies of their Form

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700 with the City Clerk (the default is to e-file), but that these had not been registered on the system yet. PEC staff asked the City Clerk to verify whether these paper filers had indeed filed; as of the writing of this report, the City Clerk has not provided this information to us.

After the short grace period was over, we opened 59 cases against alleged non-filers. Of those, the following people subsequently filed and entered “streamlined” settlement agreements. 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 ⁵ 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 Bond Public Oversight Committee)	21	Diversion (training)	24-05.23
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

A number of other respondents have also filed their Form 700 since being contacted by Enforcement but have not yet entered settlements regarding their penalty. We will update the Commission on those cases as they are resolved.

A number of the cases we opened ended up concerning people who turned out to have been either (1) on long-term leave, (2) had resigned their position without this being noted in the City’s data used to compile the non-filer list, or (3) had transitioned to a new position with a

⁵ Government Ethics Act section 2.24.040(B).

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different filing officer (not the City Clerk). We are recommending that these cases be closed with no further action (we are omitting the respondents' names for their privacy):

2023 Annual Form 700 Non-Filer Cases Recommended For Closure			
Case #	City Position	Date Filed	Notes
24-05.2	Captain, Fire Department	(not filed)	Has been on long-term leave or modified duty since Q1 2023
24-05.7	Captain, Fire Department	(not filed)	Has been on long-term leave since 2022
24-05.9	Fire Investigator, Fire Department	(not filed)	Has been on long-term leave since 2022
24-05.15	Captain, Fire Department	(not filed)	Has been on long-term leave since January 2024; we have requested that he file when he returns to service
24-05.17	Captain, Fire Department	(not filed)	Has been on long-term leave since 2023
24-05.20	Captain, Fire Department	(not filed)	Has been on long-term leave since 2023
24-05.25	Commissioner, Police Commission	(not filed)	Resigned in October 2023
24-05.48	Commissioner (former), Commission on Persons with Disabilities	(not filed)	Left the Commission in 2023; filed a Leaving Office 700 on 4/24/2024 (upon PEC request)
24-05.53	Captain, Fire Department	April 29, 2024	Was on leave on due date; filed the same day they returned
24-05.64	Member, Community Policing Advisory Board	(not filed)	Erroneously listed on Netfile as a member of the Community Policing Advisory Board. They were formerly a member of that board and apparently the system was never updated to show that they had left.

Simultaneous enforcement of these matters could also be handled by the FPPC upon referral from the City Clerk's office. We have not been notified of any such referrals being made.

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Due to the unreliability of the non-filer data for 2022 Annual filers, it is very difficult for the PEC to calculate a year-on-trend re: whether the rate of filing has increased with the 2023 Annual filers. Anecdotally, Enforcement staff was pleasantly surprised by the relatively low number of 2023 Annual non-filer cases that we had to open. We attribute this to the greater prominence this issue has received since we initiated last year's pilot program, including our reminders to City departments and Commissions to verify the integrity of the City's non-filer data and ensure that their officials had filed by the deadline. The City Clerk's office has also been reminding departments and commissions of the filing requirement.

Recommendation

Enforcement staff recommends that the Commission vote to close the following cases with a finding of no violation, for the reasons described above:

- 23-16.1
- 23-16.2
- 23-16.5
- 23-16.6
- 23-16.7
- 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