

ATTACHMENT 9



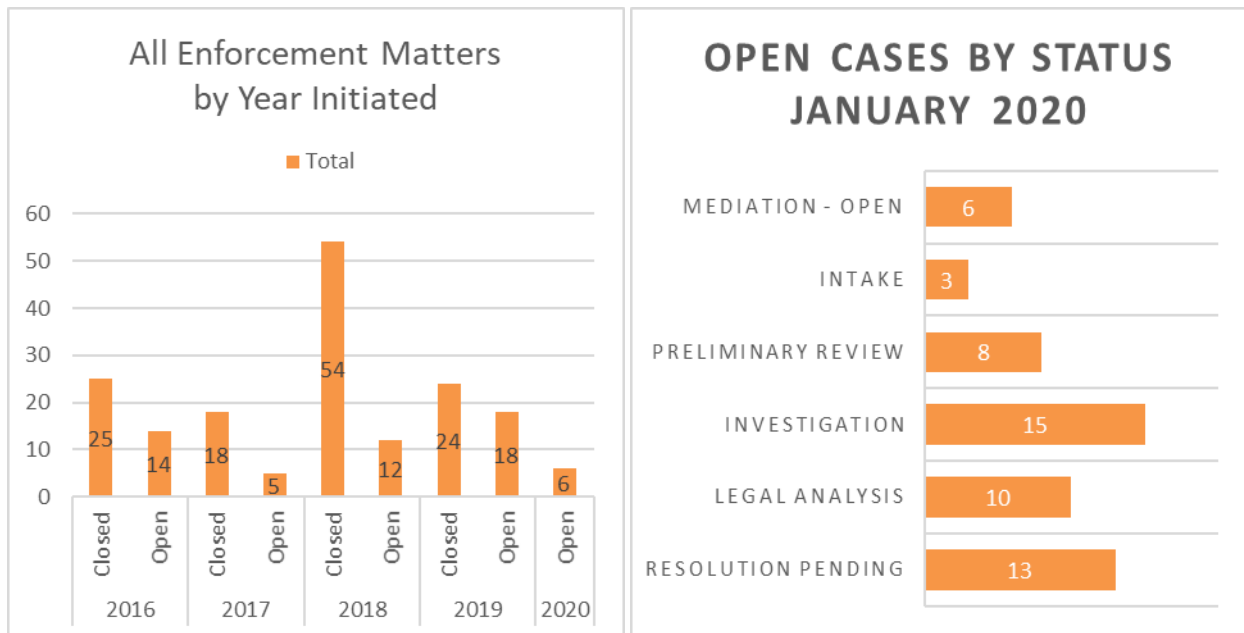
James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice Chair
Jill M. Butler
Michael MacDonald
Janani Ramachandran
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: February 18, 2020
RE: Enforcement Program Update

Current Enforcement Activities:

Since the last Enforcement Program Update on February 3, 2020, Commission staff received three complaints. This brings the total Enforcement caseload to 55 enforcement and mediation cases: 8 matters in the intake or preliminary review stage, 15 matters under active investigation, 10 matters under post-investigation analysis, 13 matters in settlement negotiations or awaiting an administrative hearing, and 6 ongoing public records request mediations.



Summary of Cases:

Since the last Enforcement Program Update in February 2020, the following status changes occurred:

1. *In the Matter of Anthony Harbaugh* (Complaint No. 18-11) Around October 2016, PEC Staff opened a pro-active investigation into allegations of a bribery and misuse of position scheme

by a senior building inspector, Commission Staff found evidence that Anthony Harbaugh, a City building inspector, between January 2015 and December 2016, committed, participated in, or aided and abetted Thomas Espinosa in committing multiple violations of the Oakland Government Ethics Act. The alleged violations include the following: soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; misusing his City position to induce/coerce others to provide him with economic gain, and; failing to report significant income from individuals with matters before him as a City building inspector. Staff recommends that the PEC find probable cause for the enumerated violations and schedule this matter for a hearing. (See Action Items)

2. *In the Matter of Andrew Haydel and Lane Partners* (Complaint No. 19-24) In June 2019, Commission Staff initiated a pro-active investigation after Andrew Haydel's lawyer called to report that Haydel, a commercial real-estate investor and principal at Lane Partners LLC, "may have made a contribution" to an Oakland political campaign during a time when he and Lane Partners was subject to the contractor contribution ban. Staff's preliminary investigation determined that Lane Partners, on October 21, 2018, made a \$1,000 contribution to the Lynette Gibson-McElhaney Defense Fund at a time when they were subject to the City's ban on contributions from City contractors to candidates, in violation of Oakland Municipal Code section 3.12.140. Staff and the Respondent reached a stipulated settlement agreement. Staff recommends that the PEC approve the Stipulation and impose a \$2,000 penalty. (See Action Items)
3. *In the Matter of City of Oakland Police Commissioner Ginale Harris* (ProActive/Informal Complaint). On or about November 15, 2019, Commission Staff received an informal complaint alleging that the City of Oakland Police Commissioner Ginale Harris violated the Government Ethics Act by misusing her position to induce or coerce a person to provide her with a private advantage or benefit. Staff initiated a preliminary review of the allegations and the law and determined that the allegations did not constitute a violation of the Government Ethics Act within the Commission's enforcement jurisdiction. The informal complaint was dismissed. (See Attachment)
4. *In the Matter of Libby Schaff* (Complaint No. 19-20) On November 12, 2019, Commission Staff received a complaint alleging that the Mayor violated the Oakland City Charter, Sunshine Ordinance, and the California Brown Act when she failed to deliver a general address on the State of the City at the first meeting of the City Council in October 2019. Further, the complaint alleged the Mayor did not have the authority to move the address and require the public to register to attend the State of the City Address. After conducting a preliminary review of the allegations and a close review of the facts and the law, Staff dismissed the complaint because the PEC lacks jurisdiction. (See Attachment)
5. *In the Matter of The City of Oakland Police Department, Mediation Summary* (Case No. 16-15). On August 24, 2016, the Commission received a complaint alleging that the Oakland Police Department (OPD) failed to disclose records in response to multiple public records requests made by the Requestor. On November 10, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Once Staff initiated mediation, the Requestor received several responsive documents from OPD. However, upon conclusion of

the mediation program on July 16, 2018, the requester had not received responsive documents to PRR No. 14437. This request remains open in NextRequest with relevant records still unproduced by OPD, even though this public records request was made on March 10, 2016. Commission Staff attempted to resolve this matter through mediation for two years with some success. However, the parties have reached an impasse regarding PRR No. 14437. For those reasons, Commission Staff recommends that the Commission close this matter. (See Action Items)

6. *In the Matter of City of Oakland Public Works (Maintenance and Facilities) (Complaint No. 20-02).* The Commission received a complaint on December 24, 2019, alleging that an Oakland City employee with the Public Works Department (maintenance and groundskeeping) violated the Oakland Government Ethics Act by engaging in harassing, profane and racially incendiary conduct against the Complainant. The Complainant had filed the same report with identical allegations in Case No. 19-21 and 20-01. The allegations in Case No. 19-21 were dismissed and presented for information at the January 6, 2020, PEC meeting. Case No. 20-01 was dismissed at the February 2020 meeting. Likewise, Staff dismissed this complaint due to lack of PEC enforcement jurisdiction. (See Attachment)

ATTACHMENT 9



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

February 18, 2020

Oakland Police Commissioner Ginale Harris
GHarris@oaklandcommission.org

Re: PEC Complaint (Informal/Pro-Active); Notice of Dismissed Complaint

Commissioner Harris:

On or about November 15, 2019, the City of Oakland Public Ethics Commission (PEC) received an informal complaint alleging you violated the Government Ethics Act. We have reviewed the allegations and the law and write to inform you that the Complaint has been dismissed because the allegations, even if true, do not constitute a violation of the Government Ethics Act and is not within the jurisdiction of the Commission's enforcement jurisdiction.

The PEC received a report from the Oakland Police Department of an anonymous call that was placed with the Oakland Police Department that reported that you, a Commissioner on the Oakland Police Commission, were involved with a dispute at your son's private school in San Francisco and may have used your Police Commissioner badge/identification to induce or coerce staff at the school for your private benefit or advantage.

PEC Staff opened a preliminary investigation and, among other things, obtained a copy of the anonymous call that was taped by the Oakland Police Department, a copy of the video tape that was recorded by the San Francisco Police Department (SFPD), and a copy of the SFPD police report, in addition to interviewing the Director of the school.

PEC Staff found no evidence of the use of your Commissioner badge for the purpose of inducing or coercing staff at the school to allow you to enter the school. In fact, the Director of the school, when interviewed, confirmed that no Police Commissioner badge was presented during your interaction with school personnel. Therefore, we are dismissing this complaint.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on March 2, 2020, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank

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PEC Complaint (Pro-Active); Notice of Dismissed Complaint
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Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish.

If you have any questions, you can reach me at (510) 238-4976 or kjohnson3@oaklandca.gov.

Sincerely,

Kellie Johnson
Enforcement Chief,
City of Oakland Public Ethics Commission



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Public Ethics Commission
Enforcement Unit

(510) 238-3593
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February 18, 2020

Sara Carroll
[REDACTED]
[REDACTED]

Re: PEC Complaint No. 19-20; Notice of Dismissed Complaint

Dear Ms. Carroll:

On November 12, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#19-20) alleging that the Mayor violated the Oakland City Charter, Sunshine Ordinance, and the California Brown Act when she failed to deliver a general address on the State of the City at the first meeting of the City Council in October 2019. Further, the complaint alleged the Mayor did not have the authority to move the address and require the public to register to attend the State of the City Address. This letter is a follow-up to our January 22, 2020, telephone conversation. We have concluded our preliminary review of your allegations and, after close review of the facts and the law, we are dismissing your complaint because there is no allegation of a violation within the PEC's enforcement jurisdiction.

Mayor Libby Schaff did not present a State of the City Address at the first October meeting of the City Council in 2020. Instead, on November 5, 2019, at a City Council meeting, she informed the Council and the citizens in attendance that she will present the State of the City Address on February 7, 2020, at the Oakland Museum of California. The Mayor informed the body that attendance would be limited due to space size and that an "Event bright," an online registration computer application, would be set up for citizens to sign up to attend the event.

You (and others) attended the meeting and presented public comment regarding your objection to the Mayor's failure to present the State of the City Address.

The Oakland City Charter Article III section 305 provides that the Mayor "shall" provide a State of the City Address at the first City Council meeting in October. Unfortunately, neither the City Charter, the Sunshine Ordinance nor the Brown Act provide a penalty provision enforceable by the PEC for the Mayor's failure to comply with this provision.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting as part of our regular monthly update on Enforcement actions. That meeting will take place on March 2, 2020, at 6:30 p.m. in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission

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regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission



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Public Ethics Commission
Enforcement Unit

(510) 238-5239
FAX (510) 238-3315
TDD (510) 238-3254

February 18, 2020

Libby Schaaf
Mayor
City Hall
1 Frank H Ogawa Plaza
3rd Floor
Oakland, CA 94612

Re: PEC Complaint No. 19-20; Dismissal Letter

Dear Mayor Schaaf:

On November 12, 2019, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that, among other things, you violated the Oakland City Charter, Sunshine Ordinance, and the California Brown Act when you failed to deliver a general address on the State of the City at the first meeting of the City Council in October 2019. Further, the complaint alleged that you did not have the authority to move the address and require the public to register to attend the State of the City Address.

We have reviewed the complaint, the Oakland City Charter¹ and the law. The allegations raised by the complainant do not provide sufficient facts to establish a violation of the Brown Act or the Sunshine Ordinance within the PEC's jurisdiction. Furthermore, the PEC does not enforce violations of the City Charter without a supplemental statute granting such authority to the Commission. Therefore, we are dismissing this complaint against you.

A copy of the dismissal letter to the complainant is attached. If you have any questions regarding this matter, please feel free to contact me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Chief of Enforcement

¹ The Oakland City Charter Article III section 305 provides that the Mayor "shall" provide a State of the City Address at the first City Council meeting in October.

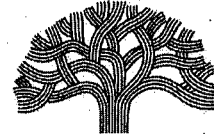
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City of Oakland Public Ethics Commission

Enclosure



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Public Ethics Commission
Enforcement Unit

(510) 238-3593
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February 10, 2020

Raven Bays
2811 Adeline St.
Oakland, CA 94621

Re: PEC Complaint No. 20-02; Dismissal Letter

Dear Ms. Bays:

On January 24, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#20-02) asserting the same allegations from complaint (#19-21 and 20-01) that an Oakland City employee with Public Works Department (maintenance/grounds keeping) violated the Oakland Government Ethics Act by engaging in harassing, profane, sexist and racially incendiary conduct against you. Complaints (#19-21, 20-01) were dismissed because the allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction. As with your previous complaints, the alleged conduct does not fall within the PEC's enforcement jurisdiction, and we are therefore dismissing your complaint.

I have called and left messages on your phone to explain to you directly the PEC's lack of jurisdiction. I have even invited you to drop by my office at your convenience to discuss the matter. Unfortunately, you have not returned my calls, nor have you visited my office. If you have additional questions, I encourage you to contact me directly by telephone or email, both of which are contained in this letter.

I must inform you of the Public Ethics Commission Complaints Policy. Any person who has submitted (4) four complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a "repetitive unmeritorious complaint." Any subsequent complaint submitted by a repetitive unmeritorious complainant during the (12) twelve-month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. Thus far, you have made (3) three such complaints that have been dismissed. Before filing the same complaint again, I strongly encourage you to contact me.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on March 2, 2020, at 6:30 p.m. in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend

