

ATTACHMENT 9



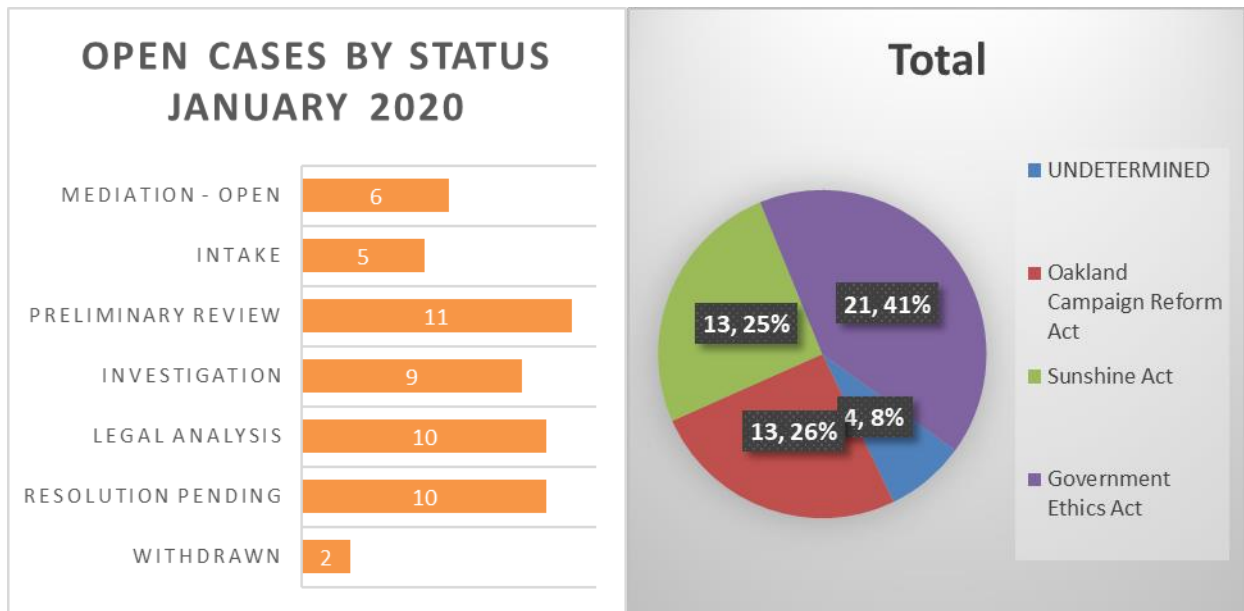
James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice Chair
Jill M. Butler
Michael MacDonald
Janani Ramachandran
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: January 21, 2020
RE: Enforcement Program Update

Current Enforcement Activities:

Since the last Enforcement Program Update on January 6, 2020, Commission staff received one formal complaint. This brings the total Enforcement caseload to 51 enforcement and mediation cases: 5 matters in the intake or preliminary review stage, 9 matters under active investigation, 10 matters under post-investigation analysis, 10 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 January 2020, the following status changes occurred:

1. *In the Matter of Oakland City Council (Complaint No. 19-19)*. On November 12, 2019, the City of Oakland Public Ethics Commission received a complaint alleging that each member of the Oakland City Council violated the Oakland Government Ethics Act (GEA) when they approved the grant of funding from the City Budget to Oakland Promise during the following budget cycles: 2016-2018, 2017-2018, 2018-2019 and 2019-2020. The complainant alleged that Oakland Promise was not a state-recognized non-profit organization and that it did not have the appropriate documentation/registration until 2019 with the state to merge with East Bay College Fund (EBCF), a state-recognized non-profit organization. In the absence of being certified, the allocation of City funds to the organization was unlawful. Staff dismissed the complaint because the complainant did not allege conduct that was a violation of the Government Ethics Act. At the January 6, 2020 meeting, the Commission asked Staff to set this matter over until the next Commission meeting. Staff includes the dismissal letter again, along with a more detailed explanation of the law and the facts alleged in the complaint. (See Attachments)
2. *In the Matter of City of Oakland Public Works (Maintenance and Facilities) (Complaint No. 20-01)*. 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. The allegations in Case No. 19-21 were dismissed and presented for information at the January 6, 2020, PEC meeting. Likewise, Staff dismissed this complaint due to lack of PEC enforcement jurisdiction. (See Attachment)



CITY OF OAKLAND

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Public Ethics Commission
Enforcement Unit

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

December 11, 2019

Gene Hazard

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

Dear Mr. Hazard:

On November 12, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#19-19) alleging that each member of the Oakland City Council violated the Oakland Government Ethics Act (GEA) when they approved the grant of funding from the City Budget to Oakland Promise during the following budget cycles: 2016-17, 2017-18, 2018-19 and 2019-20. The complainant asserts that Oakland Promise was not a State recognized non-profit organization until 2019 and that Oakland Promise did not have the appropriate documentation/registration (Certificate of Agreement or Certificate of Merger) with the State to merge with East Bay College Fund (EBCF), a State recognized non-profit organization. In the absence of being a certified non-profit or merger with the EBCF, the complainant alleged that any and all allocations of funding were unlawful. After review of your complaint and the law, we have determined that the allegation you set forth does not constitute a violation of the Government Ethics Act and therefore are dismissing the complaint.

On November 19, 2019 the City of Oakland's Auditor's office released a report on its investigation into Oakland Promise. The investigation found the following:

“In 2014, Oakland Promise formed as a partnership between the Oakland Unified School District (OUSD) and the East Bay College Fund (EBCF) to improve educational and career prospects for Oakland youth and families. The East Bay College Fund (EBCF) was a nonprofit organization.

In 2015, the Mayor's Office joined OUSD and EBCF, and assumed a leadership role in collaborating with these organizations, including the Oakland Public Education Fund (Ed Fund). The Mayor's Office publicly launched the Oakland Promise multi-agency partnership in January 2016. The Oakland Public Education

ATTACHMENT 9

PEC Complaint No. 19-19; Dismissal Letter
Page 2

Fund (Ed Fund) is a tax-exempt nonprofit organization that raises money for Oakland public schools.

For several years, Oakland Promise existed as a partnership of organizations that individually and collaboratively developed programs toward the shared goal of tripling the number of low-income Oakland public school graduates who complete a post-secondary education. In 2016, the partnership gained more organizational capacity when one of the partner organizations – the Ed Fund – lent its status as an established nonprofit organization to set up a restricted account to receive donations and make payments on behalf of Oakland Promise, an unincorporated association. This fiscal sponsorship arrangement enabled Oakland Promise to obtain funding to staff and administer its programs. On June 27, 2019, the California Secretary of State filed articles of incorporation designating Oakland Promise as an independent nonprofit organization.”

The City Auditor’s investigation concluded that:

“The City’s financial contributions to Oakland Promise – though complex and hard to follow – were neither prohibited nor irregular. The City Council authorized \$1,518,054 of financial contributions to Oakland Promise through the Oakland Fund for Children and Youth (OFCY) for the ‘Brilliant Baby’ and ‘College and Career Access and Success’ programs. As of the date of this report (November 19, 2019), the City paid \$1,117,011 toward these Oakland Promise programs. • The City Council has authorized \$2,150,000 from the City’s General-Purpose Fund to Oakland Promise’s ‘K2College’ program. As of the date of this report, none of the authorized funding for Oakland Promise’s ‘K2College’ program has been paid.”

The Oakland Government Ethics Act section O.M.C. 2.25.060 (A) (1) prohibits a Public Servant from using, permitting others to use public resources for a campaign activity or for personal or non-city purpose not authorized by law. Further, section O.M.C. 2.25.060 (A)(2) prohibits a Public Servant from using his or her position or the power or authority of his/her office or position, in a manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

On these facts, even though the “Fiscal Sponsorship Agreement” between Oakland Promise and the Ed Fund was complicated, the complaint provides no information or evidence that members of the City Council, by approving funds to the Ed Fund for the purpose of assisting an Oakland Promise program, was for personal or non-city purposes. Further, the complainant provides no information that any particular councilmember used their position to coerce or induce a person to provide a private advantage, benefit or economic gain to the councilmember or any other person.

Because the allegations in your complaint, if true, do not constitute a violation of the Government Ethics Act, we are dismissing your complaint pursuant to our Complaint Procedures. The PEC’s Complaint Procedures are available on the PEC’s website, and a copy has been included with this

ATTACHMENT 9

PEC Complaint No. 19-19; Dismissal Letter
Page 2

letter for your reference. I am also including a complete copy of the Oakland City Auditor's Report on Oakland Promise, issued in November 2019. In the Auditor's Report, the City Auditor explains the complicated but lawful Fiscal Sponsorship Agreement.

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 January 6, 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 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.

A large black rectangular redaction box covers the signature area. Above the box, there are faint, handwritten scribbles that appear to be the initials 'M' and 'S'.

ATTACHMENT 9

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Nayeli Maxson Velazquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: January 23, 2020
RE: *In the Matter of Oakland City Council and Mayor Libby Schaff (Case No. 19-19);* PEC Memorandum on Decision to Dismiss an Information Item

PROCEDURAL/FACTUAL BACKGROUND

The Enforcement Unit of the City of Oakland Public Ethics Commission (“Staff”) pursuant to the PEC’s complaint procedures Section II (C)(1)¹ conducted an intake review and dismissed Case No. 19-19 because the allegations the Complaint set forth does not constitute a violation of the Government Ethics Act.

The Complainant made a general allegation, without citing any specific area of the Oakland Charter or ordinances, that every member of the Oakland City Council since 2016, including the Mayor and Councilmembers no longer in office, engaged in unethical and unlawful activity by approving funding in the City Budget for Oakland Promise during the following budget cycles: 2016-2017, 2017-2018, 2018-2019 and 2019-2020.

When a complaint fails to cite a specific statute, provision or ordinance, Staff proactively evaluates whether the allegation constitutes a violation within the Commission’s jurisdiction.²

Here, the closest potential laws that could be applied in this case include Government Ethics Act (GEA) 2.25.060 (A)(1) Misuse of City Resources and/or Misused City Position GEA 2.25.060 (A)(2). O.M.C. 2.25.060(A)(1) prohibits a Public Servant from using or permitting others to use public resources for a campaign activity or for personal or non-city purposes authorized by law.³

¹ The Staff may dismiss a complaint if the allegations do not warrant further action for reasons that may include, but are not limited to, the following: a. allegations, if true, do not constitute a violation of law within the Commission’s enforcement jurisdiction, b. the complaint does not include enough information to support further investigation, c. the allegation in the complaint are already under investigation or already have been resolved, by the Commission or other law enforcement agency, d. the complaint should be referred to another governmental or law enforcement agency better suited to address the issue.

² After a thorough review of the City Charter, Municipal Code provisions and the PEC’s jurisdictional authority, no other applicable laws appear relevant

³ O.M.C. 2.25.060 (A)(1)

ATTACHMENT 9

The allegations set forth in the complaint fail to establish a violation of Misuse of Public Resources in the following ways:

1. No factual evidence that any member of City Council between 2016 and today used or permitted others to use public resources for campaign activity.
2. No factual information that any member of City Council between 2016 and today used or permitted others to use public resources for a personal purpose.
3. No factual information that any member of City Council between 2016 and today used or permitted others to use public resources for a non-city purpose not authorized by law.

Likewise, O.M.C. 2.25.060 (A)(2) prohibits a Public Servant from using his or her position or the power or authority of his/her office or position, in a manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

The allegations set forth in the complaint failed to establish a violation of Misuse of Position in the following ways:

1. No factual evidence that any member of the City Council between 2016 and today used his/her position or the power or authority of his/her office to induce or coerce any person to provide a private advantage, benefit, or economic gain to the City Public Servant.
2. No factual evidence that any member of the City Council between 2016 and today used his/her position or the power or authority of his/her office to induce or coerce any person to provide a private advantage, benefit, or economic gain to any other person.

DISMISSAL SUMMARY

The complaint fails to provide any new information, factual, legal or otherwise that would establish Commission jurisdiction in this case.

The Complaint includes a letter from the State of California Department of Justice, dated September 17, 2019. . The letter provides information that Oakland Promise “has never filed any documentation indicating the organization is a 501(C)(3), non-profit public benefit corporation.” Although helpful information, the letter does not provide evidence of a violation. Furthermore, the Oakland City Auditor has conducted an investigation and made findings that the Oakland City Council did not allocate funds to Oakland Promise.

The City Council allocated funds in the amount of \$1,518,054 in financial contributions to the Oakland Fund for Children and Youth (OFCY) a state recognized non-profit public benefit corporation. The OFCY then provided funding for Oakland Promise’s ‘Brilliant Baby’ and ‘College and Career Access and Success’ programs. The City Council has authorized \$2,150,000 from the City’s General-Purpose Fund to the Education Fund that in turn provided funding to Oakland Promise’s ‘K2College’ program.

ATTACHMENT 9

Oakland Promise had a “fiscal sponsorship arrangement” with the Ed Fund that enabled Oakland Promise to obtain funding to staff and administer its programs. The City Auditor’s office made findings that although the “fiscal sponsorship agreement” between Oakland Promise, the Ed Fund, and OFCY was complicated and on first blush hard to follow, The City’s financial contributions to Oakland Promise “were neither prohibited nor irregular.”⁴

In sum, the letter the Complainant provided to Staff and the Commission from the Department of Justice, although it accurately states Oakland Promise was not a state registered non-profit organization, does not establish the City Council unlawfully allocated funds to an organization that was not a state recognized non-profit organization. Even if true, that fact alone does not establish the violation of Misuse of Public Resources because it does not prove that the allocation was for a campaign or for personal use or for a non-city purpose. Moreover, none of the information alleged by the Complainant, including the letter, establish that a Councilmember, by allocating the funds as part of a full Council vote, coerced or induced anyone to provide a private advantage, benefit or economic gain to themselves or any other person.

A copy of the dismissal letter is included in the Enforcement Report for your review. In addition to the dismissal letter, Staff provided the Complainant with a copy of the City Auditor’s report and findings.

Lastly, Staff notes that the Enforcement team is investigating allegations against Mayor Schaff and her alleged allocation of public resources and the grant of use of City property to Oakland Promise as well as other conduct that was disclosed in the City Auditor’s Oakland Promise report. Staff cannot comment on the details of that investigation until it has concluded and is brought to the Commission for resolution or other action.

⁴ Oakland Promise Audit Report 2019

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Public Ethics Commission
Enforcement Unit

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January 16, 2020

Raven Bays



Re: PEC Complaint No. 20-01; Dismissal Letter

Dear Ms. Bays:

On December 24, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#20-01) asserting the same allegations from complaint (#19-21) 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. Complaint (#19-21) was dismissed on January 6, 2020, because the allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction. As with your previous complaint, 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. Unfortunately, I was not able to reach you and you have not returned my calls. If you have additional questions, I encourage you to contact me directly by telephone or email, both of which are contained in this letter.

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 February 3, 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 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.

Sincerely,

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission
KJohnson3@oaklandca.gov