

# Item 9 - Probable Cause Report - PEC 23-28



Ryan Micik, Chair  
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Nicolas Heidorn, Executive Director

TO: Public Ethics Commission  
FROM: Simon Russell, Enforcement Chief  
DATE: May 29, 2024  
RE: Investigation Summary (Probable Cause Report) in PEC # 23-38, *In the Matter of Michael Dabney*

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**INTRODUCTION**

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3       This is a bribery case involving a mobile food vendor named Michael Dabney  
4 (Respondent) who called a City permit inspector and offered him an undisclosed amount of  
5 cash. The inspector declined the bribe and immediately notified his supervisors. Another  
6 witness overheard the phone call (which was on speaker phone) and verified the inspector's  
7 version of events. In an interview with the PEC, Dabney denied offering a bribe and instead  
8 claimed that he had asked the inspector for a loan.

9       Efforts between PEC staff and Respondent to settle this matter without an  
10 administrative hearing have been unsuccessful. PEC staff now presents its investigative  
11 findings to the Commission and recommends that the Commission (1) vote to find probable  
12 cause that the violations listed below were committed by the person(s) named in this report,  
13 and (2) order that the matter be scheduled for an administrative hearing before a single  
14 Commissioner.

**SUMMARY OF FACTS**

*General Background on the City's Mobile Food Permit Process*

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20       Food trucks, tents, and carts are known within the City's permitting scheme as  
21 "mobile food vendors." Anyone who wants to operate a mobile food vending business in  
22 Oakland needs to obtain a permit from the City's Special Activity Permits office.

23       In order to qualify for a City permit, applicants first need to have obtained a permit  
24 from the county health department. They often need to attach certain other documentation  
25 as well, such as proof that they carry workers compensation insurance (if they have  
26 employees). They may also need to pass inspections conducted by City inspectors. Those  
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1 applications are processed by administrative staff rather than by the inspectors, though  
2 inspectors do occasionally help with processing if they happen to be in the office.

3           An annual permit for a food truck costs about \$482.50. Payments are made only  
4 within the Special Activity Permits office located on the first floor of City Hall. According to  
5 PEC interviews with Special Activity Permits employees, there would never be a legitimate  
6 situation where an inspector would receive cash or any other payment from someone,  
7 except in the limited circumstance of assisting with the processing of an application at the  
8 Special Activity Permits counter in City Hall (which is normally done by other employees, but  
9 where inspectors sometimes help with Spanish-speaking applicants).

10  
11   *General Background on Michael Dabney*

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13           Michael Dabney is the proprietor of Rainbow Italian Ice, a mobile food vending  
14 business. The business operates out of a cart rather than a truck.

15           Though he often vends in Oakland, Dabney has never had a permit to do so. Special  
16 Activity Permit inspectors have occasionally encountered Dabney while out in the field, but  
17 to date they have never cited him. Instead, they have provided him with educational  
18 materials in an effort to get him to comply with the law.

19           In 2020 Dabney applied with the Special Activity Permits office to operate a mobile  
20 cart near Lake Merritt. His application was placed on hold for failure to show proof of  
21 workers compensation insurance (Dabney's application said he had five employees). Dabney  
22 never provided proof of insurance and the permit was never issued. There is no evidence  
23 that he was ever asked to provide a payment in connection with that application.

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*The Attempted Bribery Incident*

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4       In July 2023, Special Activity Permits inspector Moises Campos was assigned to Lake  
5 Merritt to document unpermitted food vending. While there, he encountered Dabney  
6 operating his business. In the course of a conversation about the City’s permit requirements,  
7 Dabney told Campos that he was hoping to purchase a food truck (Dabney was vending out  
8 of a cart). Wanting to help Dabney and encourage him to legalize his business, Campos  
9 provided him with an informational flyer about a private program that offers loans to  
10 qualifying mobile food vendors to purchase a truck. Dabney subsequently contacted the loan  
11 program, which requires loan applicants to have a mobile food vending permit.

12       On Thursday, August 17, 2023, Dabney sent a text message to Campos on the latter’s  
13 work-issued cell phone, stating, “Rainbow Italian ice calling you. Hit me back if you got a  
14 minute.”

15       Though he did not know Dabney well, Campos did not find it unusual that a vendor  
16 would want to speak to him on the phone. Vendors often called him to ask about the  
17 requirements of the permit process.

18       The following day, August 18, 2023, Campos called Dabney back. At the time of making  
19 the call, Campos was in the Special Activity Permits office located in City Hall. When Dabney  
20 answered the phone, he told Campos that he had “some business to talk to you about.”

21       This struck Campos as unusual. His suspicions raised, Campos put Dabney on  
22 speakerphone and indicated to a nearby co-worker, Nancy Marcus, that he wanted her to  
23 listen.

24       Campos then asked Dabney what type of business he wanted to talk about. Both  
25 Campos and Marcus heard Dabney reply that he had “money” or “cash” and that it was “for”  
26 Campos or to “pay” Campos. Campos asked Dabney what the money was supposed to be for.  
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1 Dabney did not answer directly but said the money was for “you know” (emphasis added  
2 based on how Marcus later described Dabney’s intonation to the PEC). At that point, Campos  
3 declined Dabney’s offer and terminated the call soon afterward. He then reported the  
4 incident to his supervisors.

*Dabney’s Statements to the PEC*

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8 In an interview with the PEC, Dabney confirmed that he had spoken on the phone to  
9 Campos but denied expressing an intention to give Campos money. Instead, Dabney claimed  
10 that he had asked Campos to lend him \$500.

11 When asked what the \$500 loan was meant to be for, Dabney said it was “personal”  
12 and not meant to be a business loan. He did not provide any more specifics when asked about  
13 the purpose of the supposed loan, other than to say that it was meant to help him “get by”  
14 for a “couple of weeks.”

15 When asked why he would ask Campos, in particular, for a loan, Dabney said he didn’t  
16 know, just that he was hoping to get a loan. He admitted that he knew Campos solely as a City  
17 inspector, that they were not personal friends, and that they had never spent time together  
18 socially.

19 When informed by the PEC that his phone call with Campos had been overheard by  
20 others on speakerphone, Dabney stated that he had been unaware of that. When told by the  
21 PEC that Campos and others who heard the call were claiming that Dabney had told Campos  
22 that he (Dabney) wanted to give money to Campos, Dabney said that they must have  
23 misheard or misunderstood the conversation. During his interview with the PEC, Dabney  
24 never stated that anyone else had also been a witness to the call on his end or could otherwise  
25 verify his version of events.  
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1           Several months later, Dabney contacted the PEC and claimed to also have a witness  
2 who could corroborate his story. When asked why he had not mentioned or produced this  
3 witness earlier, Dabney replied “My witness was out of touch for quite some time lost in Las  
4 Vegas. Resurfaced.”

5           Dabney subsequently produced a brief written affidavit from someone named  
6 Christopher Williams, which stated in relevant part: “I was with Michael Dabney at the time of  
7 the phone call received by Michael from Moises Campos. Michael was driving and the phone  
8 was on hands free speaker. Moises asked Michael what his call/txt about. Michael asked  
9 Moises if he would consider lending \$500 on a short term basis to help Michael out as personal  
10 loan. Moises stated that he couldn't do anything in the way of a loan to Michael and wished  
11 him the best with finding help. That was the end of the call.”

12           In follow-up interviews, both Campos and Marcus denied that Dabney had asked  
13 Campos for a loan or said anything on the call that might have been construed as asking for a  
14 loan. (When informed of Dabney’s version of events, Marcus flatly told the PEC, “That did not  
15 happen”). Campos confirmed that he and Dabney are not social friends, and that Dabney had  
16 never asked him for a loan at any point in their working relationship.

**SUMMARY OF LAW & LEGAL ANALYSIS**

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20           All statutory references and discussions of law pertain to the referenced statutes and  
21 laws as they existed at the time of the violations.

22           All definitions of terms are the same as those set forth in the Government Ethics Act  
23 (“GEA,” Oakland Municipal Code Chapter 2.25), either directly or as apparent from the  
24 context. For terms that are not defined in GEA, the definitions set forth in the state or local  
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1 law that is cited as the source of the relevant provision governs its interpretation.<sup>1</sup>

2  
3 *Dabney Offered to Bribe Campos*

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5 GEA's prohibition on bribery states that no person shall offer anything of value in  
6 exchange for the performance of any official act.<sup>2</sup>

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8 **Element 1: Offer**

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10 "Offer" is not specifically defined under GEA, and no state or local law is cited as the  
11 source of this provision in GEA. Therefore we must look to the context of the law, the  
12 interpretation of similar laws, common-sense understanding, and the PEC's prior  
13 interpretation and practice for guidance.

14 California's bribery statutes are substantially similar to GEA's bribery prohibition, so  
15 the interpretation of those statutes can be used as persuasive authority here. It is a well-  
16 established principle under those laws that a bribery offer need not be overt or forceful, and  
17 can even be implied. "The offer or solicitation of a bribe need not be stated in express  
18 language as such; it is sufficient that the words used carried the import of a bribe and were  
19 evidently intended to bear that meaning."<sup>3</sup> Surrounding circumstances, including  
20 conversations and behavior before and after the solicitation itself, can also be used as

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25 <sup>1</sup> OMC § 2.25.030(A).

26 <sup>2</sup> OMC § 2.25.070(A).

27 <sup>3</sup> *People v. Vollmann*, 73 Cal. App. 2d 769, 786, citing 11 C.J.S. 843.

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1 circumstantial evidence of solicitation to the extent that they may shed light on the meaning  
2 or intent behind the solicitation.<sup>4</sup>

3 For instance, a court affirmed a defendant’s bribery conviction where he told a taxicab  
4 inspector “I realize that I forgot to get you a gift” and slipped \$500 into the inspector’s pocket  
5 after his taxicabs failed the inspection.<sup>5</sup> Similarly, another court concluded that a public  
6 official’s offer to sell “grossly overpriced land” to a developer who was seeing to remove a  
7 different parcel from an agricultural preserve was implicitly a bribe.<sup>6</sup>

8 The only prior PEC case involving the offer of a bribe (as opposed to solicitation or  
9 acceptance) is # 18-03, *In the Matter of Dorian Gray*. In that case, the PEC found that  
10 respondent Dorian Gray offered a bribe by telling a City Councilmember that Gray had an  
11 envelope containing \$10,000 with the Councilmember’s name on it during a conversation  
12 about Gray’s client, who had a pending application for a cannabis permit from the City. The  
13 Councilmember declined the bribe. As in Dabney’s case, Gray’s offer was implicit: Gray never  
14 explicitly told the Councilmember that the \$10,000 was in exchange for any specific help they  
15 might give toward obtaining the permit, but the overall circumstances reasonably led to such  
16 a conclusion.

17 Here, both Campos and his co-worker Marcus recalled that Dabney had said that he  
18 had cash and that it was specifically “for” Campos (or to “pay” Campos). Both further stated  
19 that there would be no legitimate reason for someone to pay cash to an inspector. At the time  
20 of making this statement, Dabney did not have an active permit application pending with the  
21 City – his 2020 permit application was on hold pending proof of worker’s compensation

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24 <sup>4</sup> *Id.* at 786-87.

25 <sup>5</sup> *People v. Lasher*, No. H035478, 2011 WL 5040613, at \*2, \*4 (Cal. Ct. App. Oct. 24, 2011).

26 <sup>6</sup> *People v. Diedrich*, 643 P.2d 971, 975 (Cal. 1982).



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1 insurance, and he had not followed up for three years. There is also no evidence that he was  
2 ever asked to provide a payment in connection with that application.

3         Given that the common-sense understanding of “offer” would encompass arranging  
4 to meet someone in order to give them money, Dabney’s statements to Campos clearly  
5 qualify as an offer for purposes of GEA. And as with the *Gray* case or the other precedents  
6 cited, the circumstances surrounding Dabney’s phone call with Campos also show his intent  
7 to offer a bribe. Dabney’s interest in obtaining a loan requiring evidence of a permit; his prior  
8 troubles obtaining a permit; Campos’ status as a City permit inspector; Dabney’s statement  
9 that he had money “for” Campos; the irregularity of Campos receiving cash from anyone; and  
10 the vague and indirect language used by Dabney in his phone call with Campos all evidence  
11 that Dabney was making an offer of money to Campos.

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13                 **Element 2: Thing of Value**

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15         Both common sense and prior PEC prosecutions under this law include money in the  
16 definition of a “thing of value.”

17         Here, Dabney offered Campos money. Although Campos terminated the call before a  
18 specific amount of money could be offered, GEA does not require that a specific amount be  
19 offered, just a “thing of value” in general.<sup>7</sup> Therefore this element is satisfied.

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21                 **Element 3: In Exchange For The Performance of Any Official Act**

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23         It is established under the law of criminal bribery that the exact nature of an official  
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25 <sup>7</sup> See also Judicial Council of California Criminal Jury Instruction 2600 (“The thing offered does not need to...  
26 exist at the time it is offered, or have a specific value.”).

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1 act need not be specified in order for a bribe to be made: “[B]ribery does not require that a  
2 specific official action be pending when the bribe is given, or that there be proof that the bribe  
3 was intended to influence any particular such act. Rather, it is sufficient that the evidence  
4 reflect that there existed subjects of potential action by the recipient, and that the bribe was  
5 given or received with the intent that some such action be influenced.”<sup>8</sup> For instance, in a  
6 bribery case involving a developer who paid money to a legislator after a vote on the  
7 developer’s project had already taken place, the court concluded that additional related  
8 matters “could” have come before the legislator for purposes of establishing a bribe,  
9 including zoning approvals and allocation of tax money for building roads.<sup>9</sup>

10 Furthermore, it is also established under the law of criminal bribery that “no ‘meeting  
11 of the minds’ is required to establish an agreement to take a bribe. It is not necessary that  
12 there be an understanding, in the sense of an agreement, with the person unlawfully  
13 approached but merely an understanding on the part of the bribe seeker himself that his  
14 official action shall be influenced.”<sup>10</sup> For instance, a defendant was properly found guilty of  
15 bribing a witness to not testify even though the witness “never intended” to follow through  
16 with their agreement not to show up.<sup>11</sup>

17 In the present case, therefore, it is irrelevant whether Campos intended to perform  
18 any official act in exchange for Dabney’s bribe. Instead, it is only relevant whether Dabney  
19 offered the bribe with the intent to influence Campos’ performance of any official act that  
20 Campos could have undertaken.

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23 <sup>8</sup> *People v. Gaio*, 81 Cal. App. 4th 919, 929 (2000).

24 <sup>9</sup> *Diedrich*, 643 P.2d at 977.

25 <sup>10</sup> *Vollmann*, 73 Cal. App. 2d at 788 (internal quotes and citations omitted).

26 <sup>11</sup> *People v. Pic’l*, 646 P.2d 847, 850 (Cal. 1982).

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1           As for what type of acts by a City official might qualify as an “official act,” in prior PEC  
2 cases we have prosecuted building inspectors for soliciting or accepting money in exchange  
3 for the following types of acts: falsely stating (in City records) that someone had obtained a  
4 necessary permit<sup>12</sup>; guaranteeing a certain result in an official inspection<sup>13</sup>; modifying and/or  
5 inputting false information into the City’s computer system<sup>14</sup>; and ignoring violations in the  
6 course of an inspection<sup>15</sup> (i.e. non-performance of an official act, which we treat the same as  
7 performance for purposes of this law). In other words, all of the discretionary acts normally  
8 undertaken by a City inspector meet this element, including the issuance of permits or  
9 falsifying other information that would allow someone to obtain a City permit.

10           Here, Campos told the PEC that Dabney had said that he had “some business to talk to  
11 you about” and that it “involves me paying you in cash.” The conversation occurred soon after  
12 Dabney had inquired about a private loan program that required proof of a City permit.

13           Because Dabney and Campos had only ever interacted regarding the performance of  
14 Campos’ duties as a City inspector, it is reasonable to assume that when Dabney referred to  
15 having “business” with Campos, it was in reference to Campos’ official duties. Since Campos  
16 works in the City office where mobile food vendor permits are processed and approved, it is  
17 reasonable to assume that Dabney thought Campos could help him to get a permit  
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21 <sup>12</sup> *In the Matter of Thomas Espinosa* (PEC # 16-14), Count 21.

22 <sup>13</sup> *In the Matter of Thomas Espinosa* (PEC # 16-14), Counts 4, 11, 16-17; *In the Matter of Anthony Harbaugh* (PEC #  
23 18-11), Count 1.

24 <sup>14</sup> *In the Matter of Thomas Espinosa* (PEC # 16-14), Count 21.

25 <sup>15</sup> *In the Matter of Thomas Espinosa* (PEC # 16-14), Counts 4, 21; *In the Matter of Anthony Harbaugh* (PEC # 18-11),  
26 Count 1.

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1 approved.<sup>16</sup> And because both the nature of their relationship and the surrounding  
2 circumstances do not reasonably give rise to an inference that Dabney wanted to give Campos  
3 money for any other reason (e.g. a gift, or repaying a loan), it is reasonable to assume that the  
4 offer of money was being made to induce Campos to perform (or not perform) some official  
5 act. Therefore, this element is satisfied.

*Dabney Lied To PEC Investigators*

9 GEA states that a person shall not knowingly and intentionally furnish false or  
10 fraudulent evidence or information to the Public Ethics Commission, or knowingly and  
11 intentionally misrepresent any material fact, or conceal any evidence or information relevant  
12 to an investigation by the Commission of an alleged violation of the Government Ethics Act.<sup>17</sup>

**Element 1: Furnishing False Evidence or Information, Misrepresentation of Material  
15 Fact, or Concealment of Relevant Evidence or Information**

17 Dabney lied to the PEC when, during an interview with a PEC investigator, he denied  
18 offering money to Campos and instead claimed that he had asked Campos to lend him  
19 (Dabney) \$500. This statement was untrue.

20 By denying that he offered Campos money and saying that he asked Campos for a loan  
21 when he did not do so, Dabney furnished false information, misrepresented a material fact,  
22 and/or concealed relevant evidence or information. Accordingly, this element is met.

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24 <sup>16</sup> See *Diedrich*, 643 P.2d at 977 (holding that the mere possibility of a matter coming before an official was  
25 sufficient to sustain a bribery conviction).

26 <sup>17</sup> OMC § 2.25.080(C)(7)(a).

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**Element 2: Knowingly and intentionally**

“[K]nowingly and intentionally” is not specifically defined under GEA. However, California law defines knowingly as “a knowledge that the facts exist which bring the act or omission within the provisions of [a] code. It does not require any knowledge of the unlawfulness of such act or omission.”<sup>18</sup> “Intentionally” is similarly understood to mean that a person intended to do the act proscribed by the law, in the sense of doing that act “wilfully.”<sup>19</sup> As such, GEA’s intent requirement is substantially similar to that of the law criminalizing perjury, which is violated when a person “wilfully states as true any material matter which he or she knows to be false.”<sup>20</sup>

This element accordingly requires that a person intend to provide the PEC with false evidence or information (including an oral statement given during an interview) while knowing that the evidence or information was false.<sup>21</sup>

Here, Dabney’s first-person knowledge of the relevant conversation and the circumstances of his interview reasonably support the conclusion that he gave false information to the PEC knowingly and intentionally. Dabney knew exactly what he said during his conversation with Campos since he was the one who spoke those words. His interview with the PEC took place approximately a month and a half after that conversation. Accordingly, it is reasonable to believe that Dabney had a good memory of what he said, and that he knew he did not ask Campos for a personal loan.

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<sup>18</sup> Cal. Penal Code § 7(5).

<sup>19</sup> *People v. Lewis*, 15 Cal. Rptr. 3d 891, 901 (Cal. Ct. App. 2004).

<sup>20</sup> Cal. Penal Code § 118(a).

<sup>21</sup> See *People v. Story*, 853, 216 Cal. Rptr. 158, 160 (Cal. Ct. App. 1985).



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**VIOLATIONS:**

**MICHAEL DABNEY**

Respondent, Michael Dabney, violated the following Oakland Municipal Code(s):

**Count 1: Bribery**

On August 18, 2023, Dabney offered a thing of value (money) to City inspector Moises Campos in exchange for the performance of an official act.

In this way, Respondent violated OMC § 2.25.070(A).

**Count 2: Lying to/Misleading the PEC**

On or around October 5, 2023, in the course of a PEC investigation into whether Dabney offered to bribe City inspector Moises Campos, Dabney stated to PEC investigators that he had not offered money to Campos and instead stated that he had asked Campos for a loan. This was an untrue statement, which Dabney offered to the PEC with knowledge of its falsehood.

In this way, Respondent violated OMC section 3.12.250.

**RECOMMENDATION**

Based on the foregoing, PEC staff recommends that the Commission:

1. Find that there is probable cause to believe that Respondent Michael Dabney committed the violations described in Counts 1-2; and

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2. Order that this matter be scheduled for an administrative hearing before a single Commissioner.