

Item 10a - Enforcement Report 6-7-21



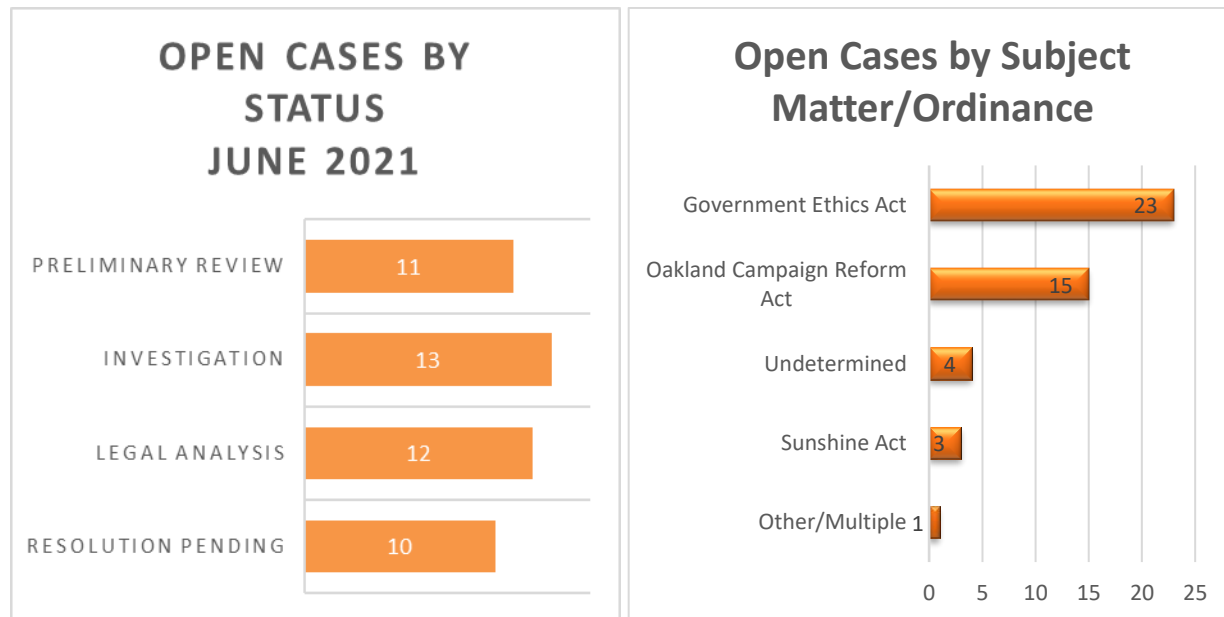
Michael McDonald, Chair
Jerett Yan, Vice-Chair
Avi Klein
Arvon Perteet
Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: May 17, 2021
RE: Enforcement Program Update for the June 7, 2021, PEC Meeting

Current Enforcement Activities:

Since the last Enforcement Program Update on May 3, 2021, Commission staff received two complaints. This brings the total Enforcement caseload to 46 open cases: 11 matter(s) in the intake or preliminary review stage, 13 matters under active investigation, 12 matters under post-investigation analysis, and 10 matters in settlement negotiations or awaiting an administrative hearing.



Summary of Current Cases:

Since the last Enforcement Program Update in May 2021, the following status changes have occurred.

1. ***In the Matter of Thomas Espinosa (Case No. 16-14)***. Pursuant to Public Ethics Commission Hearing Procedures, a Hearing was held on April 27, 2021 to resolve this 2016 complaint which alleged 47 violations of the Government Ethics Act. The complaint alleged, among other things, that a Planning and Building Inspector, the Respondent, engaged in a “pay to play” scheme by extorting fees from Oakland property owners in exchange for building permits and inspections. After review of all relevant legal memorandum and submissions of evidence, the Hearing Officer submitted to the Commission a report of factual and legal findings, with penalty recommendations. Staff recommends that the PEC adopt the Hearing Officer’s proposed factual conclusions and the findings as to counts 1-29 and 34-47. Staff will defer to the Commission on whether to adopt the Hearing Officer’s factual and legal findings regarding counts 30-33. Staff recommends the Commission adopt the hearing officer’s imposition of a \$210,000 penalty. (See Action Items)

2. ***In the Matter of The City of Oakland Planning and Building Department (Case No. 18-48 and 16-22M)***. On September 7, 2016, the Commission received a complaint alleging that the Oakland Planning and Building Department failed to disclose records in response to a public records request made by the complainant on August 8, 2016. On October 31, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. In response, the Department provided additional records responsive to Complainant’s public records request. Commission Staff has completed mediation and made a recommendation to close the mediation because the department reported that they had no other documents in their possession regarding the public records request related to Case No DS 15-0313. The Commission closed the Mediation and referred the matter to the Enforcement Unit for further investigation on whether the Planning and Building Department violated the Public Ethics Act. After reviewing the facts, the law and taking into consideration that the Commission has no authority to impose penalties for Sunshine Ordinance violations, the Staff will defer the resolution to the PEC. (See Action Items)

3. ***In the Matter of Terrell Picot (Case No.21-04)***. On February 8, 2021, the Public Ethics Commission received an inquiry that alleged Picot and newly hired Building Inspector with the Planning and Building Department violated a provision of the Government Ethics Act, Financial Conflicts of Interest, by owning his own private building inspection business while employed by the City of Oakland as a Building Inspector. Staff completed its review and investigation of the matter and after reviewing the facts, relevant law and Enforcement Procedures, the Staff found that the allegations failed to establish Picot violated any

provision of the Government Ethics Act. Pursuant to Enforcement Procedures the complaint was dismissed. (See Attachments)

In the Matter of Mark Sawicki, Director of Development Department and the City of Oakland Planning and Building Department. (Case No. 21-02). On February 8, 2021, the Public Ethics Commission received a complaint that alleged the City Planning and Building Department, Mark Sawicki along with a representative from the Verizon Telephone Company, violated a provision of the Government Ethics Act. The Complaint alleged that Sawicki had a financial conflict of interest with AT&T and alleged he wrote an email that detailed his possible financial conflicts with the corporation. Staff recovered the alleged email, and although Sawicki makes ill-advised comments regarding the money the City makes from contracts with certain cooperation's, there was no information that established that Sawicki had personal financial conflicts of interests as defined by the Oakland Municipal Code. Staff completed its review and investigation of the matter and after reviewing the facts, relevant law and Enforcement Procedures, contacted the complainant about the preliminary review at which time the Complainant made a request to withdraw the Complaint. The Complaint was withdrawn. (See Attachments)