



CITY OF OAKLAND

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

Public Ethics Commission
Enforcement Unit

(510) 238-5239
FAX (510) 238-3315
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December 16, 2022

Sheng Thao, Controlling Candidate
Julie Caskey, Treasurer



Via email:



Re: City of Oakland Public Ethics Commission Complaint 22-24; Notice of Dismissal

To *Sheng Thao for Oakland Mayor 2022*:

On November 22, 2022, the City of Oakland Public Ethics Commission (PEC) received a complaint (#22-24) alleging that unnamed “workers” on your campaign had campaigned too closely to a polling station on Election Day. We previously sent you a notification letter about this complaint, as well as a copy of the complaint itself, on December 7, 2022.

I am writing to inform you that the PEC has completed its preliminary review of the complaint and has dismissed it with no further action. We did this because the allegations in the complaint, even if assumed to be true, would not have violated any of the laws under the jurisdiction of the PEC. For more detail, you can consult the dismissal letter that we sent to the complainant, a copy of which is attached here.

No action is necessary on your part; this letter is just a courtesy notice.

We are required to inform the Public Ethics Commission of the resolution of this matter at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting and update will take place on January 11, 2023, at 6:30 p.m. by teleconference and will be posted on the Commission’s website in advance of the meeting. 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 call-in to that meeting to listen and/or give

Item 12c - Dismissal Letter 22-24

PEC Complaint No. 22-24; Notice of Dismissal

Page 2

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.

If you have any questions regarding this matter, please feel free to contact me at (510) 424-3200 or srussell@oaklandca.gov.

Sincerely,

Simon Russell

Simon Russell
Chief of Enforcement
City of Oakland Public Ethics Commission

Enclosure



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Public Ethics Commission
Enforcement Unit

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December 16, 2022

Lilah M. Lackney



Via email: [REDACTED]

Re: Public Ethics Commission Complaint No. 22-24; Notice of Dismissal and Suggested Referral

To Lilah Lackney:

On November 22, 2022, the City of Oakland Public Ethics Commission (PEC) received your complaint (#22-24) alleging that unnamed agents of the Sheng Thao mayoral campaign campaigned within close proximity of a polling station on Election Day.

As a preliminary matter, I would note that the PEC does not have direct jurisdiction over allegations of campaigning too close to a polling station. Complaints of that sort should be made to the Alameda County District Attorney or the California Secretary of State (SOS). The SOS complaint form can be found at <https://www.sos.ca.gov/elections/publications-and-resources/voter-complaint>.

I did take the time to examine your complaint under the only provision of Oakland's local law that might be applicable to your allegation, namely the misuse of City resources (specifically, an Oakland park) for campaign purposes.¹ But I do not find that the allegations in your complaint, even if assumed to be true, would violate that law. My reasoning is explained below.

Under Oakland's Government Ethics Act section 2.25.060(A)(1), a public servant may not use or permit others to use public resources for a campaign activity not authorized by law. Your complaint alleges that unnamed campaign workers were campaigning on a sidewalk

¹ Oakland Municipal Code (OMC) section 2.25.060(A)(1). Your polling place, Lakeside Park Garden Center and the adjoining sidewalk, is a public park.

adjoining the Lakeside Park Garden Center, which is a City park (including the sidewalk referenced in your complaint).

Under the facts alleged in your complaint, it is unclear if the unnamed campaign workers were campaigning in the park under the direction of Councilmember/candidate Sheng Thao (for example, they could also have been working for an independent group supporting Thao, or even on their own personal initiative). But even assuming that they were working directly for Thao's campaign, their actions would not have been a violation of the law just cited unless it can be proved that they were "using" public resources as defined under that law. That law defines "use" to mean "any use of public resources which is substantial enough to result in a gain or advantage to the user, or a loss to the City, for which a monetary value may be estimated."²

Here, the alleged use of City resources is the temporary occupation of part of a sidewalk in a public park. The public may freely occupy space at a public park, including the sidewalk. There is no measurable gain or loss to the City if one set of people (e.g. campaign workers) use space at a park, as opposed to another (e.g. non-campaign workers).

Even if it were argued that the occupation of a sidewalk constituted a "use" of City property that could be measured in monetary terms, there is an exception under the law for "incidental and minimal" use of City resources for campaign purposes.³ In a phone conversation with me, you stated that the unnamed campaign workers were not occupying the entire sidewalk and that you were still able to use the sidewalk despite their presence. It appears that their use of the sidewalk could reasonably be considered incidental and/or minimal under these circumstances.

There is thus no measurable monetary value to the alleged use of City resources in the complaint, at least beyond the "incidental and minimal" use permitted by law. As such, a violation of this law could never be proved even if all of the facts alleged in your complaint are assumed to be true. Regarding the allegation that the campaign workers were too close to the polling station, I suggest sending your complaint to the Secretary of State using the link provided earlier in this letter.

We are required to inform the Public Ethics Commission of the resolution of this matter at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting and update will take place on January 11, 2023, at 6:30 p.m. by teleconference and will be posted on the Commission's website in advance of the meeting. 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 call-in to that meeting to listen and/or give

² OMC section 2.25.060(A)(1)(a)(iv).

³ OMC section 2.25.060(A)(1)(a)(ii).

Item 12c - Dismissal Letter 22-24

PEC Dismissal and Suggested Referral Letter, Complaint # 22-24

Page 3 of 3

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 other questions regarding this matter, please feel free to contact me.

Sincerely,

Simon Russell

Simon Russell, Enforcement Chief
City of Oakland, Public Ethics Commission
(510) 424-3200
srussell@oaklandca.gov