

# Item 13a - Enforcement Report



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TO: Public Ethics Commission  
FROM: Simon Russell, Enforcement Chief  
DATE: January 3, 2024  
RE: Enforcement Program Monthly and Year-End Report for the January 17, 2024, PEC Meeting

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## End of the Year Summary for Enforcement Matters

2023 was a challenging year for the Enforcement Unit, mainly due to staffing issues. For most of the year, Enforcement had no permanent investigators, and only intermittent support from contract staff. This was a problem that had carried over from September 2022, when the current Enforcement Chief was promoted and the only budgeted investigator position was left vacant. It was not until December 2023 (fifteen months later) that a new, permanent investigator was hired. (Our understanding is that the long delay was due to capacity issues at the Human Resources Management Department, and that other City departments were similarly impacted). In addition, until the PEC's new Executive Director came on board in May 2023, the Enforcement Chief was the only attorney on the PEC staff – a considerable problem for an office handling a number of complicated cases in a specialized area of law.

This staffing shortage was particularly ill-timed given the number and complexity of the cases on Enforcement's docket. The unexpected departure of two Executive Directors in a short period of time (one of whom had also served as the previous Enforcement Chief for a number of years) also meant that a great deal of institutional knowledge was lost. As a consequence, the current Enforcement Chief had to devote more time than anticipated to rebuilding the Enforcement Unit's internal processes, in addition to investigating and prosecuting all existing and incoming cases. The "ransomware" attack of February 2023 also meant that the Enforcement Unit was unable to access most of its electronic case files for a number of weeks.

In light of these challenges, in April 2023 the Enforcement Chief made the difficult decision to begin placing a number of matters "on hold" in order to free up limited resources for the most urgent and impactful cases. While this did allow us to make behind-the-scenes progress on significant cases, it also resulted in over half of our other cases effectively coming to a halt.

More happily, we have at long last brought on a permanent investigator as of December 2023. We will also be bringing in a temporary (six-month) investigator in January 2024, as well as two part-time law clerks (also for six-month terms). We also added an Enforcement Assistant last year, the first time the Enforcement Unit has ever had a dedicated administrative assistant (though this individual had to split their duties with other units due to unexpected turnover this autumn, and only recently resumed spending a majority of their time on Enforcement matters).

In short, the Enforcement Chief had to make a number of strategic calculations this year in light of these serious and unexpected challenges. The fruits of most of them will likely not be visible to the Commission and to the public until sometime in 2024, assuming there are no further major disruptions. These calculations were the following:

- To focus on pushing major cases “over the finish line” at the expense of many mid-level and smaller cases;
- To clarify and institutionalize Enforcement’s internal processes, which had previously been more ad hoc and informal;
- To strengthen relationships with other enforcement agencies in order to make up for lost PEC capacity;
- To “test out” tools that had previously been under-utilized by the Enforcement Unit (particularly injunctions and streamlined Form 700 enforcement) in the hopes of using them more vigorously once more staff has been hired; and
- To develop an in-depth training program and onboarding process for new Enforcement hires (particularly investigators) to promote high-quality work and staff retention, at the short-term expense of efficiency.

This end-of-year report presents a summary and highlights of the Enforcement Unit’s work in 2023 under these conditions, to the extent possible under the confidentiality requirements imposed upon our casework by the City Charter.

### *Clarifying and institutionalizing Enforcement’s internal processes*

The Enforcement Unit has formal Complaint Procedures and Penalty Guidelines that ensure cases are handled in a manner that respects due process as well as the public’s interest in seeing the PEC’s laws vigorously and efficiently enforced. However, before 2023 the Enforcement Unit largely lacked internal procedures or manuals to govern the day-to-day

handling of its work. Instead, these processes were developed on-the-go as the result of the small Enforcement team's daily practice (and the newness of the Enforcement Unit generally, which did not exist before 2015).

With the unexpected departure of its senior leadership in 2022, the Enforcement Unit was left without much in the way of guidelines or uniform practices for its day-to-day work. While the new Enforcement Chief had some previous exposure to the Enforcement Unit's case processing practices, the lack of written manuals or consistent recordkeeping methods presented a major challenge when trying to ensure an orderly leadership transition.

Throughout 2023, the Enforcement Chief has devoted considerable time to developing and memorializing consistent practices for the Enforcement Unit's day-to-day work. While this did reduce the amount of time that could otherwise have been spent on straightforward casework, the hope was that investment in these areas would yield long-term rewards in the form of more efficient case processing, better recordkeeping and public-facing statistical information, and enduring practices that could survive staff turnover. Among the changes made were the following:

*Revamped and expanded case-tracking database.* We have significantly reworked our internal case-tracking system known as the Enforcement Database, in order to capture more detailed information about the nature and progression of each case. This has allowed us to provide more detailed statistical information about our overall caseload (see the table on the last page of this report); more efficiently identify prior cases that can be used as templates for newer investigations and legal analysis (thus speeding up our overall case processing); and more precisely track the progress and current status of each case. Many thanks to PEC Program Manager Suzanne Doran for her technical assistance in this effort.

*Tracking informal complaints.* Previously we lacked a system for tracking and ensuring a response to incoming informal complaints (i.e., complaints not submitted on our formal complaint form – usually in the form of emails or phone calls). Therefore we not only lacked statistical data about these complaints (which can form a significant part of our workload), but we also were unable to verify that Enforcement was responding to – or even aware of – these incoming complaints. We now have consistent procedures in place for routing, tracking, and responding to all incoming informal complaints. Many thanks to PEC Administrative Assistant Chris Gonzales for all of his work fielding the majority of these complaints as they came in.

*Memorializing case processing practices not contained in the Complaint Procedures.* Our formal Complaint Procedures govern how we must process cases at a birds-eye level. In terms of day-to-day practices, however, no manuals or other written guidelines existed before 2023.

The Enforcement Chief drafted uniform standards for the processing of complaints (including informal, anonymous and proactive complaints), case file organization, evidence storage and retention, data security, and similar matters.

*Recruiting and Training New Staff.* To ensure high-quality hires, the Enforcement Chief developed a “skills test” for prospective investigators in order to assess their facility with interviewing witnesses and understanding the nature of the allegations that the PEC typically investigates. And to support and retain newly-hired investigators, we have developed a training and onboarding program for both the technical and the substantive aspects of the investigator’s position.

### *First use of our injunctive authority*

An “injunction” is a court order compelling someone to do – or refrain from doing – something. While the Enforcement Unit has long had the legal authority to seek injunctions in order to compel compliance with the City’s campaign finance and ethics laws, we had never previously made use of this power.

In the fall of 2023, the Enforcement Unit decided to make use of this power for the first time, in order to compel a campaign that had failed to file its legally-required campaign finance reporting forms in advance of the November 2023 election. Enforcement’s rationale was that a mere fine for non-compliance after the election would not be an adequate remedy, since the public would still have been deprived of any information about the subject’s sources of campaign funding and expenditures when it mattered most – before the election. Happily, the subject of the proposed injunction began to comply with their legal obligations shortly after receiving a direct notice that we were about to seek a court order (and Enforcement appreciates and recognizes their eventual compliance).

While Enforcement ultimately did not need to use its injunctive power this year, the experience that we gained while preparing to do so (including templates) has made us more capable of invoking this power on shorter notice in future elections. We hope to combine this remedy with the PEC’s usual educational tools, filing late fees, and enforcement penalties to ensure that all campaigns file their legally-mandated financial reports in advance of future elections.

### *Pilot Program For Increased Form 700 Enforcement*

As recently noted by the Alameda County Grand Jury, the City of Oakland has a longstanding problem with public officials failing to file their Form 700s. These are basically forms that City

staff and officials must file every year, listing all of their financial interests that could potentially form the basis of a conflict of interest in the execution of their City duties.

The PEC has the authority to investigate and prosecute the non-filing of these forms. The challenge has always been twofold: (1) identifying all of the non-filers in the City, particularly in light of the fact that the PEC is not the filing officer for Form 700s (and therefore does not have direct access to the relevant data); and (2) handling a caseload of non-filer matters that potentially numbers in the hundreds.

However, in late 2022 the PEC directed Enforcement and the City Clerk's office (the filing officer for Form 700s) to collaborate more consistently in monitoring and enforcing Form 700 compliance. This has resulted in the PEC getting access to data on non-filers that it did not previously possess. In addition, the PEC had earlier developed a "streamline" program for handling low-level violations such as the non-filing of a Form 700. This program had never been used on a wide scale; but with greater access to non-filer data, Enforcement felt it was in a better position to make use of this tool for purposes of fostering a Citywide culture of compliance with the Form 700 laws.

Some challenges remained. Enforcement was not sure how reliable the City's data regarding Form 700 non-filers was, due, in part, to the City not having an automated IT process for updating records of who is required to file these forms. In addition, we lacked the staff capacity to process a large number of these cases, even at the streamline level. But with an eye toward continued collaboration with the City Clerk as well as increased Enforcement staffing in 2024, we decided to run a "pilot" program of Form 700 enforcement this year (focused on senior-level City officials). Our goal was two-fold: to enlist the help of other City departments in verifying the integrity of the City's non-filer data, and to work out streamlined enforcement procedures in the Form 700 context that could be easily replicated on a larger scale in 2024 (assuming we would have more staff to implement them).

Regarding the accuracy of the City's non-filer data, we contacted every City department and asked them to verify whether the reported non-filers still worked at their department. We received responses that allowed us to verify or eliminate about 25% of the names on the list (though unfortunately, the City department with the largest amount of reported non-filers – over half of the total – has not yet responded). In addition, after Enforcement announced to the rest of the City that we would be verifying this data and prosecuting non-filers in the future, we saw a notable increase in the number of reported non-filers across the City who soon filed their late Form 700 – about 25% of the total reported non-filers in 2023 (and this percentage actually goes up if we eliminate the false positives that were contained in the total number of reported non-filers). We have also identified four senior-level City officials who

have not filed their Form 700 or responded in a timely fashion to our follow-up requests to file. We will be using the resolution of those cases as a template for resolving all Form 700 non-filers cases (regardless of seniority) in 2024.

### *Caseload Trends in 2023*

In 2023, Enforcement staff received eighteen (18) formal complaints. Of these, four (4) have been reviewed and dismissed without proceeding to a full investigation; two (2) of them were opened for investigation; and the remaining twelve (12) have been placed on hold.

Enforcement staff also received ninety-six (96) informal complaints in 2023. Of these, sixty-seven (67) were rejected, eight (8) were assigned a complaint number and escalated to our regular intake process, and twenty-one (21) are awaiting a decision as to whether to accept or reject them.

Finally, Enforcement staff initiated thirteen (13) proactive complaints this year. Of these, three (3) are currently in Intake or under Preliminary Review, seven (7) are under investigation, and two (2) have been placed on hold.

Enforcement's processing rate for incoming, formal complaints in 2023 (meaning that preliminary review was completed, resulting either in a dismissal or the opening of an investigation) stands at 43%. This is down from last year's processing rate of 50%, which was already not an ideal number. This is attributable to our short-staffing and resulting policy of putting most non-urgent complaints on hold. It should also be borne in mind that the length of a preliminary review does not depend solely upon Enforcement staff's efforts; delays in obtaining documents or interviews from third parties are a common reason for preliminary reviews to take an extended amount of time.

By contrast, our processing rate for informal complaints in 2023 (meaning that we reviewed the complaint and determined whether or not to assign it a complaint number and proceed to our regular intake process) was 78%. This process is almost entirely within Enforcement's control. Because Enforcement did not begin tracking incoming informal complaints until late in 2022, we are unable to make a comparison with last year's processing rate.

Over the course of 2023, no cases were presented to the Commission for a monetary penalty. This was due not only to short-staffing, but also to Enforcement's decision to focus its limited resources on what we believe to be the most impactful cases – which also tend to be the most complex, and therefore take longer to bring to the Commission. While we are unable to provide specific information about ongoing cases, we anticipate making many of these

matters public in the first half of 2024, either as settlement agreements or investigation summaries (“probable cause reports” issued in advance of an administrative hearing).

We also have two (2) cases for which probable cause has been found and administrative hearings are pending. We anticipate holding those hearings (or settling those cases) by the third quarter of 2024.

In sum, the numbers above provide a downbeat picture. Short-staffing has clearly had a dramatic impact on Enforcement’s ability to resolve most cases in a timely manner. However, we are optimistic that the recent addition of a permanent investigator, and the hiring of a second (temporary) investigator and two part-time law clerks in January 2024, will allow us to begin turning some of these numbers around. In addition, the substantial work we have put into formalizing our internal procedures and beefing up training for new hires should allow us to process cases more quickly than in the past.

However, we must once again underscore the urgency of increasing Enforcement’s staff capacity if we are ever going to be able to fulfill the duties that the voters of Oakland gave us when they passed Measure CC in 2014. The efforts taken by Enforcement this year to build up our internal capacity and conserve resources for serious cases has allowed us to enter 2024 on an optimistic note; but that could easily be derailed if more resources are not forthcoming. At a bare minimum, our temporary investigator will need to become a permanent position if we are even going to be able to keep pace with incoming complaints. And only additional investigative and legal staff will allow us to make timely progress on high- and mid-level cases in the medium term, to say nothing of the numerous smaller cases that still carry an outsize impact for the complainants and respondents involved.

### **Overview of the Enforcement Process**



The PEC’s Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City’s ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. “Formal” complaints are submitted on the PEC’s official complaint form and are signed under penalty of perjury. “Informal” complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an investigation into a formal complaint. By contrast, Enforcement has the discretion not to review an informal complaint and does not have to report rejected informal complaints to the Commission. Commission staff may also initiate its own “pro-active” complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called “Preliminary Review,” in which Enforcement determines whether there are sufficient legal and evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If Enforcement is unable to settle a case within a reasonable time or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting evidence. A majority



of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

### **Current Enforcement Caseload**

Since the last Enforcement Unit Program Update submitted to the Commission on October 26, 2023, Commission staff received one (1) formal complaint, dismissed two (2) formal complaints, opened seven (7) new investigations, and completed one (1) investigation.

In the same time period, we also received twelve (12) informal complaints, of which four (4) were rejected, one (1) was assigned a complaint number and escalated to our regular intake process, and seven (7) are awaiting a decision as to whether to accept or reject them.

This brings the total Enforcement caseload to eighty-six (86) open complaints or cases: ten (10) matters in the intake or preliminary review stage, fourteen (14) matters under active investigation, six (6) matters under post-investigation legal analysis, two (2) matters in settlement negotiations, and two (2) matters awaiting an administrative hearing.

Enforcement’s current staffing is: one (1) Enforcement Chief, one (1) permanent Investigator, and one (1) Administrative Assistant.

### **Case Resolutions or Submissions**

Since the last Enforcement Unit Program report on October 26, 2023, the following complaints or cases have been resolved or submitted to the Commission:

1. ***In the Matter of Sofia Navarro; Steven Falk; Carroll Fife; Nikki Fortunato Bas; Noel Gallo; Kevin Jenkins; Dan Kalb; Rebecca Kaplan; Janani Ramachandran; and Treva Reid (PEC No. 23-20)***. On May 15, 2023, the PEC received a formal complaint alleging that the City Council, the interim City Administrator, and the Director of the Economic and Workforce Development Department all violated one or more laws under the PEC's jurisdiction when they allegedly awarded a lease of City-owned property without performing adequate due diligence. Enforcement conducted a preliminary review and determined that there was insufficient evidence of any violation of a law within the PEC's jurisdiction. As such, we have dismissed the complaint with no further action. Complainant has been referred to the relevant City departments and/or the City Attorney's office if they wish to pursue their allegations further. **(See Attachment)**
2. ***In the Matter of Huey Dang and Chris Le (PEC No. 23-31)***. On September 22, 2023, the PEC received a complaint alleging that two employees at the Finance Department were incorrectly assessing the complainant's liability under the City's vacant property tax. Enforcement conducted a preliminary review and determined that there was insufficient evidence of any violation of a law within the PEC's jurisdiction. As such, we have dismissed the complaint with no further action. Complainant has been referred to the respondents' supervisor if they wish to pursue their allegations further. **(See Attachment)**

**Appendix: Current Caseload by Violation Type**

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than our number of total cases, since one case can involve multiple types of violations.

	On Hold	Intake	Preliminary Review	Investigation	Legal Analysis	Seeking Settlement	Administrative Hearing	Grand Total
<b>Campaign Finance</b>	<b>24</b>		<b>6</b>	<b>14</b>	<b>9</b>	<b>7</b>	<b>1</b>	<b>61</b>
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	5			2	2	1	1	11
Coordination Between Candidate And "Independent" Campaign			2	2		1		5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	1	1			4
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	6		2	2	3	1		14
Late Filing Of Campaign Finance Report	5			2				7
Making/Receiving Campaign Contribution Over The Legal Limit	1			2	2	1		6
Misuse Of Campaign Funds For Personal Purposes	1					1		2
Inaccurate or Missing Disclaimer On Campaign Ad	3		1	1	1	2		8
<b>Government Ethics</b>	<b>46</b>	<b>5</b>	<b>15</b>	<b>10</b>	<b>3</b>		<b>2</b>	<b>81</b>
Bribery	2		3	1	1		1	8
Financial Conflict Of Interest	3		1		1			5
Holding Incompatible Public Offices	1							1
Inaccurate Reporting On Financial Disclosure Form 700	2	1	3					6
Late or Non-Filing Of Financial Disclosure Form 700	1			8				9
Misusing Official Powers For Private Gain (Coercion/Inducement)	22	1	4	1			1	29
Misuse Of City Resources For Personal Or Campaign Purposes	10	1			1			12
Receiving An Improper Gift Based On Amount	1	1	2					4
Receiving An Improper Gift Based On Source	2	1	1					4
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")	1							1
Awarding City Contract To Oneself ("Self-Dealing")	1		1					2
<b>Lobbyists</b>							<b>1</b>	<b>1</b>
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
<b>Miscellaneous</b>	<b>5</b>		<b>3</b>	<b>1</b>	<b>3</b>	<b>1</b>		<b>13</b>
Failure To Produce Records To Police Commission Investigators	1							1
Lying Or Providing False Information To PEC Investigators	1			1	3	1		6
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower	2		3					5
<b>Open Meetings &amp; Public Records</b>	<b>8</b>			<b>1</b>				<b>9</b>
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	5							5