

Item 11 - Enforcement Report



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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: December 29, 2021
RE: Enforcement Program Monthly and Year-End Report for the January 12, 2022, PEC Meeting

End of the Year Summary for Enforcement Matters

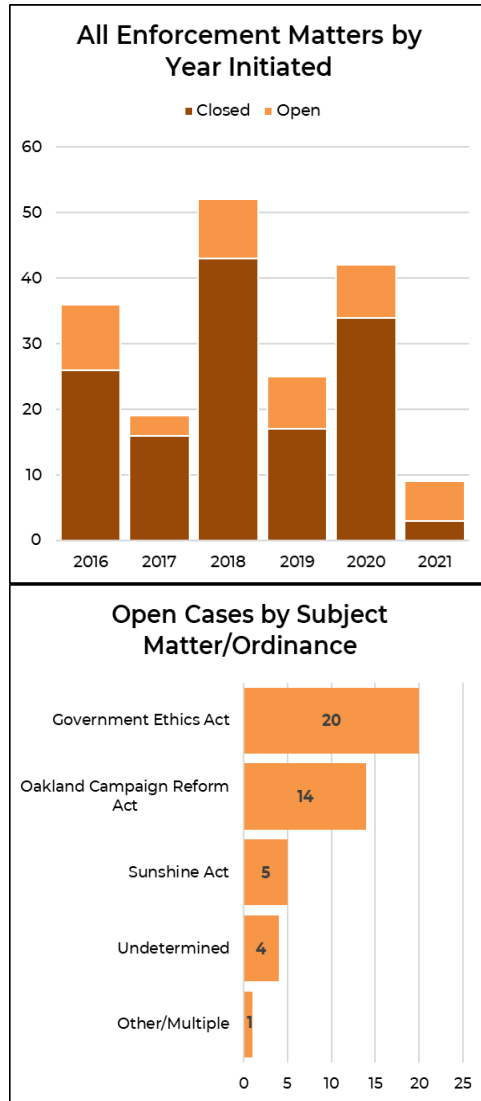
The Enforcement Unit's efforts to ensure fairness, openness, honesty and integrity in Oakland City Government by ensuring compliance with local and state government ethics, campaign finance, transparency, and lobbyist registration laws, are critical to instilling confidence in and accountability for public servants. In furtherance of the Public Ethics Commission's goals and objectives, the Enforcement Unit recommends, and the Commission brings, multiple enforcement actions that protect the integrity of our local government, deter violations, advise on policy, practice improvements, and restores accountability. The overarching goal of the PEC's enforcement activity is to obtain compliance with rules under its responsibility, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.

This end-of-year report presents a summary of the Enforcement Unit's work in 2021, including key priorities and accomplishments, as well as challenges imposed by the COVID-19 pandemic. Most notably in 2021, the Commission imposed its two largest ever fines for ethics cases that included significant bribery and conflicts of interest charges: a \$55,000 fine In the Matter of Anthony Harbaugh, and a \$309,600 fine In the Matter of Thomas Espinosa. These two cases required a substantial amount of staff resources due to both the complexity and volume of evidence as well as the lack of cooperation by respondents in both cases – from evidence gathering to an administrative hearing. This explains the unusual increase in fine amounts imposed in 2021 compared to prior years, as well as lower numbers in terms of volume of cases completed this year. In addition, the Commission employed its newly created Diversion program for the first time on two ethics cases in which diversion was the best option for fair and effective enforcement of local ethics rules. Together, these important actions highlight the PEC's Enforcement unit's ability to employ enforcement tools to address ethics matters of any level of complexity in a manner that is commensurate to the seriousness of each violation.

Enforcement Cases

The Enforcement Unit receives tips, complaints and referrals for violations of the City of Oakland ethics laws. In 2021, the Enforcement Unit received a total of nine complaints, significantly fewer than the

number of complaints received in past years. Currently the Enforcement Unit has a total of 44 open Enforcement cases.



Upon the receipt of every formal complaint received, Enforcement staff reviews, analyzes, and conducts a preliminary investigation of each complaint to determine whether the complaint is within the jurisdiction of the PEC and whether further investigation is needed. Following this process, Enforcement closed a total of 14 cases, including dismissing 9 complaints, in year 2021. Of the nine enforcement complaint dismissals in 2021, six were dismissed for lack of jurisdiction, one was referred to another agency and two were withdrawn by the complainant.

Enforcement Priorities

The Commission continued to prioritize enforcement activities based on the following considerations to determine priority level: 1) the extent of Commission authority to issue penalties; 2) the impact of a Commission decision; 3) public interest, timing, and relevancy, and 4) Commission resources.

Types of Cases

As the chart to the right illustrates, most of the Enforcement complaints involved allegations of Government Ethics Act (GEA). The Commission currently has a total of 20 enforcement cases that alleged violations of GEA. The second largest group of complaints encompassed complaints of 14 alleged Oakland Campaign Reform Act (OCRA). There are three Sunshine Act cases, one case categorized by multiple or other violations, and four undetermined violations.

Investigations

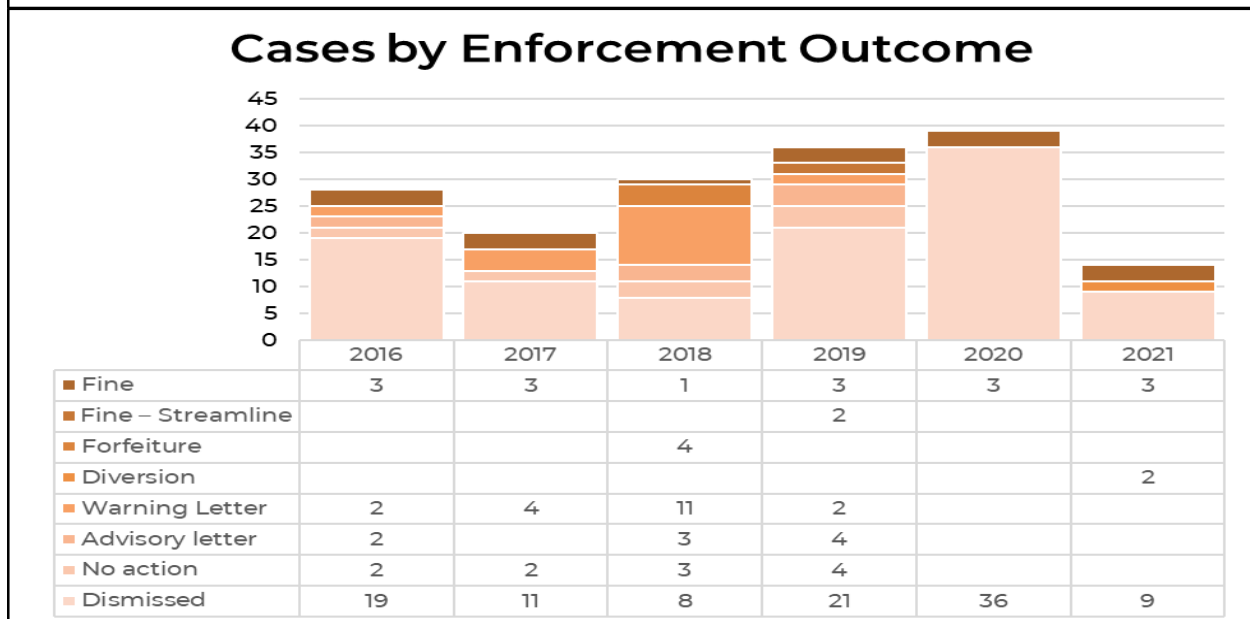
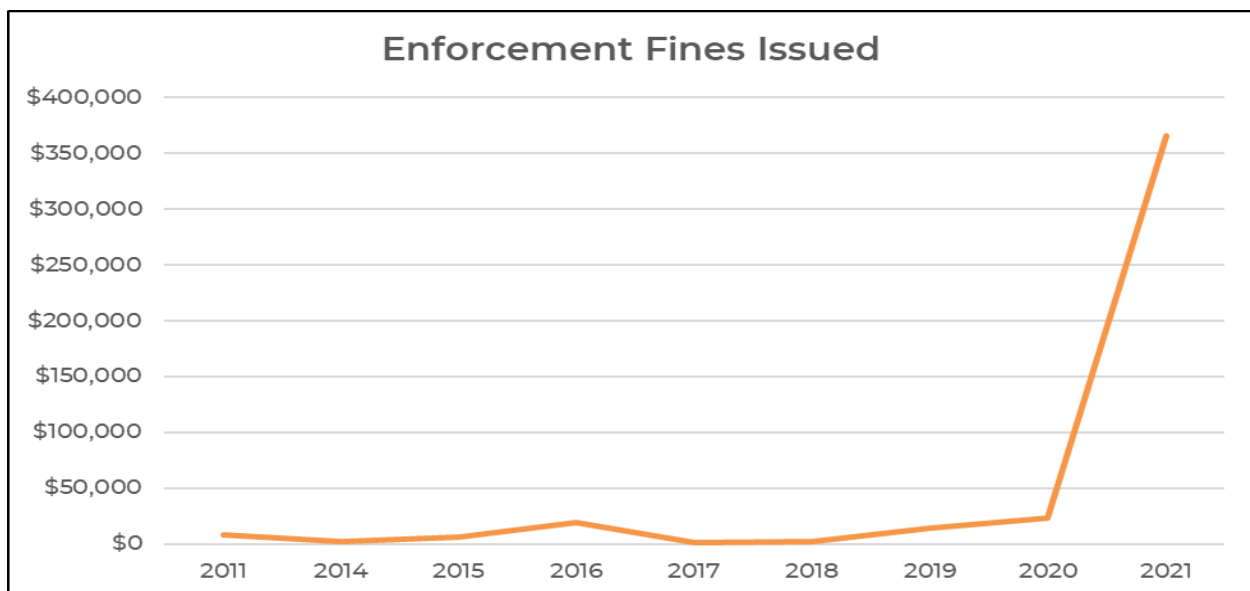
The Commission’s Enforcement unit conducts investigations to determine whether or not a violation of the Oakland Ethics Ordinances occurred and, if so, the persons or entities responsible. At year-end 2021, the Enforcement Unit has 16 matters under active investigation. The PEC’s administrative subpoena authority allows the Enforcement Unit to issue compulsory requests for documents or testimony. In 2021, the Executive Director issued 25 administrative subpoenas prepared by the Commission’s Investigator.

Achieving Results Through Contested Hearings

The majority of the Commission’s enforcement actions are settled as stipulated matters, but the Enforcement Unit can and will pursue an administrative hearing when a respondent rejects or ignores Enforcement staff’s attempts to resolve a matter by settlement. The Enforcement Unit took two matters to a hearing in 2021.

Penalties and Enforcement Outcomes

In year 2021, the Commission imposed \$365,600 in monetary penalties in enforcement actions. This reflects significantly larger fines than in prior years, commensurate with the type of violations, complexity of cases, and the amount of money in controversy in the cases brought this year. Below is a visual summary of fine amounts per year since 2011.



Non-Monetary Relief Ordered

In every enforcement action, Staff seeks to recommend appropriately tailored penalties that advance the mission of the PEC. In addition to the monetary penalties discussed above, there are a variety of potential non-monetary remedies available in the Commission's actions. Non-monetary remedial relief is important to the Commission's effort to ensure future compliance with local ethics ordinances and City policies. In year 2021 (as reflected in the graph above "Cases by Enforcement Outcomes"), the Commission issued two Diversion agreements – the first ever Diversion agreements approved by the PEC. Diversions are an agreement between the Respondent and the Commission to resolve an open enforcement case in a manner that facilitates education and training for the Respondent and meets the program goals of the Commission. A diversion may include a fee to cover the cost of training or other resources required of PEC staff to assist the respondent in meeting diversion requirements. In 2021 the Commission did not issue any advisory letters or warning letters, however, the Commission made recommendations to two separate City departments, the Oakland Planning and Building and Housing and Community Development departments on gaining compliance with Oakland ethics laws.

Mediation Cases

In 2021, The Commission's Mediation program was relocated internally from enforcement to the PEC's education and engagement team.

Conclusion

Over the past year, PEC enforcement has accomplished much in the face of an ever-changing workplace and a growing number of responsibilities. It has maintained its regulatory purpose of obtaining compliance with Oakland City ordinances, made full use of all available enforcement tools and continued to focus on providing timely, fair and consistent service to the community. Continuing advancement for enforcement in the new year will include maintaining an open mind to innovative ideas and approaches to enforcement, while continuing to draw on the experience and insights of its dedicated investigators and staff.

Summary of Current Case(s):

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

1. ***In the Matter of Jason Overman (Case No. 18-14)***. On May 9, 2018, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that Respondent, Jason Overman violated the Oakland Campaign Reform Act. Staff opened an investigation to determine whether the Respondent violated the Oakland Campaign Reform Act's Contractor Contribution Ban by making campaign contribution(s) to City of Oakland elected officials, candidates, or their controlled committees. After close consideration of all of the facts and the law, and the reasons explained in the attached memorandum, Staff recommends that the Commission approve a stipulation that Jason Overman violated the Oakland Campaign Reform Act and impose the following fines and financial penalties: \$500 on count 1 and \$500 on count 2, plus the unlawful amount \$1,600. (total sum of \$2,600). (See Agenda Items)
1. ***In the Matter of Oakland City Council (Case No. 18-05)***. On February 8, 2018, the City of Oakland Public Ethics Commission (PEC) received a complaint that alleged on February 6, 2018, the City Council held a meeting wherein City Councilmembers violated the Oakland Sunshine Act and California Brown Act when the Council voted to amend Council Rule (4) and (7.6). After conducting a preliminary review, Staff dismissed the complaint after determining that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)
2. ***In the Matter of Oakland City Council (Case No. 17-22)***. In December of 2017, the City of Oakland Public Ethics Commission (PEC) received a complaint that alleged Councilmembers participated in a vote to amend the Oak-to-Ninth Parcel (Brooklyn Basin Project) in violation of an unspecified City ordinance. After conducting a preliminary review, Staff dismissed the complaint after determining that the complaint had insufficient evidence to establish a violation of any of the laws under the PEC's jurisdiction. (Attachment)