

Item 9 - Enforcement Report



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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: December 15, 2020
RE: Enforcement Program Update for the January 4, 2021, PEC Meeting

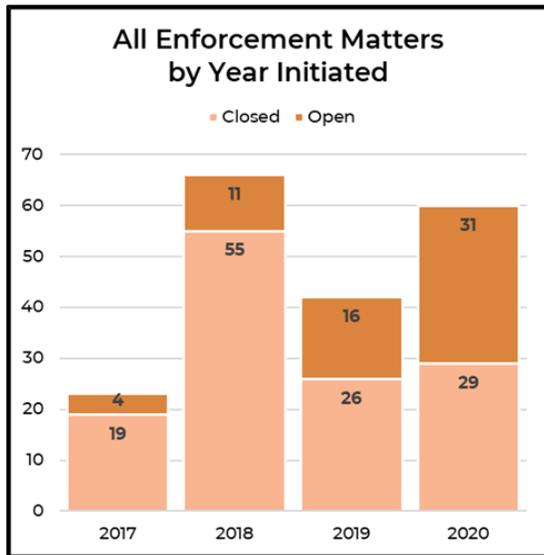
End of the Year Summary for Enforcement Matters

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.

Any end-of-year report, however, discussing metrics of success inevitably places a certain emphasis on numbers. But a strong ethics enforcement program is about much more than that. It is about the integrity of government, providing transparency, ensuring compliance and deterring misconduct from happening in the first place. It is about holding violators accountable, but it is also about being fair. And it is about allocating resources to ensure our efforts target the most pernicious forms of ethics violations. Numbers cannot measure these sorts of things alone. At the same time, we recognize that numbers can tell part of the story. They might show the direction an enforcement program is heading. They might reflect the types of cases and conduct that stand as priorities. Or they might offer some perspective on the program's broader goals. Here we offer a summary of both quantitative and qualitative measures that can help the public understand the work of our Enforcement Unit, our key priorities and accomplishments in the last Fiscal Year.

Enforcement Cases

The Enforcement Unit receives tips, complaints and referrals for violations of the City of Oakland ethics laws. In 2020, the Enforcement Unit received a total of 60 complaints. Currently the Enforcement Unit has a total of 74 open Enforcement cases (51 Enforcement Cases and 23 Mediations).

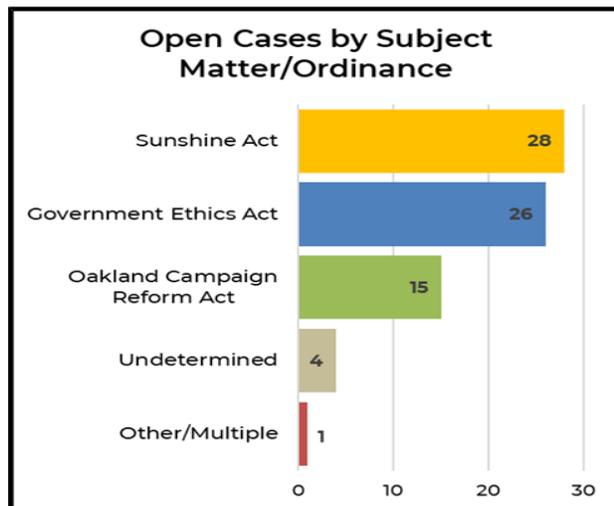


Pursuant to Enforcement Procedures, staff acknowledged in writing every formal complaint received, reviewed, analyzed, and conducted a preliminary investigation of each complaint to determine whether the complaint was within the jurisdiction of the PEC and whether further investigation was needed. To that end, Enforcement closed a total of 40 cases in 2020 (36 Formal Complaints and 4 Mediations), and dismissed a total 27 complaints, in year 2020.

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.

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Types of Cases

As the chart to the right illustrates, most of the Enforcement complaints involved allegations of Sunshine Act violations. The Commission currently has a total of 28 enforcement cases that alleged violations of the Sunshine Act. The second largest group of complaints encompassed 26 complaints of alleged Government Ethics Act violations. There are 15 open complaints of Oakland Campaign Reform Act violations, one (1) case categorized by multiple or other violations, and four (4) undetermined violations.

Investigations

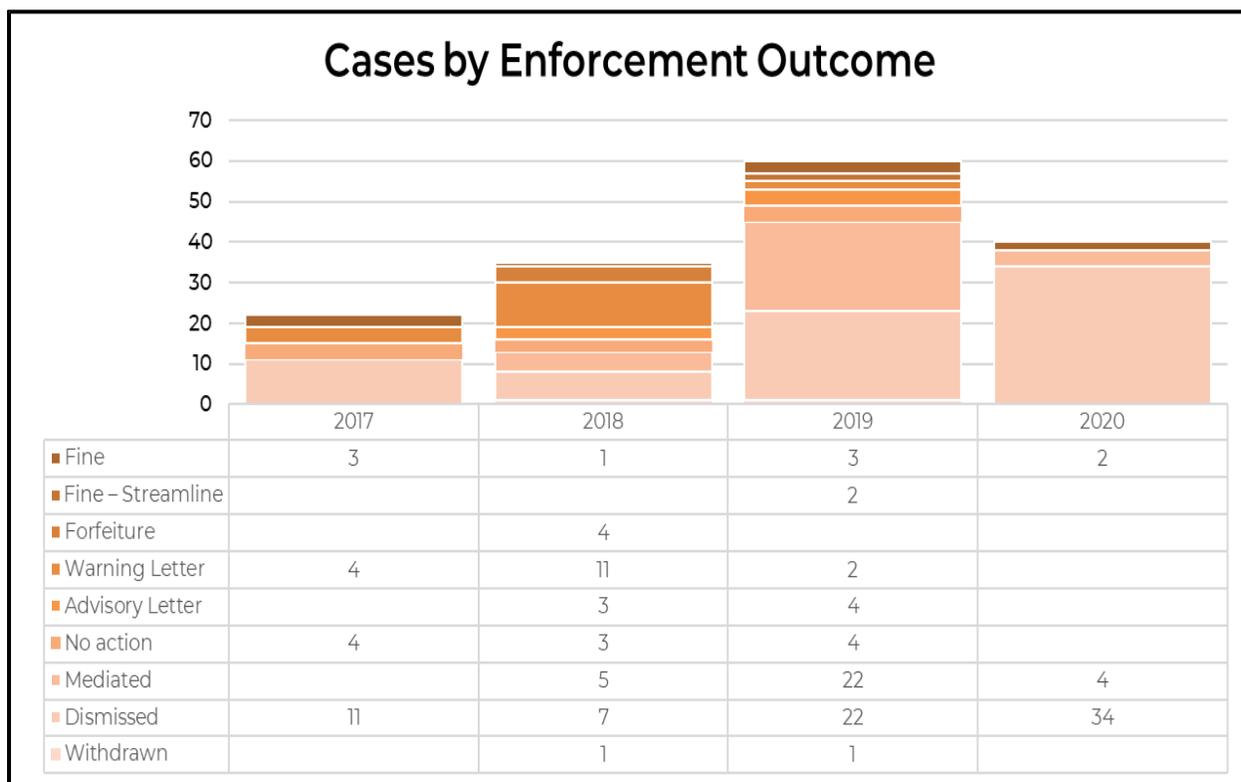
An important aim of the Commission’s Enforcement investigations and inquiries is to conduct a legally based and analytical process designed to gather fair and objective information in order to determine whether or not a violation of the Oakland Ethics Ordinances occurred and, if so, the persons or entities responsible. Although our investigation team is small, we are fortunate to have an investigator who delivers high performance year to year. In 2020, the Enforcement Unit opened a total of 38 active investigations. At year-end 2020, the Enforcement Unit has 15 matters under active investigation. Administrative subpoena authority allows the Enforcement Unit to issue compulsory requests for documents or testimony. In 2020, the Commission investigations issued 15 administrative subpoenas.

Achieving Results Through Contested Hearings

The majority of the Commission’s enforcement actions are settled as stipulated matters, but the Enforcement Unit stands ready to pursue a contested hearing where necessary to protect and advance the Commission’s objectives. The Enforcement Unit has had two (2) contested hearings between 2019 and 2020.

Penalties and Enforcement Outcomes

In year 2020, the Commission imposed monetary remedies in enforcement actions. In total, the Commission imposed \$23,000 in penalty fines.



Non-Monetary Relief Ordered

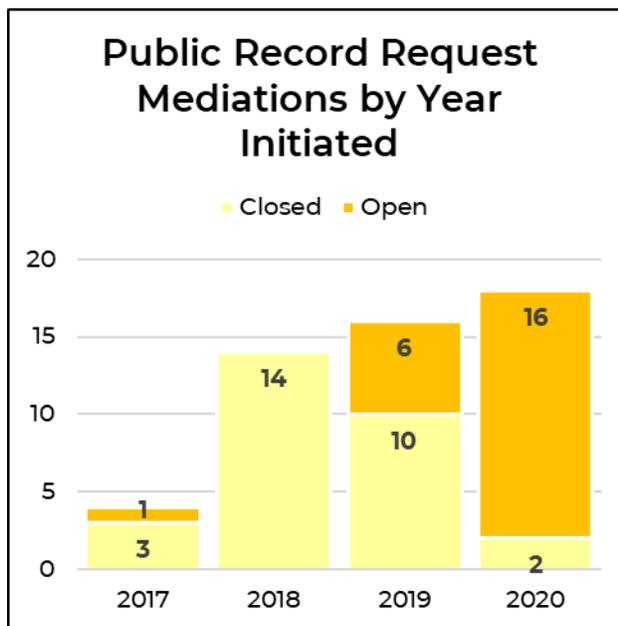
In every enforcement action, Staff seeks to recommend appropriately tailored penalties that advance the mission of the PEC. In addition to the monetary penalties discussed above, there are a variety of potential non-monetary remedies available in the Commission’s actions. Non-monetary remedial relief is important to the Commission’s effort to ensure future compliance with local ethics ordinances and City policies. In year 2020, the Commission also issued advisory letters, warning letters and made recommendations to several departments on gaining compliance with Oakland ethics laws.

Mediation Cases

The Commission's Mediation program seeks to resolve matters between any person whose request to the City of Oakland to inspect or copy public records has been denied, delayed or not completely fulfilled. In year 2020, Enforcement received a total 18 requests for mediation. At year end, Enforcement has a total of 23 open mediation cases. The enforcement unit closed a total of four (4) mediation cases in 2020. Mid-year 2020, The Commission hired an Intern to assist with mediation requests, to facilitate the transfer of public records requests between the City of Oakland and the requestor.

Conclusion

As a result of COVID19, the Enforcement Unit, like the City of Oakland at large faced various logistical challenges. The Enforcement Unit, however, maintained its high-volume productivity, and advanced the mission and goal of the Commission, while working remotely.



Summary of Current Cases:

Since the last Enforcement Program Update in December 2020, the following status changes have occurred.

- 1. In the Matter of Anthony Harbaugh (Case No. 18-11)** Around October 2016, PEC Staff opened a pro-active investigation into allegations of a bribery and misuse of position scheme by a senior building inspector, Commission Staff found evidence that Anthony Harbaugh, a City building inspector, between January 2015 and December 2016, committed, participated in, or aided and abetted Thomas Espinosa in committing multiple violations of the Oakland Government Ethics Act. The alleged violations include the following: soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; misusing his City position to induce/coerce others to provide him with economic gain, and; failing to report significant income from individuals with matters before him as a City building inspector. The parties were unable to reach a stipulated settlement, therefore, on November 18, 2019, a hearing was held on the merits of the allegations. Staff has attached a written memorandum on the proposed decision and appropriate penalty, post hearing. (See Action Item).