

CITY OF OAKLAND

Public Ethics Commission

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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Deputy Director
DATE: November 21, 2016
RE: Enforcement Program Update

This memorandum communicates the activities of the Enforcement Program, including pending litigation, all case status changes, the current caseload, a recap of enforcement activities in 2016, and current enforcement priorities.

Pending Litigation

PEC v. Lynette Gibson McElhaney (Alameda County Superior Court Case No. RG16834022, PEC Case No. 15-07.)

On October 5, 2016, Staff filed a petition with the Alameda County Superior Court requesting an order from the Court directing Councilmember Lynette McElhaney to appear before the Court to show cause why she has not produced or permitted inspection or copying of the documents demanded by the administrative subpoena issued by the PEC on July 22, 2016, and an order compelling Councilmember McElhaney to comply with the PEC's administrative subpoena.

On October 7, 2016, Judge Kimberly Colwell issued an order that Councilmember McElhaney appear before the Court on November 7, 2016, and show cause for her failure to comply with the PEC's administrative subpoena which specified a document production date of August 25, 2016. The Order also required Councilmember McElhaney to file and serve any opposition to the Petition no later than October 24, 2016.

Councilmember McElhaney did not file with the Court or serve on the PEC any opposition to the Petition by October 24, 2016. On November 3, 2016, the Court issued a tentative ruling granting the Petition and ordering Councilmember McElhaney to respond to and comply with the PEC's subpoena on or before November 23, 2016. The tentative ruling was not challenged and became the order of the Court on November 7, 2016.

To date, Councilmember McElhaney has not responded to the subpoena.

Case Status Changes

Since the last Enforcement Program Update on October 28, 2016, the following case status changes have occurred:

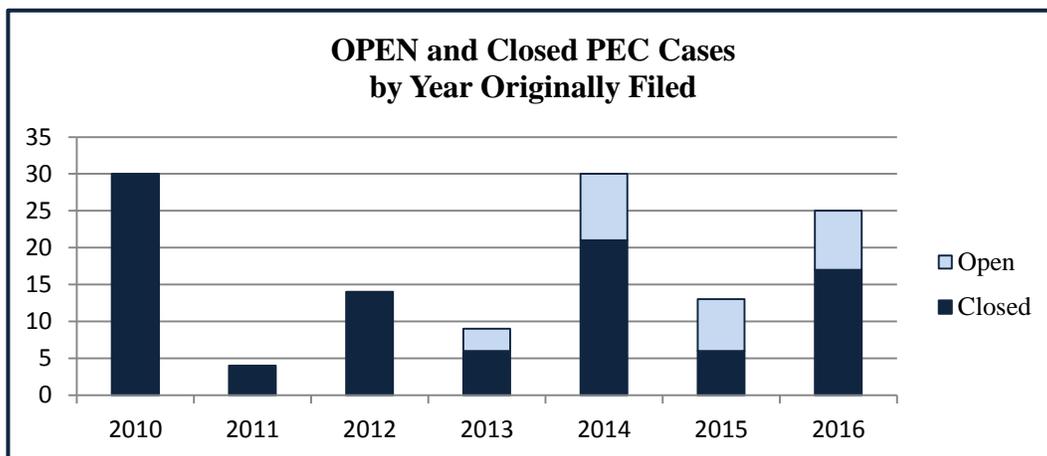
1. The following complaints were reviewed and dismissed:
 - a. Complaint No. 16-13, received on August 16, 2016, alleging that an employee of the Public Works Department’s Tree Unit violated the Sunshine Ordinance by abridging the complainant’s right to criticize practices and policies of the Tree Unit, (Attachment 1);
 - b. Complaint No. 16-20, received on September 7, 2016, alleging that a ballot measure committee controlled by the Mayor received contributions in excess of OCRA’s contribution limits in 2016, (Attachment 2);
 - c. Complaint No. 16-24, received on September 26, 2016, alleging that a City official attempted to influence governmental decisions affecting her real property, in violation of GEA’s Conflict of Interest, Revolving Door, and Misuse of City Position provisions. (Attachment 3.)

2. One formal complaint was received and is currently being reviewed. (Complaint No. 16-29.)

Current Caseload Summary

As of November 23, 2016, the Commission has 27 open cases, each in various stages ranging from active investigation to resolution pending: 20 cases are in active investigation, five cases are pending resolution, and two cases are pending a decision by the Commission regarding the process for alleged Sunshine Ordinance violations by the Commission (Case Nos. 15-11 and 14-11).

The graph below illustrates open and closed cases based on the year the complaint was filed.



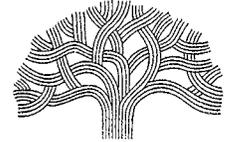
Recap of Enforcement Activities in 2016:

- 23 formal complaints received
 - 4 in preliminary review
 - 3 investigations opened
- 6 cases opened pro-actively
- 29 cases resolved (including two 2012 complaints, a 2011 complaint, and six 2010 complaints.)
 - 3 fines imposed, totaling \$19,500
 - 2 warning letter issued
 - 2 advisory letter issued
- 27 subpoenas issued

Current Enforcement Priorities

Staff continues to prioritize cases based on the following priority factors: 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. As a result, investigations into allegations of violations of the Government Ethics Act and the Campaign Reform Act, for which the Commission has its greatest penalty authority, are prioritized ahead of all others. Sunshine-related complaints, for which the Commission has no penalty authority, take last priority behind complaints related to the Oakland Campaign Reform Act, the Government Ethics Act, and the Lobbyist Registration Act.

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • SUITE 104 • OAKLAND, CALIFORNIA 94612

Public Ethics Commission
November 17, 2016

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

Jane Bicek
[REDACTED]

Re: PEC Complaint No. 16-13; Dismissal Letter

Dear Ms. Bicek:

On August 16, 2016, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that Robert Zahn, in his capacity as Tree Supervisor I in the Tree Unit of the City of Oakland Public Works Department (Tree Unit), violated section 2.20.150, subdivision D, of the Oakland Sunshine Ordinance by abridging your right to criticize practices and policies of the Tree Unit in regards to its handling of Development Permit Application T15-125. After reviewing the Complaint, we have determined that the allegation does not constitute a violation of the Oakland Sunshine Ordinance Section 2.20.150, subdivision (D), and are therefore dismissing the Complaint.

Section 2.20.150, subdivision (D), of the Oakland Sunshine Ordinance, which applies to “public testimony at regular and special meetings,” states, in part, that “no local body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the local body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the local body, even if the criticism implicates the performance of one or more public employees.”

The Oakland Sunshine Ordinance defines “local body” as:

1. The Oakland City Council, the Oakland Redevelopment Agency, and the Board of Port Commissioners;
2. Any board, commission, task force or committee which is established by City Charter, chapter or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners;
3. Any advisory board, commission or task force created and appointed by the Mayor and which exists for longer than a 12 month period; and
4. Any standing committee of any body specified in subsections (1)(2) or (3).

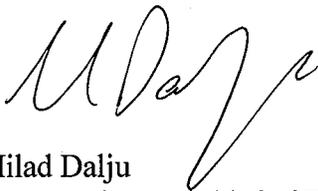
Because Section 2.20.150, subdivision (D), of the Oakland Sunshine Ordinance only applies to the actions of local bodies, and the definition of local body does not include the Tree Unit or its

employees, Section 2.20.150 of the Oakland Sunshine Ordinance does not apply to Mr. Zahn in his capacity as an employee of the Tree Unit. Therefore your allegation does not constitute a violation of Section 2.20.150, subdivision (D), of the Oakland Sunshine Ordinance. As a result, we are dismissing your complaint pursuant to the PEC's Complaint Procedures. The PEC's Complaint Procedures is available on the PEC's website.

Because your Complaint alleges that a City employee's actions are contrary to City laws and/or policies, we are also referring your Complaint to the Oakland City Auditor.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me at 510-238-4976 or mdalju@oaklandnet.com.

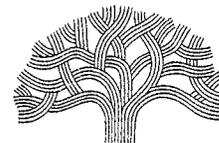
Sincerely,



Milad Dalju
Deputy Director/Chief of Enforcement

cc: Robert Zahn, Tree Supervisor I, City of Oakland Public Works Department
Brenda Roberts, Oakland City Auditor

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Public Ethics Commission

(510) 238-3593
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November 14, 2016

Ralph Kanz

Re: PEC Complaint No. 16-20; Dismissal Letter

Dear Mr. Kanz:

On September 7, 2016, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that the committee *Mayor Libby Schaaf for Oakland* received contributions in excess of \$700, in violation of the Oakland Campaign Reform Act's (OCRA) contribution limits. We have reviewed the Complaint and are dismissing it because the allegation does not constitute a violation of OCRA's contribution limits.

According to the committees' campaign statements filed with the Oakland City Clerk's Office, *Mayor Libby Schaaf for Oakland* is a general purpose committee formed to support and oppose ballot measures and has not, to date, made any expenditures in support of or opposed to any candidates for elective City office. The committee's campaign statements also reflect that the committee is controlled by Oakland Mayor Libby Schaaf and that the committee received contributions in 2016 in excess of \$700 per individual. However, OCRA's contribution limits do not apply to contributions made to and received by ballot measure committees, including ballot measure committees controlled by candidates for elective City office or elected City officeholders. Because *Mayor Libby Schaaf for Oakland* is a ballot measure committee, OCRA's contribution limits do not apply to contributions made to or received by *Mayor Libby Schaaf for Oakland*, and *Mayor Libby Schaaf for Oakland* did not violate OCRA's contribution limits by receiving contributions in excess of \$700 per individual.

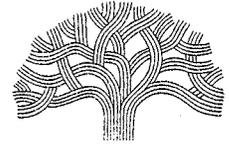
Because the allegation in the Complaint does not constitute a violation of OCRA's contribution limit, we are dismissing your complaint pursuant to the PEC's Complaint Procedures. If you have any questions, please feel free to contact me at (510) 238-4976 or mdalju@oaklandnet.com.

Sincerely,

Milad Dalju
Deputy Director/Chief of Enforcement

cc: Stephen Kaufman, o/b/o *Mayor Libby Schaaf for Oakland*

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • SUITE 104 • OAKLAND, CALIFORNIA 94612

Public Ethics Commission
November 18, 2016

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

Howard Matis



Re: PEC Complaint No. 16-24; Dismissal Letter

Dear Mr. Matis:

On September 26, 2016, the City of Oakland Public Ethics Commission (PEC) received your complaint alleging that Susan Piper used her City position to influence City decisions regarding the Bentley School due to the school's proximity to her real property, in violation of the Government Ethics Act's (GEA) Conflict of Interest, Revolving Door, and Misuse of City Position provisions. I also discussed the allegations in your Complaint with you in further detail over the phone and via email. After reviewing your allegations and the information you provided, we have determined that your allegations do not constitute a violation of law within the PEC's enforcement jurisdiction, and we are therefore dismissing your complaint.

Your first allegation is that Ms. Piper used her City position as a staffer for the Mayor's office until 2012 to influence City decisions regarding the Bentley School, and that she had a conflict of interest in those decisions because she owns property adjacent to the Bentley School. Because the GEA was not adopted until December 8, 2014, the allegations, if true, do not constitute a violation of law within the PEC's enforcement jurisdiction.

Your second allegation is that Ms. Piper has been attempting to influence City decisions regarding the Bentley School since she left her position with the City in 2012, in violation of GEA's Revolving Door provisions. GEA's Revolving Door provisions prohibit a former public servant, after termination of his or her employment with the City, from representing any person or entity, other than him or herself, in a matter in which the City is a party and the former public servant personally and substantially participated in as a public servant. Because the allegation is that Ms. Piper only represented her own interests, rather than any other person or entity, the allegation, if true, does not constitute a violation of GEA's Revolving Door provisions.

Your third allegation is that Ms. Piper used her position as the Chair of the Wildfire Prevention Assessment District Citizen's Advisory Committee (Wildfire Committee) to influence City decisions regarding the Bentley School, in violation of GEA's Misuse of City Position provision. In support of this allegation, you refer to several emails Ms. Piper sent to City officials regarding the Bentley School. However, the emails are not addressed to any City official under the authority or control of the Wildfire Committee, do not refer to any matters under the authority or control of the Wildfire Committee, and do not include any reference to Ms. Piper's position as

the Chair of the Wildfire Committee, and therefore do not suggest that Ms. Piper attempted to use her position as the Chair of the Wildfire Committee to influence a decision of the City. Therefore the emails, on their own, are insufficient to warrant further investigation into the allegation.

Because none of the allegations constitute a violation of law within the PEC's enforcement jurisdiction or warrant further investigation into an alleged violation of law within the PEC's enforcement jurisdiction, we are dismissing the Complaint pursuant to the PEC's Complaint Procedures. If you have any questions, please feel free to contact me at (510) 238-4976 or mdalju@oaklandnet.com.

Sincerely,



Milad Dalju
Deputy Director/Chief of Enforcement

cc: Susan Piper