

1 Kellie F. Johnson
Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza, Rm. 104
3 Oakland, CA 94612
Telephone: (510) 238-4976

4 Petitioner/Complainant

5 BEFORE THE CITY OF OAKLAND

6 PUBLIC ETHICS COMMISSION

8 ENFORCEMENT UNIT OF THE CITY OF OAKLAND) Case No.: 18-11

9 PUBLIC ETHICS COMMISSION,) Hearing Date: November 18, 2020

10 Complainant,) **COMPLAINANT’S HEARING BRIEF**

11 v.)

12 ANTHONY HARBAUGH)

13 Respondent.
14 _____

15 Complainant, THE ENFORCEMENT UNIT OF THE CITY OF OAKLAND PUBLIC ETHICS
16 COMMISSION (“Complainant”), hereby submits its hearing brief containing written argument in
17 support of the Complaint/Accusation filed in this manner, and ahead of the hearing scheduled for
18 November 18, 2020.

19 **I. INTRODUCTION**

20 This case concerns a simple but deceptive *quid pro quo* scheme whereby the Respondent Anthony
21 Harbaugh (“Respondent”), a building inspector with the City of Oakland Planning and Building
22 Department aided and abetted a co-worker former Building Inspector, Thomas Espinosa (“Espinosa”), in
23 extorting monetary payments from Oakland property owners in exchange for building permits and
inspection approvals.

24 Between 2015 and 2016, the Respondent’s co-worker would generally arrange for properties to be
25 inspected and solicit the Respondent to execute the inspections on the property. In return, the co-worker
26 or the owner of the properties would pay the Respondent around \$300 or more in cash (under the table)
for the inspection and subsequent approval.

27 The Respondent, pursuant to both State law and City policy was required to report all income he
28 received in any given year. The Respondent filed Annual Statements of Economic Interests, (Form 700)

1 with the City Clerk’s Office for 2015 and 2016, however, he failed to report any of the cash payments he
2 received from his co-worker or the property owners.

3 On September 26, 2019, Complainant filed its Accusations in a Case Summary of Probable Cause
4 before the Public Ethics Commission. The Public Ethics Commission, pursuant to its Complaint
5 Procedures scheduled an evidentiary hearing in this matter to begin on November 18, 2020.

6 **II. SUMMARY OF FACTS**

7 **A. Respondent’s Scheme for Monetary Payments in Exchange for Inspections/Permits**

8 The Respondent and Espinosa’s activities were grouped around three separate and distinct sets of
9 properties: Elizabeth Williams properties, Bill Charman properties and Alex Machado properties.

10 **i. Elizabeth Williams Properties**

11 Elizabeth Williams is a landlord who owned 15 residential rental properties in Oakland. She entered
12 into an agreement with Espinosa wherein she would pay Espinosa to renovate her properties and ensure
13 that City inspections were passed. These properties included:

- 14 1. 857-859 Mead Avenue;
- 15 2. 2735 Market Street; and
- 16 3. 877 27th Street

17 **857-859 Mead Avenue Properties:**

18 Between 2015 and 2016, Ms. Williams hired Espinosa and his construction work crew, to do
19 remodeling work on some of her properties at 857-859 Mead Avenue. 859 Mead Avenue is a four-unit
20 apartment building that Ms. Williams owns in West Oakland. The property also includes a house, 857
21 Mead.

22 In January 2016, Ms. Williams hired Espinosa to do renovations on the property which included some
23 electrical work. In addition to performing remodeling work, Espinosa would also arrange and manage
24 inspections performed by the City of Oakland Building and Planning Department and Ms. Williams
25 would pay Espinosa “fees” (generally in cash) after she received a passing result on the inspections of her
26 properties.

27 On January 13, 2016, the West Oakland Mead property was scheduled for an inspection. Even though
28 the Respondent was scheduled that day to conduct inspections in East Oakland, several miles away from
Williams property, he personally conducted the inspection on Ms. Williams property. On January 14,
2016, around 8:56 AM, the Respondent logged into the City’s Planning and Building Department Accela¹

¹ All inspectors have a unique login ID for Accela. The system records the login ID of any user adding data to the system (for example, when an inspection is scheduled, or when an inspection result is inputted to the system, the name of the employee making that entry will be displayed next to the actual data that was entered). According to IT,

1 database and notes that at 12:30 PM on January 13, 2016, he conducted the inspection and gave the
2 property a “Pass” for a permit.²

3 On January 22, 2016, Ms. Williams acknowledged that Espinosa informed her that she owed him
4 \$300 for paying the inspector who oversaw the electrical inspection and asked her to deposit the money
5 for him.

6 Generally, Ms. Williams would conduct arrangements through Espinosa, however, Ms. Williams, on
7 at least one occasion around this same time, conducted inspection arrangements with the Respondent
8 directly. Around the same time that the property on Mead Ave. was being renovated, the Respondent told
9 Ms. Williams directly that he would not sign off/pass for permit one of her properties because he had not
10 received a cash payment.

11 Derrick Canada (“Canada”) was a construction contractor who also worked for Ms. Williams between
12 2015-2016, when the Mead property was being renovated. Canada, on at least one occasion during the
13 time Espinosa was performing renovations on Ms. Williams property, was instructed by Ms. Williams to
14 give the Respondent an envelope full of cash. Canada looked inside the envelope and saw what appeared
15 to be thousands of dollars. Canada believed the payments were in exchange for the Respondent giving
16 Williams’ property a pass on inspections.

17 **2735 Market Street Property:**

18 The Market St. properties are a series of rental units. Ms. Williams conducted unpermitted renovation
19 work on the properties. City Inspector Bill Bergstrom cited her for the unpermitted work, noting that there
20 was a potential life safety issue with the heating system on the property and instructed her to open the
21 walls and floor for inspection before permits would be issued. Ms. Williams refused to open up the walls.
22 After a year of back and forth with the City over safety issues, Ms. Williams hired Espinosa to do the
23 renovations. She told Espinosa she was having problems with Bergstrom and admitted that she would
24 cancel inspections if an Inspector she did not like was scheduled to perform the inspection.

25 On September 29th and October 13, 2015, Inspector Bergstrom was scheduled to perform field
26 checks on the Market St. building permit, but the contractor canceled both of them. Bergstrom made a
27 note in the Accela database and the main portal that only “Bill Bergstrom or Greg Clarke can do the field
28 check.”

On October 15, 2015, Inspector Bergstrom conducted a field check of the Market St. property and
noted several issues that need correcting. He did not approve a permit and restated that the walls and floor
needed to be opened up and inspected before a field check would be complete.

it is impossible to “fake” an entry by having another inspector’s name appear, unless you were to actually steal that
inspector’s login and password and access the system with them.

² After a permit inspection is performed, the result can be either “Pass”, “Partial” or “Not Pass.” “Pass” results are
recorded in two ways. First, the inspector initials and dates what’s called a “job card” or “inspection card.” That
card is in the possession of the permit applicant, not the City. It is typically kept at the job site by the applicant (or
their contractor). Second, the inspector inputs the result on Accela, for the City’s own records. “Partial” and “Not
Pass” results are also recorded on Accela, but not the job card. In those instances, a list of deficiencies is given to
the permit applicant.

1 On October 16, 2015, Building Supervisor Tim Low allowed the building permit to be issued,
2 contingent on the sheet rock being exposed prior to an inspection and the cost of the job evaluation
3 increased. The Accela database also had a note that Inspector Bergstrom was to perform the building
4 inspections since he was aware of the history of the building.

5 On October 27, 2015, Espinosa personally submitted the application and obtained new permits on the
6 Market St. property. Within two weeks of Espinosa obtaining the new permits, the Respondent performed
7 frame inspections of the building electrical and plumbing permits and he gave a "Pass" result to each.

8 On November 5, 2015, Espinosa submitted a handwritten list of costs/a bill to Ms. Williams that
9 included a \$300 amount for "material inspection rough 2735 Market." Ms. Williams paid Espinosa a
10 check for the billed amount. On November 6, 2015, Espinosa deposited the check into his personal bank
11 account.

12 On November 20, 2015, the Respondent performed the final inspections on three of the permits for
13 the Market St. property and again gave a "Pass" result to each. Despite the note in Accela that Bergstrom
14 conduct inspections, three days after the inspections were conducted by the Respondent, an entry into the
15 Accela database is made on November 23, 2015, reassigning the inspection to the Respondent. Within ten
16 minutes of the inspection assignment to the Respondent, he enters records into the database on the Market
17 St. inspection.

18 On December 4, 2015, Tim Low changed the result of the Respondent's final building inspection to
19 "Partial." Inspector Low did not include an explanation for the change, however, a few days later
20 Inspector Clarke noted in Accela that the permit did not cover the scope of work outlined in the initial
21 report (specifically it did not cover the balcony and stairs). An inspection was scheduled on the property
22 on January 7, 2016.

23 On January 7, 2016, Inspector Clarke conducted an inspection on the Market St. property and gave a
24 "Partially abated" result. Again, on February 9, 2016, Inspector Clarke performs another inspection and
25 gave it a "Partially abated" result. The code case was still outstanding as of October 2019.

26 **877 27th St. Property:**

27 In 2015, Ms. Williams hired Espinosa to renovate 877 27th Street in Oakland. On November 10, 2015,
28 Espinosa applied for the following four permits at the Planning and Building Department on Ms.
Williams' behalf:

Permit no.	Permit Type	Description on Accela
RB1504824	Building	"Kitchen and bathroom remodel."
RE1503704	Electrical	"Electrical for kitchen and bathroom remodel."
RM1501795	Mechanical	"Mechanical for kitchen and bathroom remodel; new F. A. U.."
RP1502935	Plumbing	"Plumbing for kitchen and bathroom remodel."

1 On November 23, 2015, City of Oakland Building Inspector Joanneke Verchuur conducted the frame
2 inspections on the 27th St. property and gave a “Partial” result to the electrical permit and noted in the
3 City Planning and Building Department database that additional work needed to be done. She gave a “Not
4 Pass” result to the plumbing permit noting several existing issues with the plumbing.

5 On or around December 11, 2015, Supervisor David Miles reassigned the inspection of 877 27th St. to
6 two other inspectors, not the Respondent. The Respondent re-assigned the inspection to himself and
7 performed frame inspections at 877 27th St. on those same electrical and plumbing permits. The
8 Respondent also performed inspections on two other permits for building and mechanical and gave a
9 “Pass” result to each one. On December 16, 2015, the Respondent returned to perform a frame inspection
10 on 877 27th Street. On December 17, a day after the inspection was conducted, he assigned his name to
11 the December 16th, inspection in the City Building and Planning Accela database and gave the property a
12 “Pass” result.

13 On March 1, 2016, Espinosa scanned and emailed several documents to Ms. Williams, including a
14 note that had a list of costs. The list included a notation for 877 27th St and an amount of \$300 written
15 next to it. Attached to the note was an Accela printout regarding permits at 877 27th Street that included
16 handwritten notes. Written on the note, among other things, was the amount of “\$300 rough” and “\$300
17 final.” Ms. Williams acknowledge that she received the documents with the amounts on them from
18 Espinosa and that the amounts were likely “his fees” for the rough and final inspections. The investigation
19 uncovered that each of the permits that Espinosa applied for at 877 27th St, where the Respondent
20 conducted the inspections, expired in June 2016 without being “Finalled.”

21 **ii. Gimme Shelter Property Owned by Bill Charman**

22 **4163 Rifle Lane Property**

23 On November 14, 2013, the City of Oakland Planning and Building Department received a complaint
24 alleging that the property owners at 4163 Rifle Lane were building a unit in the backyard without permits.
25 On that same day, Espinosa conducted an inspection and confirmed the allegations. Thereafter, there was
26 no further Building Department activity entered in the Accela database and the case remained unresolved
27 for two years.

28 The owners decided to move out of the property and sell it. The owners hired Gimme Shelter; a real
estate company owned by Bill Charman. Multiple buyers were interested in the property but the
unresolved permit problem on the property hindered the sale. Eventually, potential buyers Jorge Iriso and
Aimee Cole entered into a contract to buy the property. The potential buyers wanted a guarantee from the
City that the permit issues with the house would be fixable and an estimate of the cost before they would
close the contract.

Espinosa visited the property on February 2, 2016 and spoke with the potential buyers. Espinosa
appeared agitated and warned of a significant fine being levied against the property as well as major
inspections that may require opening up the walls of the structure. The seller’s representative was present,
Megan Micco and asked Espinosa to speak to her boss Bill Charman. Espinosa told Charman that the
permit issue could be resolved.

1 On that same day, the Respondent also visited the property and performed an inspection. The
2 Respondent gave Micco a printout with his handwritten notes about repairs needed for the property. The
3 Accela database has no record of Espinosa or the Respondent's visit to the property nor of his inspection.
4 Failure to log an inspection of a property is a violation of the City Planning and Building Department
5 policy. The Respondent, however, did make a handwritten record of this inspection on his schedule for
6 the day. Ultimately, Iriso and Cole retracted their offer for the property because the licensing and
7 permitting issues remained unresolved.

8 On February 9, 2016, Bill Charman applied for building, electrical and plumbing permits to "legalize
9 unapproved addition at the back of the house of 4163 Rifle Lane." On that same day Espinosa asked
10 Charman to meet him at a bench outside of City Hall. Espinosa told Charman that in order to complete a
11 re-inspection and legally complete the unpermitted building and Charmin needed to pay Espinosa \$1,500.
12 Charman paid Espinosa directly. Espinosa deposited the payment in his personal bank account on that
13 same day.

14 On or about February 11, 2016 the Respondent logged into Accela and reported that he conducted
15 frame inspections pursuant to each permit on the Rifle Lane property and gave a "Pass" result to each. He
16 made a note that it was a "rough ok." None of the Respondent's daily log sheets included the inspections
17 he conducted at the Rifle Lane address.

18 On February 16, 2016, the Respondent, without permission, reassigned inspections of the Rifle Lane
19 property from Supervisor David Miles, to himself. The Respondent performed the final inspections and
20 gave each a "Pass" result. Despite the inspection inaccuracies, the property was finally sold on March 25,
21 2016.

22 **iii. Alex Machado Properties**

23 **2326 Myrtle Street Property**

24 This single-family home is located in West Oakland. The City Building Department received a
25 complaint on November 30, 2015, at 2326 Myrtle alleging that major construction occurred on the
26 property without permits including open trenches, and the structure was lifted. On December 7, 2015
27 Inspector Gene Martinelli inspected the property and verified the violation. He also issued a stop-work
28 order on the property.

On December 25, 2015 title passed from Elvecio Machado to his brother, Alex Machado, a locally
known house flipper. His intention was to remodel it and sell it. On January 21, 2015, Alex Machado
applied for a building permit. On February 9, 2016, Inspector Felix Menendez inspected the property's
foundation and issued a "Not Passed" result. On February 10, 2016, Building Supervisor David Miles
changed the permit status to "Inspections-Stop-Work," and commented on Accela that "Work must stop,
approval was based on incorrect representations of existing conditions, fees need to be adjusted as well.

On February 11, 2016, Inspector Martinelli inspected the property again and issued a "Not Pass"
result. On that same day, Alex Machado applied for and obtained approval from the City for a design
review exemption to, among other things, "remodel interior." A job card was created for 2326 Myrtle

1 bearing entries with the initials A.H..³ There is no corresponding record of this inspection on the Accela
2 system records, as required by department policy, however, The Respondent had a handwritten note on
3 his schedule for February 23, 2016, the day of the entry on the job card, “2326 Myrtle, RB OK to pour
4 footings.”

5 On February 27, 2016, Alex Machado made three cash withdrawals totaling \$1,700 and paid the cash
6 to Espinosa. On March 2, 2016 a member of the City Building and Planning department made a note in
7 Accela that the Myrtle property “needs 2x fees, FC & valuation adjusted for Stop Work orders &
8 exceeding scope of work. Needs revised plans that address all work.”

9 On March 3, 2016, a stop-work condition was placed on the Myrtle property building permit. The
10 permit was revoked by Department Supervisor, Tim Low.

11 On March 8, 2016, the following occurs:

- 12 • At 9:19 AM, the Respondent schedules himself to perform the field check on March 10
13 instead of inspector Bernal.
- 14 • At 9:25 AM, The Respondent cancels that field check altogether.
- 15 • At 9:33 AM, Silvia Ford creates a new field check record.
- 16 • At 9:34 AM, Silvia Ford schedules the Respondent to perform the field check the same
17 day (March 8).
- 18 • At 2:02 PM, The Respondent enters a “Pass” result for the field check on Accela. He
19 comments: “OK to issue a permit, plans reflect scope of work being done on job site. Will need
20 to comply with title 24. Electrical, plumbing and mechanical permits needed.”

21 On March 29, 2016, the Respondent scheduled himself to perform a frame inspection at the property
22 that day. He entered a “Pass” result on Accela, commenting: “Wall frame and shear nail ok. Roof frame
23 and plywood nail ok.” The job card has no corresponding entry for an inspection that day. The
24 Respondent’s schedule for the day does not mention 2326 Myrtle. On April 11, 2016, Machado withdrew
25 \$1000 in cash from one of his bank accounts and paid Espinosa. Then on April 13, 2016, the job card for
26 Myrtle had an entry that AH inspected the property. The Accela database had no record of the Respondent
27 conducting the inspection.

28 On April 15, 2016, the Respondent noted in Accela that he conducted another inspection of the
Myrtle property for electrical and plumbing. The Respondent noted in Accela “4/15/2016, “Rough OK.”
There are no corresponding entries on the job card for the property. There are entries on the job card from
May 3, 2016, with the initial’s AH. Neither Accela, comment logs or the Respondent’s raw log contain
any record off these inspections being performed. On June 7, 2016, the job card from the Myrtle property
also reflects that Harbaugh conducted an inspection on that date.

The Respondent admitted to the Public Ethics Investigator that he performed some inspections at the
2326 Myrtle property but claimed some of the initials looked like someone else had written them.

6220 Valley View

³ During the relevant times of the listed inspections, Anthony Harbaugh was the only person in Planning and
Building with the initials AH.

1 On November 12, 2015, Mr. Machado applied for, and was issued, a building permit for rot repair
2 at 6220 Valley View Road. On December 9, 2015, the City received a complaint from an unknown person
3 regarding 6220 Valley View: "WORKING OUTSIDE OF SCOPE OF PERMIT RB1504860 ADDING
4 ON TO HOME." On January 20, 2016, City building inspector Benjamin Lai conducted an inspection at
5 6220 Valley View on January 20, 2016 and found that the work being done at 6220 Valley View Road
6 was outside the scope of the building permit issued to Mr. Machado and opened an enforcement case
7 against him. Inspector Lai noted in Accela the following:

8 2X Permit Fees. Verified work beyond permit including roof sheathing, wall
9 sheathing, siding and possible framing with trash and debris of lumber pieces and
10 plumbing materials in front and side yards. Also observed shared garages with neighbor
11 is leaning. Contacted property owner William Koupal 925-202-7918 and informed to
12 clean up and submit permits for additional work and have structural evaluation of garage.
13 Meeting set up for 02-08-16 to review plans for unpermitted work. Preparing NOV for
14 mailing.

15 The Notice of Violation was eventually sent out on February 8, 2016. It is addressed to Machado
16 and Liu, at the Tyson Circle address in Piedmont. The NOV states that a follow-up inspection is to be
17 conducted on March 10.

18 On February 24, 2016, Lai entered the following into Accela:

19 Met with property owner in office with revised plans to completely remodel house
20 and convert basement into habitable space. Informed to submit for permits to increase
21 valuation and scope of work. Repair of shared garage with neighbor will be separate from
22 current permit application. Monitor case

23 On February 29, 2016, the Respondent performed a final inspection on the Valley View property
24 (the "minor dry rot repair" permit that Lai had discovered was downplaying the actual scope of work),
25 according to Accela. Harbaugh gave a "Pass" result, and the permit was "finalled." The Respondent had
26 scheduled that inspection himself earlier that morning, according to Accela. On May 10, 2016, inspector
27 Lai enters the following comment on Accela re: complaint no. 1504310:

28 Field check to be performed and 2X permit fees. Met with Yvonne⁴, property owner's
representative, and reviewed plans to rehab 985sf of 2nd fl. existing, convert 1,323sf
basement into habitable space, and 225sf of new construction with a revised valuation of
\$271,000. Monitor case

Also, that same day, Machado applied for a new building permit re: 6220 Valley View. Inspector Lai
completed the CE Routing Slip and valued the job at \$271,000. In an interview with the PEC, Lai said
that the owners of the Valley View property appeared to be trying to low-ball the value of the project to a
significant degree but that he revised their low-ball valuation.

On May 13, 2016, the Respondent performed a field check on the Valley View property and stated on
Accela that the permit was "OK to issue," and that the job valuation should be lowered to \$125,000.

⁴ Likely Ivonne Gomez, an architect affiliated with Espinosa.

1 Despite the Respondent's note, the value of the job remained \$271,000 on Accela until it was lowered to
2 \$ \$207,800 on July 6, 2016, on Inspections Manager Tim Low's decision. The Respondent had scheduled
3 that field check himself that morning. The Commission has copies of cell phone records and text
4 messages that track the cellphone communications between Harbaugh and Espinosa during all of the
5 above referenced, relevant transactions.

6 Between 2015 and 2018, all employees designated in the City's Conflict of Interest Code were
7 required to file a Form 700 statements of economic interests and disclose all required information
8 provided in the California Political Reform Act and the City Conflict Interest Code. On April 5, 2016, and
9 on March 16, 2017, the Respondent filed his respective Form 700s but failed to report the money he
10 received from Williams, Espinosa or any other property owner for the inspections.

11 **III. APPLICABLE LAW**

12 All statutory references and discussions of law pertain to the referenced statutes and laws as they
13 existed at the time of the violations.

14 **A. Economic Interest Disclosure Requirement**

15 Every City of Oakland (City) employee designated in the City's Conflict of Interest Code is required
16 to file statements of economic interests and disclose all required information pursuant to the California
17 Political Reform Act and the City's Conflict of Interest Code.⁵

18 The City's Conflict of Interest Code incorporates Fair Political Practices Commission (FPPC)
19 Regulation 18730 and requires every Specialty Combination Inspector in the City's Planning and
20 Building Department (Building Department) to report, on his or her statement of economic interests,
21 investments and business positions in business entities, sources of income, and interests in real property.⁶
22 The City's Conflict of Interest Code requires designated employees file their statement of economic
23 interests with the City Clerk's Office.⁷

24 A Specialty Combination Inspector ("Building Inspector") is required to report by April 1st all
25 reportable investments and business positions in business entities, sources of income and interests in real
26 property, held or received during the previous calendar year.⁸ He or she is also required to report within
27 30 days after leaving office all reportable investments and business positions in business entities, sources
28 of income and interests in real property, received or held during the period between the closing date of the
29 last statement filed and the date his or her employment with the City is terminated.⁹

30 Reportable income is any payment received by the Specialty Combination Inspector and includes
31 loans other than those received from a commercial lending institution.¹⁰ The Specialty Combination

32 ⁵ O.M.C. §2.25.040(B).

33 ⁶ O.M.C. §3.16.010.

34 ⁷ O.M.C. § 3.161.020.

35 ⁸ FPPC Regulation 18730, subs. (b)(6)(C).

36 ⁹ FPPC Regulation 18704 (b)(5)(D).

37 ¹⁰ Government Code (G.C.) § 82030.

1 Inspector is required to report the name and address of every source of income aggregating \$500 or more
2 in value during the period that discovered by the statement of economic interests, the amount of income
received, and a description of the consideration for which the income was received.¹¹

3 A business position must be reported when the filer is a director, officer, partner, trustee, or employee
4 of, or hold any position of management in, a business entity that has an interest in real property in the
5 jurisdiction, or does business or plan to do business in the jurisdiction or has done business in the
jurisdiction at any time during the two years prior to the date the statement is required to be filed.¹²

6 **B. Conflict of Interest**

7
8 A City employee may not make, participate in making, or seek to influence decision of the City in
9 which the City employee has a disqualifying financial interest.¹³ A City employee has a disqualifying
10 financial interest in a governmental decision if the decision will have a reasonably foreseeable material
11 financial effect on any of his or her qualifying financial interests.¹⁴ A City employee makes a
governmental decision if he or she authorizes, directs, obligates, or commits his or her agency to any
course of action.¹⁵

12 A City employee attempts to use his or her official position to influence a decision when he or she
13 contacts or appears before any official in his or her agency for the purpose of affecting the decision.¹⁶ A
14 City employee has a disqualifying financial interest in any individual or business entity from whom he or
she has been provided or promised income aggregating \$500 or more within 12-months prior to the time
when the relevant government decision is made.¹⁷

15
16 The financial effect of a decision on a disqualifying financial interest is presumed to be reasonably
17 foreseeable if the disqualifying financial interest is a named party in, or the subject of, the decision before
18 the City employee or the City employee's agency.¹⁸ For income received by the official, the reasonably
19 foreseeable financial effect of the decision on the City employee's disqualifying financial interest is
material if the source of the income is a claimant, applicant, respondent, contracting party, or is otherwise
identified as the subject of the proceeding.¹⁹

20 **C. Bribery**

21
22 A City employee may not solicit or accept anything of value in exchange for the performance of any
official act.²⁰

24 ¹¹ G.C. § 18700(a).

25 ¹² G.C. § 87209.

26 ¹³ O.M.C. § 2.25.040 (A); GC 87100.

27 ¹⁴ FPP Regulation 18700 (a).

28 ¹⁵ FPPC Regulation 18704(a).

¹⁶ FPPC Regulation 18704 (c)(1).

¹⁷ G.C. § 87103(c).

¹⁸ FPPC Regulation 18701.

¹⁹ FPPC Regulation 18702.3 (a)(1).

²⁰ O.M.C. § 2.25.070.

1 **2. Count 2: Misusing City position to induce/coerce others to provide him with economic gain**

2 On or between January 1, 2015, through December 31, 2016, Respondent, Anthony Harbaugh,
3 refused to complete a record of a final inspection at the Mead Ave. property owned by Elizabeth
4 Williams, for the purpose of inducing or coercing Ms. Williams into providing the Respondent with a
5 payment.

6 By using his authority as a City official to induce or coerce a person to provide him with an economic
7 gain, Respondent violated Section 2.25.060 (A) (2) of the Oakland Government Ethics Act.

8 **3. Count 3: Conflict of Interest Violation: Make or Participate in Making a Governmental
9 Decision Involving a Source of Income**

10 A City employee uses his or her official position to make or participate in making a decision when he
11 or she has a financial interest within the California Political Reform Act.

12 On or between January 2015 and December 2016, Respondent, Anthony Harbaugh, violated Section
13 2.25.040(A) by making a decision on behalf of the Oakland Building Department to issue Elizabeth
14 Williams a “Pass” result on an electrical inspection at her Mead Ave. property in Oakland, when he had a
15 financial interest within the meaning of the California Political Reform Act.

16 **4. Count 4: Conflict of Interest Violation: Make or Participate in Making a Governmental
17 Decision Involving a Source of Income**

18 A City employee uses his or her official position to make or participate in making a decision when he
19 or she has a financial interest within the California Political Reform Act.

20 On or between January 2015 and December 2016, Respondent, Anthony Harbaugh, violated Section
21 2.25.040(A) by making a decision on behalf of the Oakland Building Department to issue Elizabeth
22 Williams a “Pass” result on an inspection for remodel construction at her Market Street property in
23 Oakland, when he had a financial interest within the meaning of the California Political Reform Act.

24 **5. Count 5: Conflict of Interest Make or Participate in Making a Governmental Decision
25 Involving a Source of Income**

26 A City employee uses his or her official position to make or participate in making a decision when he
27 or she has a financial interest within the California Political Reform Act.

28 On or between January 2015 and December 2016, Respondent, Anthony Harbaugh, violated Section
2.25.040(A) by making a decision on behalf of the Oakland Building Department to issue Elizabeth
Williams a “Pass” result on an electrical, plumbing and frame inspection at her 877 27th Street property in
Oakland, when he had a financial interest within the meaning of the California Political Reform Act.

1 **6. Count 6: Conflict of Interest Violation: Make or Participate in Making Governmental**
2 **Decision Involving a Source of Income**

3 A City employee uses his or her official position to make or participate in making a decision when he
4 or she has a financial interest within the California Political Reform Act.

5 On or between January 2015 and December 2016, Respondent, Anthony Harbaugh, violated Section
6 2.25.040(A) by making a decision on behalf of the Oakland Building Department to issue Bill Charman a
7 “Pass” result on the frame and final inspection at his “Gimme Shelter” 4163 rifle Lane property in
8 Oakland, when he had a financial interest within the meaning of the California Political Reform Act.

9 **7. Count 7: Conflict of Interest Violation: Make or Participate in Making a Governmental**
10 **Decision Involving a Source of Income**

11 A City employee uses his or her official position to make or participate in making a decision when he
12 or she has a financial interest within the California Political Reform Act.

13 On or between January 2015 and December 2016, Respondent, Anthony Harbaugh, violated Section
14 2.25.040(A) by making a decision on behalf of the Oakland Building Department to issue Alex Machado
15 a “Pass” result on a building inspection for remodel construction (including electrical and frame
16 inspection) at his 2326 Myrtle property in Oakland, when he had a financial interest within the meaning
17 of the California Political Reform Act.

18 **8. Count 8: Conflict of Interest Violation: Make or Participate in making a Governmental**
19 **Decision Involving a Source of Income**

20 A City employee uses his or her official position to make or participate in making a decision when he
21 or she has a financial interest within the California Political Reform Act.

22 On or between January 2015 and December 2016, Respondent, Anthony Harbaugh, violated Section
23 2.25.040(A) by attempting to use his official position to influence the Building Department’s decision to
24 issue Alex Machado a “Pass” result on a building inspection for construction (including electrical and
25 frame inspection) at his 6220 Valley View property in Oakland, when he had a financial interest within
26 the meaning of the California Political Reform Act.

27 **9. Count 9: Making or Seeking to Use His Official Position to Make Governmental Decisions**
28 **in Which He Had a Disqualifying Financial Interest**

 As a City employee, Respondent was prohibited from making, participating in making, or attempting
 to use his official position to influence a governmental decision in which he had a disqualifying financial
 interest.

 An official has a disqualifying financial interest in any governmental decision that involves an
 individual from whom the official was promised or provided income totaling \$500 or more within 12
 months prior to the time when the governmental decision is made.

1 On or between January 1, 2015 through December 31, 2016, Respondent, Anthony Harbaugh,
2 violated O.M.C.2.25.040(A) of the Oakland Government Ethics Act by using his official position make a
3 governmental decision to issue Elizabeth Williams building permits, for multiple properties, when that
4 decision involved an individual from whom he was promised or provided income totaling \$500 or more
within 12 months prior to the time the decision to issue permits were made.

5 **10. Count 10: Economic Interest Disclosure Violation: Failing to Report a Source of Income**

6 On or between January 1, 2015 through September 24, 2016, Respondent, Anthony Harbaugh, a
7 Building Inspector with the City of Oakland, violated Oakland Government Ethics Act 2.25.040(B) when
8 he failed to report income he received from Elizabeth Williams.

9 The Respondent filed an annual statement of economic interests that did not disclose any monetary
10 payments received from Williams or Espinosa during 2015-2016.

11 A Building Inspector is required to report all sources from whom he received income, totaling \$500
12 or more during the January 1 through December 31, 2015, period by April 1, 2016.

13 **11. Count 11 : Misuse of City Resources for personal financial gain**

14 On or between January 1, 2015 through December 31, 2016, Respondent Anthony Harbaugh, violated
15 O.M.C. 2.25.060 (A)(1) of the Oakland Government Ethics Act by using the following: A City-owned
16 vehicle, computer and printer, and cell phone for personal or non-government purposes.

17 **12. Count 12: Soliciting or Accepting Gifts in excess of the City of Oakland Gift Limits**

18 On or between January 1, 2015 through December 31, 2016, Respondent Anthony Harbaugh, violated
19 O.M.C. 2.25.060 (C)(2) of the Oakland Government Ethics Act by soliciting or accepting gifts more than
20 \$250 cumulatively per year from a single source.

21 **13. Count 13: Gift Disclosure Violation: Failing to Report Gifts in excess of the City of Oakland**
22 **Gift Limits**

23 On or between January 1, 2015 through December 31, 2016, Respondent Anthony Harbaugh violated
24 O.M.C. 2.25.060 (C)(2) of the Oakland Government Ethics Act by failing to submit a form 700 that
25 accurately reported all gifts and other income that he received as required.

26 **V. MONETARY PENALTIES**

27 Pursuant to the GEA, penalties for ethics violations are as follows:
28

1 Administrative penalties. Any person who violates any provision of this Act shall be liable in an
2 administrative proceeding before the Commission held pursuant to the Commission's Complaint
3 Procedures. The Commission may impose administrative penalties in an amount up to five thousand
4 dollars (\$5,000) per violation, or up to three (3) times the amount not properly reported or received
5 (whichever is greater), per violation of the Oakland Government Ethics Act.

6 VI. CONCLUSION

7 The Respondent is a public servant in a high-level decision-making position that abused his position
8 of trust and authority by engaging in a *quid pro quo*, monetary payments in exchange for passed
9 inspections. His willful abuse of a trusted position of authority designed to protect the public and the
10 safety of their homes and properties posed great harm to the Oakland community. At the time of the
11 Respondent's conduct he had worked for the Oakland Planning and Building Department for more than
12 seven years, The Respondent was a seasoned public servant, well versed in the Planning and Building
13 department's policies against receiving monetary payments under the table. He chose to ignore them for
14 his own personal gain and failed to disclose the payments he received as required by the Statement of
15 Economic Interest Form 700. Disclosure of economic interest is important to providing transparency and
16 preventing conflicts of interest.

17 Moreover, the Respondent engaged in several instances of deception to cover up the inspections of
18 which he was getting paid under the table, including failing to properly log the Accela system, failing to
19 note the property owner's job card and assigning himself to inspections that he was not assigned to do.

20 The Respondent's conduct was deliberate, including multiple instances where he changed assigned
21 inspectors to jobs for his own personal gain. His conduct was part of a pattern of conduct that went on for
22 several months and to this date, the Respondent has failed to take any steps to cure any of the enumerated
23 violations.

24 In sum, the facts and evidence in this matter establish that Respondent committed thirteen separate,
25 serious violations of the Government Ethics Act. Accordingly, Respondent should be ordered to pay a
26 monetary penalty of \$5,000 for each of the thirteen violations of the GEA he committed, for a total of
27 \$65,000.

28 Dated: ___ 11/13/2020 ___

Kellie Johnson

Kellie F. Johnson, Enforcement Chief
City of Oakland Public Ethics Commission,
Petitioner