

## Item #5 - Staff Memorandum



Michael McDonald, Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Arvon Perteet  
Janani Ramachandran  
Joseph Tuman

Whitney Barazoto, Executive Director

---

TO: Public Ethics Commission  
FROM: Kellie F. Johnson, Enforcement Chief  
Simon Russell, Investigator  
DATE: January 16, 2021  
RE: Case No. 16-14; *In the Matter of Thomas Espinosa* -Request for a volunteer Hearing Officer to Conduct Administrative Hearing, prepared for the February 1, 2021, Public Ethics Commission meeting

---

### INTRODUCTION

In 2016, the City of Oakland Public Ethics Commission (Commission) opened a proactive investigation into allegations that Thomas Espinosa (Respondent) was violating the Oakland Government Ethics Act by, among other things, engaging in a bribery or *quid pro quo* scheme. The Commission's investigation found that between January 1, 2015, and September 15, 2016, Respondent committed 17 violations of the Oakland Government Ethics Act, including 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.

In November 2018, the Public Ethics Commission found probable cause that Espinosa violated the Government Ethics Act and referred the matter for a hearing before an Administrative Law Judge. At that time, staff had verbally recommended that the matter be heard by an Administrative Law Judge with the Office of Administrative Hearings due to the anticipated length of time the case will require (2-4 days).

Since that time, the City's financial situation has changed significantly due to COVID-19 implications and the Commission and many departments have been required to reduce current and future spending. In light of budget reductions and PEC resources, Staff returns to the Commission to request authority to select a volunteer hearing officer to conduct the administrative hearing.

## Item #5 - Staff Memorandum

### PROCEDURAL HISTORY

In 2016, at the time Staff opened a pro-active investigation into the conduct of the Respondent, Espinosa was employed by the City. On or About August 16, 2016, Espinosa retired from the City of Oakland.

In July 2018, Commission Staff completed its investigation and found probable cause that Respondent committed, in his capacity as a City building inspector, 47 violations of the Oakland Government Ethics Act, including 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 loans and income from individuals with matters before him as a City building inspector.

In late July 2018, at the conclusion of the PEC's investigation, Espinosa was represented by legal counsel. The remainder of 2018, the Respondent's counsel and PEC Staff attempted to negotiate a stipulated resolution to some or all the alleged violations. After July 2018, Espinosa moved from the Oakland area and ceased responding to the PEC. The PEC attempted to contact the Respondent to either resolve the matter or bring the matter before the Commission and request a hearing.

On or around November 2018, Staff submitted a Case Analysis with the recommendation that the Commission find probable cause that the Respondent violated the Government Ethics Act and refer the matter for an administrative hearing before an Administrative Law Judge. The Commission found probable cause and referred the matter for a hearing.

Between November 2018 and January 2021, Staff has attempted to contact the Respondent, including seeking the assistance of legal counsel to determine the Commission's civil and administrative legal options, as well as amending and revising relevant provisions of the PEC's Complaint Procedures and Oakland Municipal Codes.

### REQUEST FOR AUTHORIZATION

The city of Oakland has a projected \$62 million deficit and over the next weeks will cut more than \$29 million in personnel, law enforcement and public safety spending in an effort to close its projected \$62 million deficit. The city will cut \$9 million in general spending by enacting a hiring freeze, reducing the use of temporary staff, freezing discretionary spending, cutting pay for senior staff members who are not unionized and using unspent funds from the last fiscal year, which ended June 30. Every City department, including the PEC, is finding ways to minimize costs and conserve

## Item #5 - Staff Memorandum

spending.

State and local agencies throughout California can retain Administrative Law Judge services through the Office of Administrative Hearings (OAH). The services include contracting the services of Administrative Law Judges to conduct administrative hearings. The general contract agreement costs of an OAH Administrative law Judge can range up to \$48,000.<sup>1</sup> The costs can increase by the number and length of days necessary to conduct a hearing. In this case, Staff estimates that the hearing in the matter of Thomas Espinosa may require two to four days to present evidence.

As a result of limited PEC resources, the current budget deficits of the City and challenges under the City's Emergency Covid-19 guidelines, in an effort to defer costs and avoid logistical challenges due to Covid-19 restrictions, Staff requests that the Commission grant permission to hold the administrative hearing before a volunteer hearing officer instead of an Administrative Law Judge.

### RECOMMENDATION

Public Ethics Commission Staff requests that the Commission authorize the scheduling of an administrative hearing before a volunteer hearing officer in this matter.

Attachment: In the Matter of Thomas Espinosa (PEC No. 16-14); Investigation Summary and Recommendation, Reviewed at the PEC's October 26, 2018, meeting

---

<sup>1</sup> OAH, Standard Agreement. [www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Retaining-OAH](http://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Retaining-OAH)