

CITY OF OAKLAND
Public Ethics Commission



Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Simon Russell, Investigator
DATE: October 26, 2018
RE: *In the Matter of Thomas Espinosa (PEC No. 16-14)*; Investigation Summary and Recommendation

I. INTRODUCTION AND OVERVIEW

In October 2016, Commission Staff opened a pro-active investigation to determine whether Thomas Espinosa (Respondent), in his capacity as a City building inspector, made governmental decisions in which he had disqualifying financial interests, disclosed confidential City information, misused City resources, misused his City position, and failed to disclose financial interests on his statement of economic interests, in violation of the Oakland Governmental Ethics Act. The investigation was prompted by concerns that employees of the City Administrator's Office and the City's Planning and Building Department brought to Commission Staff's attention.

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.

This report summarizes Commission Staff's investigation and recommendation to refer this matter for an administrative hearing. If the Commission finds that Respondent committed each of the 47 violations described herein, it has the authority to impose on Respondent administrative penalties totaling up to \$1,151,737.

II. SUMMARY OF LAW

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

A. Jurisdiction

The Oakland Government Ethics Act was adopted by City Council on December 9, 2014, and it authorizes the Commission to impose an administrative penalty of up to \$5,000 per violation, or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater, on any person who commits a violation of the Oakland Government Ethics Act.¹ The enforcement authority established by the Oakland Government Ethics Act does not apply to violations that occurred prior to December 9, 2014.²

B. Investigation Summary

At the conclusion of an investigation of alleged violations of the Oakland Government Ethics Act, Commission Staff must prepare a written report that includes a summary of the evidence gathered and a recommendation of whether there is probable cause to believe that a violation occurred.³ Upon review of the written report, the Commission may decide to dismiss, close, request further investigation, request that Commission Staff seek a settlement, or refer the matter to an administrative hearing.⁴

If the Commission decides to refer the matter to an administrative hearing, it shall decide at that time whether to sit as a hearing panel or to delegate its authority to gather and hear evidence to one or more of its members or to an independent hearing examiner.⁵

C. Economic Interest Disclosure Requirement

Every City of Oakland (City) employee designated in the City's Conflict of Interest Code is required to file statements of economic interests and disclose all required information pursuant to the California Political Reform Act and the City's Conflict of Interest Code.⁶

The City's Conflict of Interest Code incorporates Fair Political Practices Commission (FPPC) Regulation 18730 and requires every Specialty Combination Inspector in the City's Planning and Building Department (Building Department) to report, on his or her statement of economic interests, investments and business positions in business entities, sources of income, and interests in real property.⁷ The City's Conflict of Interest Code requires designated employees file their statement of economic interests with the City Clerk's Office.⁸

A Specialty Combination Inspector is required to report by April 1 all reportable investments and business positions in business entities, sources of income and interests in real property, held or received during the previous calendar year.⁹ He or she is also required to report within

¹ Oakland Municipal Code (O.M.C.) § 2.25.080(C)(3).

² O.M.C. § 2.25.020(D).

³ Commission's Complaint Procedures § III(C).

⁴ Commission's Complaint Procedures § IV(A).

⁵ Commission's Complaint Procedures § V(A).

⁶ O.M.C. § 2.25.040(B).

⁷ O.M.C. § 3.16.010.

⁸ O.M.C. § 3.161.020.

⁹ FPPC Regulation 18730, subs. (b)(5)(C) and (b)(6)(C).

30 days after leaving office all reportable investments and business positions in business entities, sources of income and interests in real property, received or held during the period between the closing date of the last statement filed and the date his or her employment with the City is terminated.¹⁰

Reportable income is any payment received by the Specialty Combination Inspector and includes loans other than those received from a commercial lending institution.¹¹ The Specialty Combination Inspector is required to report the name and address of every source of income aggregating \$500 or more in value during the period that is covered by the statement of economic interests, the amount of income received, and a description of the consideration for which the income was received.¹²

A business position must be reported when the filer is a director, officer, partner, trustee, or employee of, or hold any position of management in, a business entity that has an interest in real property in the 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.¹³

D. Conflict of Interest

A City employee may not make, participate in making, or seek to influence a decision of the City in which the City employee has a disqualifying financial interest.¹⁴ A City employee has a disqualifying financial interest in a governmental decision if the decision will have a reasonably foreseeable material financial effect on any his or her qualifying financial interests.¹⁵

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.¹⁶

A City employee attempts to use his or her official position to influence a decision when he or she contacts or appears before any official in his or her agency for the purpose of affecting the decision.¹⁷

A 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.¹⁸

¹⁰ FPPC Regulation 18730(b)(5)(D).

¹¹ Government Code (G.C.) § 82030.

¹² G.C. § 87207.

¹³ G.C. § 87209.

¹⁴ O.M.C. § 2.25.040(A); GC 87100.

¹⁵ FPPC Regulation 18700(a).

¹⁶ FPPC Regulation 18704(a).

¹⁷ FPPC Regulation 18704(c)(1).

¹⁸ G.C. § 87103(c).

The financial effect of a decision on a disqualifying financial interest is presumed to be reasonably foreseeable if the disqualifying financial interest is a named party in, or the subject of, the decision before the City employee or the City employee's agency.¹⁹

For income received by the official, the reasonably 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.²⁰

E. Bribery

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

F. Using Authority as a City Official to Induce or Coerce a Private Advantage

A City employee may not use his or her position, or the power or authority of his or her position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City employee or any other person.²²

G. Misuse of Public Resources

A City employee may not use public resources for personal purposes.²³ Personal purposes means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business.²⁴ Public resources means any property or asset owned by the City, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City compensated time.²⁵ Use means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.²⁶

III. SUMMARY OF EVIDENCE

Respondent was a City employee from May 23, 2005, until August 16, 2016. At all relevant times, Respondent was a Specialty Combination Inspector in the Building Department's Code Enforcement Division.

Respondent filed Annual Statements of Economic Interests with the City Clerk's Office for 2010, 2011, 2012, 2013, and 2014. To date, Respondent has not filed an Annual Statement of

¹⁹ FPPC Regulation 18701.

²⁰ FPPC Regulation 18702.3(a)(1).

²¹ O.M.C. § 2.25.070.

²² O.M.C. § 2.25.060(A)(2).

²³ O.M.C. § 2.25.060(A)(1).

²⁴ O.M.C. § 2.25.060(A)(1)(a)(i).

²⁵ O.M.C. § 2.25.060(A)(1)(a)(iii).

²⁶ O.M.C. § 2.25.060(A)(1)(a)(iv).

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Economic Interests for 2015, or a Leaving Office Statement of Economic Interests for the January 1 through August 16, 2016, period, with the City Clerk's Office.

Income from Elizabeth Williams

Elizabeth Williams owned, at all relevant times, approximately 15 residential rental properties in Oakland.

In 2009, the City and Ms. Williams entered into a stipulated final judgment and permanent injunction that prohibited Ms. Williams and her agents from maintaining any of her properties in substandard, dangerous, uninhabitable, unhealthy, or unsanitary condition, and failing to correct code violations in a timely manner when directed to make repairs by City code compliance inspectors. Respondent, in his official capacity, was assigned to inspect Ms. Williams' residential properties in Oakland and determine whether they were in compliance with the stipulated final judgement and permanent injunction. By 2015, Respondent was no longer assigned to the stipulated final judgment and permanent injunction between the City and Ms. Williams.

Between June 26 and September 18, 2015, Respondent received checks totaling \$100,000 from Ms. Williams and deposited each check into his personal bank account. According to Ms. Williams, the \$100,000 was a loan to Respondent and she and Respondent agreed that Respondent would repay the loan to Ms. Williams and pay her \$30,000 as consideration for the loan. To date, Respondent has not repaid any part of the loan or the agreed upon consideration, and Ms. Williams has not attempted to recover any part of the loan or the agreed upon consideration.

In 2015, Respondent also received payments from Ms. Williams totaling \$76,179 for contracting work and consulting he performed for her in his personal capacity, as follows:

Date Received	Amount	Date Received	Amount
September 24, 2015	\$12,000	November 27, 2015	\$7,840
October 16, 2015	\$11,570	December 4, 2015	\$6,365
November 6, 2015	\$6,108	December 10, 2015	\$6,264
November 13, 2015	\$6,000	December 18, 2015	\$6,404
November 20, 2015	\$5,763	December 28, 2015	\$7,865

On March 3, 2016, Respondent received a payment of \$850 from Ms. Williams for contracting work and/or consulting he performed for her in his personal capacity.

Respondent has not, to date, reported receiving any income from Ms. Williams in 2015 or 2016. (Counts 1 and 2.)

Elizabeth Williams and 915 24th Street

915 24th Street was, at all relevant times, part of a four-plex that included 907, 909, and 911 24th Street, located in the Oakland and owned by Ms. Williams.

On September 20, 2013, a City building inspector verified building code violations at 915 24th Street and in response opened a code enforcement case against Ms. Williams.

In 2014, a City building inspector met several times with Ms. Williams' agents regarding her attempts to bring 915 24th Street into compliance with the building code and found that Ms. Williams needed to apply for the appropriate permits for the work she was doing at 915 24th Street.

Between June 26 and September 24, 2015, Respondent received payments totaling \$112,000 from Ms. Williams, as described above.

On October 1, 2015, Respondent, in his official capacity as a City building inspector, closed the code enforcement case against Ms. Williams for 915 24th Street. (Count 3.)

Elizabeth Williams and 857 Mead Avenue

857 Mead Ave. was, at all relevant times, a duplex in Oakland and owned by Ms. Williams. On December 9, 2014, Respondent inspected the property and issued a "stop-work order" for unapproved remodeling throughout the house on the property. He noted in City records that Ms. Williams needed to also supply records and permits for a second building in the back of 857 Mead Ave.

On December 10, 2014, Ms. Williams applied for a building permit to remodel the kitchen and bathroom of Unit B at 857 Mead Ave. In response to her application, Respondent completed, signed, and submitted a Code Enforcement Routing Slip with Ms. Williams' application that waived the requirement that building code violation fees be applied to Ms. Williams' application, that waived the requirement that a field check be conducted to confirm facts stated in Ms. Williams' application, and that the permit could be approved over-the-counter.

On December 12, 2014, a City building inspector conducted a field check in response Ms. Williams' application for a building permit and rejected her application because the work was beyond the scope of the application.

On June 24, 2015, Ms. Williams submitted an application to expand the scope of the building permit she applied for on December 10, 2014, to include a new electric subpanel, construction of partition walls to enclose a water heater in the kitchen, converting the living room into a new bedroom with a closet, and remodeling of the kitchen and bathroom in Unit A. On the same day, the Building Department issued her a building permit, electrical permit, and plumbing permit.

Between June 26 and December 28, 2015, Respondent received payment from Ms. Williams totaling \$176,179, as described above. During that entire period Respondent was still assigned, in his official capacity as a City building inspector, to the code enforcement case against Ms. Williams that he initiated on December 12, 2014.

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On September 21, 2015, Respondent met, on behalf of Ms. Williams, with a PG&E Engineering Estimator at 857 Mead Ave. to discuss electric and gas service installation at 857 Mead Ave.

On October 21, 2015, a City building inspector conducted the final inspection for the electrical permit, issued a “no pass,” and noted eight issues that had to be addressed before the electrical permit could be finalized.

On October 22, 2015, Ms. Williams applied for an electrical permit for a service upgrade to 857 Mead Ave.

On October 27, 2015, Ms. Williams filed a Letter of Agency for Property Owners with the Building Department that authorized Respondent to act as her agent/representative in obtaining permits for 857 Mead Ave., 2735 Market Street, 877/879 27th Street, and other properties she owned in Oakland.

On October 29, 2015, a City building inspector conducted another inspection on the electrical permit that Ms. Williams applied for on June 24, 2015, issued a “no pass,” and noted four issues that would have to be addressed before the electrical permit could be finalized. No further inspections were conducted on that electrical permit and it expired on December 23, 2015.²⁷

On October 30, 2015, a City building inspector conducted an inspection on the electrical permit that Ms. Williams applied for on October 22, 2015, issued a “no pass,” and noted three issues that had to be addressed before the electrical permit could be finalized.

On November 25, 2015, Respondent billed Ms. Williams for electrical work he did for her at 857 Mead Ave.

On December 8, 2015, Ms. Williams and Respondent discussed her outstanding electrical permit.

On December 10, 2015, a City building inspector performed another inspection on the electrical permit that Ms. Williams applied for on October 22, 2015, again issued a “no pass,” and noted six issues that had to be addressed before the electrical permit could be finalized.

On December 14, 2015, Ms. Williams again discussed with Respondent her concerns regarding the electrical permit that had failed inspection twice.

On January 12, 2016, Ms. Williams again discussed with Respondent her concerns regarding the electrical permit that had failed inspection twice. In response, Respondent told her that he would talk to Anthony Harbaugh about it. Mr. Harbaugh is and was, at all relevant times, a City building inspector.

²⁷ Permits are “issued” as soon as the applicant submits all the required paperwork, including the application, and pays all the associated fees. Then inspections are conducted and the permit is “finalized” after a property passes a “frame” inspection and a “final” inspection.

On January 13, 2016, Mr. Harbaugh conducted a final inspection for the electrical permit, issued it a “pass,” and attached Green Tags on the electrical meters at 857 Mead Ave.²⁸

On January 22, 2016, Respondent solicited \$300 from Ms. Williams for the final inspection and the issuance of the Green Tags on the electrical meters at 857 Mead Ave. that took place on January 13, 2016. (Count 4.)

On March 1, 2016, Respondent submitted an application to the Building Department for an electrical permit for 857 Mead Ave. on behalf Ms. Williams. (Count 5.) This application eventually expired without the permit being finalized.

Also on March 1, 2016, Respondent submitted an application to the Building Department for a plumbing permit for 857 Mead Ave. on behalf Ms. Williams. (Count 6.) This application eventually expired without the permit being finalized.

Elizabeth Williams and 2735 Market Street

2735 Market Street was, at all relevant times, a complex of residential buildings in Oakland and owned by Ms. Williams.

On July 8, 2014, a City building inspector issued a “stop-work order” on 2735 Market Street for remodeling being done without the required plumbing, electrical, and building permits. The following day, the Building Department opened an enforcement case against Ms. Williams for the unpermitted work at 2735 Market Street.

On July 16, 2014, Ms. Williams applied for a building permit for the remodeling being done at 2735 Market Street.

On August 4, 2014, a City building inspector conducted an inspection of 2735 Market Street, and concluded that there was a life safety issue that required Ms. Williams to remove sheet rock from the walls and ceiling, that she needed to apply for electrical, plumbing, and mechanical permits for the work being done, and that the building permit that Ms. Williams applied for on July 16, 2014, needed to be broadened.

On August 6, August 8, and September 18, October 14, 2014, January 20, February 20, March 20, March 30, May 7, June 8, July 8, August 7, and September 17, 2015, City building inspectors inspected 2735 Market Street and each time concluded that it was still in violation of the building code. During this time, the building permit that Ms. Williams applied for on July 16, 2014, expired without being finalized.

Between June 26 and September 18, 2015, Respondent received \$100,000 from Ms. Williams, as described above.

²⁸ Green Tags are placed on new electrical meters by City building inspectors only after an electrical permit for a new meter has been finalized by the Building Department. PG&E will not release electricity to a new electrical meter on a property in Oakland until a PG&E technician has personally verified that the Building Department has placed a Green Tag on the new electrical meter.

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On September 22, 2015, Ms. Williams applied for a building permit to remodel 2735 Market Street. On the same day, Respondent completed, signed, and submitted a Code Enforcement Routing Slip for Ms. Williams' application that waived the requirement that Ms. Williams submit an architectural plan approved by the City's Zoning Department, confirmed that the monetary valuation on Ms. Williams' application was correct, allowed Ms. Williams' permit to be issued over-the-counter, and waived the requirement that Ms. Williams submit photos of the proposed project with her application. (Count 7.)

On October 15, 2015, a City building inspector conducted an inspection of 2735 Market Street for the building permit that Ms. Williams applied for on September 22, 2015, and found that an inspection could not be conducted because the remodeling had already been done and covered up with sheet rock. The City building inspector issued Ms. Williams a correction notice that required her to remove the sheet rock on the walls and the ceiling so that he could properly inspect the work.

On October 22, 2015, Ms. Williams applied for an electrical and a plumbing permit for 2735 Market Street.

On October 27, 2015, Respondent submitted a Letter of Agency for Property Owners form to the Building Department that gave him the authority to act as Ms. Williams' agent in regards to any permits for 2735 Market Street. On the same day, Building Department issued Ms. Williams the electrical, building, and plumbing permits for 2735 Market Street. (Counts 8, 9, and 10.)

On November 4, 2015, Mr. Harbaugh conducted inspections on the building, electrical, and plumbing permits, passed each, and scheduled himself to conduct the final inspection for each permit.

On November 5, 2015, Respondent solicited \$300 from Ms. Williams for passing the three inspections at 2735 Market Street. (Count 11.)

On November 20, 2015, Mr. Harbaugh conducted the final inspection for Ms. Williams' building, electric, and plumbing permits, gave each a pass, and finalized each.

Elizabeth Williams and 877/879 27th Street

877/879 27th Street was, at all relevant times, a duplex in Oakland and owned by Ms. Williams.

Between June 26 and September 18, 2015, Respondent received \$100,000 from Ms. Williams, as described above.

On November 10, 2015, Respondent, acting as an agent for Ms. Williams, applied to the Building Department for a building permit, an electrical permit, a mechanical permit, and a plumbing permit, for kitchen and bathroom remodels to 877 27th Street. (Counts 12, 13, 14, and 15.)

On November 23, 2015, a City building inspector conducted a rough inspection for the electrical and plumbing permits that Respondent applied for and did not pass either.

On December 11, 2015, Mr. Harbaugh, in his official capacity as a City building inspector, conducted inspections for the building, mechanical, electrical, and plumbing permits that Respondent applied for on behalf of Ms. Williams, and issued a pass for each.

On December 16, 2015, Mr. Harbaugh again conducted inspections for the building, mechanical, electrical, and plumbing permits that Respondent applied for on behalf of Ms. Williams, and again issued a pass for each.

On March 1, 2016, Respondent solicited \$300 from Ms. Williams for the building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing rough inspection on December 11, 2015. (Count 16.)

Also on March 1, 2016, Respondent solicited \$300 from Ms. Williams for the building, mechanical, electrical, and plumbing permits passing final inspection on December 16, 2015. (Count 17.)

On March 14, 2016, Respondent, on behalf of Ms. Williams, submitted applications for a building permit, electrical permit, and plumbing permit, to remodel the kitchen and bathroom of 879 27th Street. (Counts 18, 19, and 20.)

Bill Charman and 4163 Rifle Lane

4163 Rifle Lane was, at all relevant times, a single-family home in Oakland. On November 14, 2013, and again on January 21, 2014, Respondent conducted an inspection of 4163 Rifle Lane, verified building code violations at 4163 Rifle Lane, and opened an enforcement case for building code violations at 4163 Rifle Lane.

On October 29, 2015, 4163 Rifle Lane was listed for sale, and Gimme Shelter, Inc., was, at all relevant times, the brokerage representing the owner of 4163 Rifle Lane. On February 1, 2016, a potential buyer entered into escrow for 4163 Rifle Lane. On the same day, the potential buyer called Respondent to inquire about the enforcement case related to 4163 Rifle Lane. On February 2, 2016, Respondent conducted a follow-up inspection of 4163 Rifle Lane and warned the potential buyer of significant potential fines as a result of unpermitted work on the property and the potential of having to conduct major inspections that would possibly require opening up the walls of the building. In response to Respondent's warning, the potential buyer retracted his offer for 4163 Rifle Lane.

On February 8 and 9, 2016, Bill Charman, in his capacity as a broker at Gimme Shelter, Inc., representing the owner of 4163 Rifle Lane, and Respondent discussed the outstanding building code violations at 4163 Rifle Lane over the phone and via email. Mr. Charman, at Respondents' request, agreed to meet Respondent outside Oakland City Hall to further discuss the outstanding code violations at 4163 Rifle Lane.

On February 9, 2016, Mr. Charman and Respondent met outside Oakland City Hall. During their meeting, Respondent told Mr. Charman that Mr. Charman would need to pay \$1,500 for the inspections needed to resolve the outstanding permit issues for 4163 Rifle Lane. Mr. Charman agreed to pay the \$1,500, and Respondent directed him to make the payment to Respondent personally, rather than to the City. In response, Mr. Charman issued Respondent a \$1,500 check, which Respondent deposited into his personal bank account on the same day. (Count 21.)

After the meeting and on the same day, Mr. Charman applied, on behalf of the owner of 4163 Rifle Lane, for building, electrical, and plumbing permits for 4163 Rifle Lane. Respondent completed, signed, and submitted a Code Enforcement Routing Slip for Mr. Charman's application that waived the building code violation fees, verified that the unpermitted work had not commenced, waived the requirement that a field check be conducted, and allowed the permit to be approved over-the-counter. The Building Department issued Mr. Charman the permits without submission of architectural plans for the projects, without conducting a field check, and without collecting fees for the outstanding building code violations, due to Respondent's decision to waive each of those requirements.

Due to Respondent's decision to waive the fees for the building code violations, Mr. Charman was only required to pay the regular fees for the three permits, totaling \$1,099.09, which he paid to the City on February 9, 2016, as part of his application for the three permits.

On February 10, 2016, Respondent scheduled himself to inspect 4163 Rifle Lane regarding the outstanding building code violations. Two minutes later, Respondent changed the status of the outstanding building code violations to "abated," even though he never conducted an inspection of 4163 Rifle Lane and the permits regarding the unpermitted addition to 4163 Rifle Lane had not been finalized by the Building Department.

Also on February 10, 2016, Respondent asked Mr. Harbaugh to finalize the building, electrical, and plumbing permits that Mr. Charman applied for the day before. (Counts 22, 23, and 24.) In response, Mr. Harbaugh scheduled himself to conduct the frame inspections on the same day and the final inspections on February 16, 2016, and signed off on the frame inspections and the final inspections without actually conducting any inspections.

On February 24, 2016, a new buyer went into escrow to buy 4163 Rifle Lane, and on March 25, 2016, the title passed to a new owner.

Respondent has not, to date, reported receiving \$1,500 from Mr. Charman. (Count 25.)

Alexandre Machado and 6220 Valley View

In October 2015, Alexandre Machado purchased 6220 Valley View Road, a single-family home in Oakland, as an investment. His intention was to remodel it and sell it.

On November 12, 2015, Mr. Machado applied for, and was issued, a building permit for rot repair at 6220 Valley View Road.

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On January 20, 2016, a City building inspector found that the work being done at 6220 Valley View Road was outside the scope of the building permit issued to Mr. Machado and opened an enforcement case against him.

On February 27, 2016, Respondent received \$1,700 from Mr. Machado.

On February 29, 2016, Mr. Harbaugh conducted an inspection of 6220 Valley View Road and finalized Mr. Machado's building permit.

On March 1, 2016, Mr. Machado applied for a building permit to replace the roof at 6220 Valley View Road.

On March 13, 2016, Respondent received \$200 from Mr. Machado.

On March 31, 2016, Respondent posted an official "stop-work order" from the Building Department on 6220 Valley View Road that stated that Mr. Machado was required to stop all work being done to 6220 Valley View Road until the work was approved by Respondent. (Count 27.) Respondent did not follow any of the policies and procedures of the Building Department in issuing the "stop-work order," and never recorded issuing the "stop-work order" into the Building Department's records. Respondent used the "stop-work order" to coerce Mr. Machado into providing Respondent with more payments. (Count 28.)

On April 11, April 13, and April 27, 2016, Respondent received \$1,000, \$4,500, and \$5,000, respectively, from Mr. Machado.

On May 10, 2016, Mr. Machado applied for a building permit to legalize 1322 square feet on the lower floor, remodel the upper floor, and abate the building code violation that the City verified on January 20, 2016.

On May 13, 2016, Mr. Harbaugh conducted a field check and finalized the building permit Mr. Machado applied for on May 10, 2016.

On May 20, 2016, Respondent received \$450 from Mr. Machado.

Respondent has not, to date, reported receiving \$12,850 from Mr. Machado. (Count 26.)

Vivian Tang and 8925 Lawlor Street

8925 Lawlor Street was, at all relevant times, owned by Vivian Tang and located in Oakland. On February 14, 2014, Respondent verified building code violations at 8925 Lawlor Street, issued a "stop-work order" for unpermitted conversions of the basement and the attic, and opened an enforcement case against Ms. Tang.

On December 10, 2014, Ms. Tang applied for building, electrical, and plumbing permits to return the attic to its original use to abate the building code violations. Respondent reviewed

Ms. Tang's permit applications and waived the required approval from the Zoning Department and the required field check to issue the permits.

On January 15, 2015, Ms. Tang hired Respondent to convert the attic and basement of 8925 Lawlor Street for \$21,500.

On January 21, 2015, Respondent passed inspections for Ms. Tang's building, electrical, and plumbing permits, and closed the enforcement case against her. (Counts 30, 31, 32, and 33.)

On January 22, 2015, Ms. Tang applied for building, mechanical, electrical, and plumbing permits to convert the basement of 8925 Lawlor Street.

On January 29, 2015, Respondent received \$10,000 from Ms. Tang pursuant to their agreement. On February 6, 2015, Respondent received the remaining \$11,500 from Ms. Tang pursuant to their agreement.

On February 19, 2015, Respondent passed inspections for Ms. Tang's building, mechanical, electrical, and plumbing permits. (Counts 34, 35, 36, and 37.)

On April 28, 2015, a City building inspector finalized Ms. Tang's building, mechanical, electrical, and plumbing permits.

On May 20, 2015, Respondent received an additional \$3,100 from Ms. Tang for work he did, in his personal capacity, at 8925 Lawlor Street.

Respondent has not, to date, reported receiving \$24,600 from Ms. Tang. (Count 29.)

Ana Siu and 5135 Manila Avenue

5135 Manila Ave. was, at all relevant times, a single-family home in Oakland. On August 13, 2013, Ana Siu bought 5135 Manila Ave.

On December 11, 2013, a City building inspector opened an enforcement case against Ms. Siu for building code violations at 5135 Manila Ave.

On December 24, 2013, Ms. Siu applied for a building permit for 5135 Manila Ave.

On February 21, 2014, Respondent issued a "stop-work order" on 5135 Manila Ave.

On May 1, 2014, Ms. Siu applied for a building permit, mechanical permit, electrical permit, plumbing permit, and obstruction permit, to convert and remodel 5135 Manila Ave.

On May 16, 2014, May 24, 2014, January 16, 2015, and January 26, 2015, Respondent inspected 5135 Manila Ave. for the enforcement case against Ms. Siu and Ms. Siu's permits.

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Between February 12 and April 30, 2015, Respondent received payments totaling \$66,277 from Ms. Siu for real estate services and general contracting work at 5135 Manila Ave. and another property Ms. Siu owned.

In March and April 2015, City building inspectors inspected 5135 Manila Ave. for the enforcement case and Ms. Siu's permits.

Between October 21 and October 28, 2015, City building inspectors inspected 5135 Manila Ave. for the permits Ms. Siu had applied for and finalized each of the permits.

On December 24, 2015, Ms. Siu sold 5135 Manila Ave. as a residential duplex.

Respondent has not, to date, reported receiving \$66,277 from Ms. Siu. (Count 38.)

Income from One Development and Investment Corporation

One Development and Investment Corporation (ODIC) was, at all relevant times, a corporation conducting real estate business in Oakland through Ms. Siu, its owner, and Respondent, its president.

Between May 27 and June 25, 2015, Respondent received income totaling \$19,770 from ODIC for real estate and general contracting work.

Respondent has not, to date, reported receiving \$19,770 from ODIC or that he was its president in 2015. (Counts 39 and 40.)

Other Reportable Sources of Income

On March 15, 2015, Respondent received \$1,000 from Pat Viswanathan, a person doing business in Oakland, for consulting services. Respondent has not, to date, reported Mr. Viswanathan as a source of income. (Count 41.)

On April 3, 2015, Respondent received \$3,000 from Apex Construction, a business entity doing business in Oakland, for consulting services. Respondent has not, to date, reported Apex Construction as a source of income. (Count 42.)

On April 8, 2015, Respondent received \$3,000 from Zati Uysal, a person doing business in Oakland, for consulting services. Respondent has not, to date, reported Mr. Uysal as a source of income. (Count 43.)

On August 15, 2016, Respondent received \$3,500 from Jerry Tran, a person doing business in Oakland, for consulting services. Respondent has not, to date, reported Mr. Tran as a source of income. (Count 44.)

Misuse of Public Resources

On several occasions in June and July of 2015, Respondent drove a City-owned vehicle to Orinda to conduct personal business. (Count 45.)

In July and August 2015, Respondent used a City-owned computer and a City-owned printer to print hundreds of pages of personal materials. (Count 46.)

In October 2015, Respondent, while on vacation, used a City-owned cell phone to make personal phone calls totaling 587 minutes. (Count 47.)

IV. VIOLATIONS

Based on the aforementioned evidence, there is probable cause that Respondent committed the following violations of the Oakland Government Ethics Act.

Count 1: Economic Interest Disclosure Violation: Failing to Report the Source of Income

Respondent was a Specialty Combination Inspector in the Building Department in 2015, and as such was required to report all sources from whom he received income, including loans other than those received from a commercial lending institution, totaling \$500 or more during the January 1 through December 31, 2015, period, by April 1, 2016.

In 2015, Respondent received income totaling \$176,179 from Ms. Williams, a person doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Williams as a source of income by April 1, 2016.

Count 2: Economic Interest Disclosure Violation: Failing to Report the Source of Income

Respondent was a Specialty Combination Inspector in the Building Department until August 16, 2016, and as such was required to report all sources from whom he received income totaling \$500 or more during the January 1 through August 16, 2016, period, by September 15, 2016.

On March 3, 2016, Respondent received income totaling \$850 from Ms. Williams. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Williams as a source of income by September 15, 2016.

Count 3: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

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.

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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.

On October 1, 2015, Respondent had a disqualifying financial interest in any governmental decision involving Ms. Williams because he had received income totaling \$112,000 from her within the prior 12 months. On October 1, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by closing a code enforcement case against Ms. Williams for 915 24th Street.

Count 4: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

As a City employee, Respondent was prohibited from soliciting or accepting anything of value in exchange for the performance of any official act.

On January 22, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by soliciting \$300 from Ms. Williams in exchange for the Building Department passing inspections for her permits, and issuing Green Tags, for 857 Mead Avenue.

Count 5: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

A City employee attempts to use his or her official position to influence a decision when he or she contacts or appears before any official in his or her agency for the purpose of affecting the decision.

On March 1, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by submitted an application to the Building Department on behalf of Ms. Williams. for an electrical permit for 857 Mead Ave.

Count 6: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 1, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by submitted an application to the Building Department on behalf of Ms. Williams. for a plumbing permit for 857 Mead Ave.

Count 7: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On September 22, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by waiving the requirement that Elizabeth Williams submit an architectural plan approved by the City's Zoning Department with her building permit application for 2735 Market Street, confirming that the monetary valuation on her building permit application was correct, allowing her building permit to be issued over-the-counter, and waiving the

requirement that she submit photos of the proposed project with her building permit application.

Count 8: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams an electrical permit for 2735 Market Street.

Count 9: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a building permit for 2735 Market Street.

Count 10: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a plumbing permit for 2735 Market Street.

Count 11: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On November 5, 2015, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by soliciting \$300 from Ms. Williams in exchange for her permits for 2735 Market Street passing inspections.

Count 12: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a building permit for 877/879 27th Street.

Count 13: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams an electrical permit for 877/879 27th Street.

Count 14: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a mechanical permit for 877/879 27th Street.

Count 15: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a plumbing permit for 877/879 27th Street.

Count 16: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On March 1, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by solicited \$300 from Ms. Williams in exchange for building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing rough inspections.

Count 17: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On March 1, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics by solicited \$300 from Ms. Williams in exchange for building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing final inspections.

Count 18: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a building permit for 877/879 27th Street.

Count 19: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams an electrical permit for 877/879 27th Street.

Count 20: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Ms. Williams a plumbing permit for 877/879 27th Street.

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Count 21: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act

On February 9, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics Act by soliciting and accepting \$1,500 from Bill Charman in exchange for resolving outstanding permit issues for 4163 Rifle Lane.

Count 22: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Mr. Charman a building permit for 4163 Rifle Lane.

Count 23: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Mr. Charman electrical permit for 4163 Rifle Lane.

Count 24: Conflict of Interest Violation: Attempting to Influence a Governmental Decision Involving a Source of Income

On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland Government Ethics Act by attempting to use his official position to influence the Building Department's decision to issue Mr. Charman a plumbing permit for 4163 Rifle Lane.

Count 25: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On February 9, 2016, Respondent received income totaling \$1,500 from Mr. Charman and was therefore was required to report him as a source of income by September 15, 2016.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Charman as a source of income by September 15, 2016.

Count 26: Economic Interest Disclosure Violation: Failing to Report a Source of Income

Between February 27 and May 20, 2016, Respondent received income totaling \$12,850 from Alex Machado, who was doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Machado as a source of income by September 15, 2016.

Count 27: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On March 31, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by issuing a “work-stop order” on 6220 Valley View, a property owned and being remodeled by Mr. Machado.

Count 28: Misuse of City Authority: Using One’s City Authority to Induce or Coerce a Person to Provide an Economic Gain

On March 31, 2016, Respondent issued a “work-stop order” on 6220 Valley View, a property owned and being remodeled by Mr. Machado, for the purpose of inducing or coercing Mr. Machado into providing Respondent with payments.

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

Count 29: Economic Interest Disclosure Violation: Failing to Report a Source of Income

Between January 29 and May 20, 2015, Respondent received income totaling \$24,600 from Vivian Tang, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Tang as a source of income by April 1, 2016,

Count 30: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by closing a code enforcement case against Ms. Tang for 8925 Lawlor Street.

Count 31: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an inspection for Ms. Tang’s building permit for 8925 Lawlor Street.

Count 32: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an inspection for Ms. Tang’s electrical permit for 8925 Lawlor Street.

Count 33: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On January 21, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an inspection for Ms. Tang's plumbing permit for 8925 Lawlor Street.

Count 34: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing an another inspection for Ms. Tang's building permit for 8925 Lawlor Street.

Count 35: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing another inspection for Ms. Tang's electrical permit for 8925 Lawlor Street.

Count 36: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing another inspection for Ms. Tang's plumbing permit for 8925 Lawlor Street.

Count 37: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of Income

On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by passing inspection for Ms. Tang's mechanical permit for 8925 Lawlor Street.

Count 38: Economic Interest Disclosure Violation: Failing to Report a Source of Income

In 2015, Respondent received income totaling \$66,277 from Ana Siu, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Ms. Siu as a source of income by April 1, 2016.

Count 39: Economic Interest Disclosure Violation: Failing to Report a Source of Income

In 2015, Respondent received income totaling \$19,770 from One Development and Investment Corporation, a business entity doing business in Oakland.

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Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report One Development and Investment Corporation as a source of income by April 1, 2016.

Count 40: Economic Interest Disclosure Violation: Failing to Report a Business Position

In 2015, Respondent was the president of One Development and Investment Corporation, a business entity doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report his business position with One Development and Investment Corporation by April 1, 2016.

Count 41: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On August 15, 2016, Respondent received income totaling \$3,500 from Jerry Tran, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Tran as a source of income by September 15, 2016.

Count 42: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On March 15, 2015, Respondent received income totaling \$1,000 from Pat Viswanathan, a person doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Viswanathan as a source of income by September 15, 2016.

Count 43: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On April 8, 2015, Respondent received income totaling \$3,000 from Zati Uysal, a person doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Uysal as a source of income by April 1, 2016.

Count 44: Economic Interest Disclosure Violation: Failing to Report a Source of Income

On April 3, 2015, Respondent received income totaling \$3,000 from Apex Construction, a business entity doing business in Oakland.

Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Apex Construction as a source of income by April 1, 2016.

Count 45: Misuse of Public Resources Violation: Using City Resources for Personal Matters

In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government Ethics Act by using a City-owned vehicle for personal matters unrelated to any City business.

Count 46: Misuse of Public Resources Violation: Using City Resources for Personal Matters

In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government Ethics Act by using a City-owned computer and printer for personal matters unrelated to any City business.

Count 47: Misuse of Public Resources Violation: Using City Resources for Personal Matters

In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government Ethics Act by using a City-owned cell phone for personal matters unrelated to any City business.

V. RECOMMENDATION

Because there is probable cause that Respondent committed 47 violations of the Oakland Government Ethics Act, as described above, Commission Staff recommends that the Commission refer this matter for an administrative hearing. If the Commission decides to refer this matter for an administrative hearing, Commission Staff recommends that the administrative hearing be held before a panel of three members of the Commission.