

Item #6 - Proposed Diversion Agreement

1 Kellie F. Johnson
Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
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Telephone: (510) 238-4976
4

5 Petitioner

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION
8

9 In the Matter of

10 EVERETT CLEVELAND Jr.,

11 Respondent.
12
13

) Case No.: 20-03 (a)
)
) **Diversion Agreement**
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15 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission (PEC), and
16 Respondent, Everett Cleveland Jr., enter into the following Diversion Agreement pursuant to
17 O.M.C. 2.24.030.

18 **DIVERSION ELIGIBILITY**

19 The Respondent is eligible for and that this matter may be resolved by diversion, in that:

- 20 (a) the allegation against Respondent does not involve misappropriation of City funds
21 or property; or the commission of a misdemeanor or felony under California law;
- 22 (b) the violation by Respondent appears to be the result of inadequate departmental
23 controls and lack of training education; and
- 24 (c) there appears to be a reasonable likelihood that the successful completion of a
25 remedial program will prevent the recurrence of violations by Respondent similar to
26 that under consideration for diversion.

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DIVERSION STIPULATIONS:

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3 1. This Diversion Agreement resolves all factual and legal issues raised in this matter and
4 represents the final resolution to this matter without the necessity of holding an
5 administrative hearing to determine the liability of Respondents;
6
- 7 2. In exchange for his entry into the Diversion Agreement, admission to the counts named
8 in this agreement, and completion of the terms of the Diversion Agreement, the
9 Commission, if approved, will close this matter with no further penalty.
10
- 11 3. Respondent knowingly and voluntarily agrees to enter diversion and waive all
12 procedural rights under the Oakland City Charter, Oakland Municipal Code, and Public
13 Ethics Commission Complaint Procedures, including, but not limited to, the right to
14 personally appear at an administrative hearing held in this matter, to be represented by
15 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
16 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
17
- 18 4. This Diversion Agreement is not binding on any other law enforcement agency, and
19 does not preclude the Commission or its staff from referring the matter to, cooperating
20 with, or assisting any other government agency with regard to this matter, or any other
21 matter related to it;
22
- 23 5. There is probable cause to establish that the Respondent violated the Government Ethics
24 Act by engaging in the following conduct: a). using his position in a manner intended to
25 induce a private advantage or economic gain to another person., in violation of the
26 Oakland Municipal Code section O.M.C. 2.25.060 (A) (2) (Misuse of Position); b).
27 making or attempting to influence a NOFA application selection process involving a
28 relative in violation of O.M.C. 2.25.070 (D) (Prohibition Against Nepotism); and c).

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1 failure to file a Form 700 Statement of Economic Interests for the year 2019 in violation
2 of O.M.C. 2.25.040 (B).

3 **DIVERSION AGREEMENT TERMS**

- 4
- 5 1. The term of this agreement shall be for six (6) months, beginning on May ____, 2021, and
6 shall terminate on November ____, 2021, or until Respondent has satisfied all of the
7 requirements of this agreement, whichever is later.
- 8
- 9 2. The proposed Diversion Agreement is subject to approval by the Public Ethics
10 Commission.
- 11
- 12 3. The respondent agrees that in the event the Commission refuses to approve the proposed
13 Diversion Agreement, it shall become null and void.
- 14
- 15 4. In the event the Commission rejects the proposed Diversion Agreement and a full
16 evidentiary hearing before the Commission becomes necessary, no member of the
17 Commission shall be disqualified because of prior consideration of the diversion
18 agreement.
- 19
- 20 5. During the term of this agreement, Respondent shall attend and successfully complete
21 the following trainings:
- 22 i. Government Ethics Act Training for Form 700 Filers, in coordination with
23 Public Ethics Commission staff to ensure course completion,
- 24 ii. Conflicts of Interest Training provided by PEC staff, and
- 25 iii. One-hour follow-up in-person training with PEC staff.
- 26
- 27 6. Respondent acknowledges that a failure to complete this requirement timely may be
28 grounds for the extension or termination of this agreement by the PEC.

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2 7. The Respondent agrees to pay a Diversion Program Fee of \$150, payable to the City of
3 Oakland upon entry into the Diversion Agreement by money order or cashier's check.
4 Any costs associated with the remedial program shall be borne by Respondent.

5
6 8. Respondent is responsible for the timely submission of all completion certificates
7 required by this agreement and must communicate the completion of all requirements to
8 the PEC.

9 10 **COMPLIANCE AND DISPOSITION**

11
12 1. Any failure by Respondent to comply with any term of this agreement or any
13 subsequent complaint that alleges that the Respondent violated a provision of Oakland's
14 Government Ethics Act in a matter unrelated to the facts stipulated to in this diversion,
15 is a basis for the extension or termination of this agreement by the PEC.

16
17 2. In the event the PEC has a reason to believe that there is such a basis to extend or
18 terminate the agreement, Respondent acknowledges that the PEC shall provide the
19 Respondent with an opportunity to be heard through written submission concerning the
20 alleged non-compliance. Thereafter, the PEC staff shall determine whether to terminate
21 or extend this agreement and, if so, shall refer the matter to the PEC for review.

22
23 3. In the event that the Respondent fails to comply with the terms of this agreement, he
24 agrees that the following facts shall be deemed true in any subsequent hearing:

25
26 a. On or between January 2019 and December 2019, Respondent, Everett Cleveland Jr.
27 attempted to use his official position to influence the Housing Department's decision
28

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1 to approve his father-in-law's (Don Gilmore) non-profit Community Housing
2 Development Corporation's NOFA application for funding.

3
4 b. Between January 2019 and December 2019, the Respondent Everett Cleveland Jr.,
5 used his position in the Housing Department as a Housing Development Coordinator
6 in a manner intended to induce a private advantage or economic gain to another
7 person, Don Gilmore and the community Housing Development Corporation.

8
9 c. Between January 2019 and December 2019, the Respondent, Everett Cleveland Jr., a
10 City of Oakland Housing Development Coordinator, made or attempted to influence a
11 NOFA application selection process involving a family member, Don Gilmore.

12
13 d. The Respondent, Everett Cleveland Jr. failed to timely file a Financial Interest Form
14 700 for the year 2019.

15
16
17 4. Notification: During the term of this Diversion Agreement, Respondent shall notify the
18 PEC, in writing, of any change of e-mail address, mailing address, or telephone change
19 within 10 days of the change.

20
21 5. This Diversion Agreement is a deferral of enforcement proceedings, fines and penalties.
22 If, in the sole discretion of the PEC, Respondent complies with all the terms of this
23 agreement through the duration of the agreement, the matter/complaint shall thereafter
24 be closed and shall not be considered a prior PEC offense in any subsequent PEC
25 proceeding against him/her. The stipulated facts contained in this agreement will serve
26 as your admission to the alleged violation(s). If the terms of this agreement are violated,
27 the enforcement action will proceed, and the stipulated facts contained in this agreement
28 will serve as your admission to the alleged violation(s).

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6. The parties acknowledge that this Diversion Agreement, Respondent’s compliance with the Agreement, and the disposition of this proceeding upon completion or termination of the Agreement, are matters of public record. He further acknowledges that the Complainant will be made aware that this matter was resolved through a diversion agreement.

Dated: _____

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

I, (Everett Cleveland Jr.), attest that the statements contained in the diversion agreement are true and correct, and that I agree to the above terms.

Dated: _____

Everett Cleveland Jr., Respondent

Print Name: _____

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ORDER OF DIVERSION

The foregoing Diversion Agreement of the parties (Case No. 20-03(a)), including all attached exhibits, is hereby accepted as the Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____

Michael MacDonald, Chair
City of Oakland Public Ethics Commission