

Item #4 - Staff Memo



Michael MacDonald, Chair
Jerett Yan, Vice Chair
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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: June 24, 2021
RE: *In the Matter of Thomas Espinosa (Case No. 16-14)*; Additional Information Regarding Penalty Options Following Discussion at the June 7, 2021, PEC Meeting

OVERVIEW

This memorandum provides additional information to the Public Ethics Commission (PEC or Commission) regarding enforcement penalty options in order to assist the Commission in determining appropriate penalties in the Matter of Thomas Espinosa, PEC Case NO, 16-14, following discussion of the item at the Commission’s June 7, 2021, public meeting. This memorandum is a supplement to the information provided at that June 7 meeting and included again in the agenda materials for this June 30, 2021, special meeting in which the matter was continued.

BACKGROUND

By way of review, the Enforcement Unit of the City of Oakland Public Ethics Commission (“Complainant”) brought this action to address violations of the Government Ethics Act (“GEA”) by former Oakland Building Inspector Thomas Espinosa (“Respondent”). Complainant charged Respondent with 47 separate violations of the Government Ethics Act in the following areas: Soliciting and Receiving Bribes; Misusing City Position, Conflicts of Interest; Making or Seeking to Use His Official Position to Influence Governmental Decisions; Failing to Report Economic Interest Disclosure; and Misuse of City Resources. An administrative hearing before Hearing Officer Jodie Smith occurred on April 27, 2021. Complainant was required to show that the violations occurred by a preponderance of the evidence.

At the administrative hearing, Commission staff presented evidence to prove 47 violations of GEA and recommended a base-level penalty amount of \$5,000 per GEA violation pursuant to the PEC Penalty Guidelines and to impose a select few penalties concurrently, for a total of \$200,000. Following the hearing, Hearing Officer Smith submitted a recommendation to the Commission with findings of fact that conclude the Respondent violated 43 separate provisions of the Government Ethics Act and a recommendation of an administrative penalty in the amount of \$210,000.

At the June 7, 2021, Commission meeting, the PEC reviewed the hearing officer’s recommendation and engaged in discussion indicating that Commissioners were interested in increasing the fine amounts

beyond the usual \$5,000 amount per violation and instead invoking the ability to pursue fines of “up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave, or received.”¹ Staff suggested that the Commission continue the item to a future meeting so that staff could prepare information to assist the Commission in determining the appropriate fine for each violation within this higher penalty framework.

ADDITIONAL INFORMATION FOR CONSIDERATION OF PENALTY OPTIONS

Commission staff compiled the following information for the Commission to consider in determining penalty amounts for each violation in this matter:

1. **Spreadsheet of Counts and Available Penalties (Attachment 1)** – Staff reviewed the Hearing Officer’s findings of facts and conclusions and attempted to quantify the dollar amounts (within the larger range of what was received in the 12 months preceding the governmental action) that might be associated with each specific violation. In some cases, such as the bribery violations in which the evidence connecting payments to actions was clear, the dollar amount can be isolated and easily quantified; however, in many cases, such as the conflicts of interest violations, it is more difficult to link specific actions to an amount certain, as the violation occurs upon the governmental action regarding the source of prior income over the past 12 months. Therefore, several governmental actions relate to the same pot of money that was identified as income or loans that the respondent received in the preceding 12 months.
2. **Public Ethics Commission Penalty Guidelines (Attachment 2)** – These guidelines are the result of a PEC subcommittee process and full PEC review to establish guiding principles for staff to consider when making fine recommendations and negotiating settlements. Overall, the goal of PEC’s enforcement penalty approach is to provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation and, under administrative and constitutional law provisions, to impose fines that are not excessive, arbitrary, or capricious.
3. **List of Past Fines for GEA Provisions at Issue in Case No. 16-14 (Attachment 3)** – Staff compiled a list of prior PEC fines for each of the violations that are the subject of Case No. 16-14 for the Commission to consider as precedent for comparison. While the Penalty Guidelines aim to ensure consistency of penalties for similar violations over time, the guidelines also expressly state that the guideline “is advisory only, and does not limit the PEC from using discretion to deviate from the guidance when atypical or egregious circumstances exist.”

CONCLUSION

Staff recommends that the Commission review this additional information in considering a penalty framework that imposes fair, and not excessive, penalties commensurate to the type of violations and the amounts at issue in this case.

¹ OMC 2.25.080(C)(3)

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Count	Violation Type	GEA Section	Source of Funds	Description of Violation	Date of Violation	Amount	Base Penalty	Statutory Limit	Notes
1	Economic Interest Disclosure	2.25.040(B)	Elizabeth Williams	Failure to report all income received from Williams in 2015	1-Apr-16	\$176,179	\$1,000	\$5,000 or three times amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his annual Form 700. The amount given is the total reportable income he failed to report in 2015
2	Economic Interest Disclosure	2.25.040(B)	Elizabeth Williams	Failure to report all income received from Williams in 2016	15-Sep-16	\$850	\$1,000	\$5,000 or three times amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his leaving office Form 700. The amount given is the total reportable income from Williams he failed to report in 2016
3	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Closing code enforcement case against Williams for 915 24th Street	1-Oct-15	1. \$112,000 or 2. \$6,000	\$3,000	\$5,00 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 1-Oct-15 2. A payment from Williams to Espinosa of \$12,000 on 24-Sep-15 (Attachment 5) is the closest in-time to 1-Oct-15 and is not accounted for in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment (given to Espinosa immediately prior to this payment). This check does not have a memo line and there is no accompanying invoice or bill. My linking of this payment to the act of 1-Oct-15 is approximate, not definite. I have also attributed this payment to Count 7, so I am dividing the total amount by two to arrive at \$6,000 here.
4	Bribery	2.25.070(A)	Elizabeth Williams	Soliciting money to pay an inspector to pass an electrical inspection at 857 Mead Avenue	22-Jan-16	\$300	\$5,000	\$5,000 or three times unlawful amount, whichever is greater.	This is the amount of money that Espinosa told Williams that he paid to the inspector for this inspection (Attachments 31 & 33) and for which he billed her (Attachment 34)
5	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Submitting an electrical permit application to the Building Department on behalf of Williams for 857 Mead Avenue	1-Mar-16	1. \$175,179 or 2. \$425	\$3,000	\$5,000 or three times the unlwaful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 1-Mar-16 2. Espinosa received a payment from Williams on 3-Mar-16 of \$850. If we assume this was a payment for applying for an electrical permit (Count 5) and electrical permit (Count 6) on 1-Mar-16, then Espinosa would have been paid \$425 for each permit. My linking of this payment to the act of 1-Mar-16 is approximate, not definite; no document or testimony expressly links the act to this particular payment.
6	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Submitting a plumbing permit application to the Building Department on behalf of Williams for 857 Mead Avenue	1-Mar-16	1. \$175,179 or 2. \$425	\$3,000	\$5,000 or three times the unlwaful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 1-Mar-16 2. Espinosa received a payment from Williams on 3-Mar-16 of \$850. If we assume this was a payment for applying for an electrical permit (Count 5) and electrical permit (Count 6) on 1-Mar-16, then Espinosa would have been paid \$425 for each permit. My linking of this payment to the act of 1-Mar-16 is approximate, not definite; no document or testimony expressly links the act to this particular payment.

Count	Violation Type	GEA Section	Source of Funds	Description of Violation	Date of Violation	Amount	Base Penalty	Statutory Limit	Notes
7	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Espinosa fills out CE Routing Slip for Williams' permit application for 2735 Market Street, waiving the requirement that she submit an architectural plans approved by Zoning, confirming that the monetary valuation on her application was correct, allowing her permit to be issued over-the-counter, and waiving the requirement that she submit photos of the proposed project	22-Sep-15	1. \$100,000 or 2. \$6,000			<p>1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 22-Sep-15</p> <p>2. Espinosa received a payment from Williams on 24-Sep-15 in the amount of \$12,000. This payment from Williams is the closest in time to 22-Sep-15, and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. My linking of this payment to the act of 22-Sep-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment. I have also attributed this payment to Count 3, so I am dividing the total amount by two to arrive at \$6,000 here.</p>
8	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Espinosa attempts to use his official position to influence the Building Department's decision to issue Williams an electrical permit for 2735 Market Street.	27-Oct-15	1. \$123,570 or 2. \$3,586.66	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	<p>1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 27-Oct-15</p> <p>2. Espinosa received a payment from Williams on 16-Oct-15 in the amount of \$11,570. This payment from Williams is the closest in time to 27-Oct-15 (except for another payment on 6-Nov-15, but Espinosa provided an invoice for that payment and it did not include the cost of obtaining this permit), and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. If we assume this was a payment for applying for an electrical permit (Count 8), building permit (Count 9) and plumbing permit (Count 10) on 27-Oct-15 then Espinosa would have been paid \$3,586.66 for each permit My linking of this payment to the act of 27-Oct-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment.</p>

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Count	Violation Type	GEA Section	Source of Funds	Description of Violation	Date of Violation	Amount	Base Penalty	Statutory Limit	Notes
9	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Espinosa attempts to use his official position to influence the Building Department's decision to issue Williams a building permit for 2735 Market Street.	27-Oct-15	1. \$123,570 or 2. \$3,586.66			1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 27-Oct-15 2. Espinosa received a payment from Williams on 16-Oct-15 in the amount of \$11,570. This payment from Williams is the closest in time to 27-Oct-15 (except for another payment on 6-Nov-15, but Espinosa provided an invoice for that payment and it did not include the cost of obtaining this permit), and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. If we assume this was a payment for applying for an electrical permit (Count 8), building permit (Count 9) and plumbing permit (Count 10) on 27-Oct-15 then Espinosa would have been paid \$3,586.66 for each permit My linking of this payment to the act of 27-Oct-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment.
10	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Espinosa attempts to use his official position to influence the Building Department's decision to issue Williams a plumbing permit for 2735 Market Street.	27-Oct-15	1. \$123,570 or 2. \$3,586.66	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 27-Oct-15 2. Espinosa received a payment from Williams on 16-Oct-15 in the amount of \$11,570. This payment from Williams is the closest in time to 27-Oct-15 (except for another payment on 6-Nov-15, but Espinosa provided an invoice for that payment and it did not include the cost of obtaining this permit), and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. If we assume this was a payment for applying for an electrical permit (Count 8), building permit (Count 9) and plumbing permit (Count 10) on 27-Oct-15 then Espinosa would have been paid \$3,586.66 for each permit My linking of this payment to the act of 27-Oct-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment.
11	Bribery	2.25.070(A)	Elizabeth Williams	Soliciting \$300 from Williams in exchange for her permits for 2735 Market Street passing inspections.	5-Nov-15	\$300	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the amount of money that Espinosa charged Williams for the inspection (Attachment 46)
12	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Influencing the Building Department's decision to issue Williams a building permit for 877/879 27th Street	10-Nov-15	1. \$129,678 or 2. \$1,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 10-Nov-15 2. Espinosa received a payment from Williams on 13-Nov-15 in the amount of \$6,000. This payment from Williams is the closest in time to 10-Nov-15 and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. If we assume this was a payment for applying for four permits (Counts 12-15) on 10-Nov-15 then Espinosa would have been paid \$1,500 for each permit My linking of this payment to the act of 10-Nov-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment.

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Count	Violation Type	GEA Section	Source of Funds	Description of Violation	Date of Violation	Amount	Base Penalty	Statutory Limit	Notes
13	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Influencing the Building Department's decision to issue Williams an electrical permit for 877/879 27th Street	10-Nov-15	1. \$129,678 or 2. \$1,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 10-Nov-15 2. Espinosa received a payment from Williams on 13-Nov-15 in the amount of \$6,000. This payment from Williams is the closest in time to 10-Nov-15 and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. If we assume this was a payment for applying for four permits (Counts 12-15) on 10-Nov-15 then Espinosa would have been paid \$1,500 for each permit My linking of this payment to the act of 10-Nov-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment.
14	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Influencing the Building Department's decision to issue Williams a mechanical permit for 877/879 27th Street	10-Nov-15	1. \$129,678 or 2. \$1,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 10-Nov-15 2. Espinosa received a payment from Williams on 13-Nov-15 in the amount of \$6,000. This payment from Williams is the closest in time to 10-Nov-15 and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. If we assume this was a payment for applying for four permits (Counts 12-15) on 10-Nov-15 then Espinosa would have been paid \$1,500 for each permit My linking of this payment to the act of 10-Nov-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment.
15	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Influencing the Building Department's decision to issue Williams a plumbing permit for 877/879 27th Street	10-Nov-15	1. \$129,678 or 2. \$1,500			1. This is the total amount of money that Espinosa received from Williams in the 12 months prior to 10-Nov-15 2. Espinosa received a payment from Williams on 13-Nov-15 in the amount of \$6,000. This payment from Williams is the closest in time to 10-Nov-15 and is not included in the \$100,000 that Williams told the PEC she loaned to Espinosa for real estate investment purposes. If we assume this was a payment for applying for four permits (Counts 12-15) on 10-Nov-15 then Espinosa would have been paid \$1,500 for each permit My linking of this payment to the act of 10-Nov-15 is approximate, not definite; no document or testimony expressly links the act to this particular payment.
16	Bribery	2.25.070(A)	Elizabeth Williams	Soliciting \$300 from Williams in exchange for building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing rough inspections	1-Mar-16	\$300	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the amount of money that Espinosa charged Williams for the inspection (Attachment 34)

Count	Violation Type	GEA Section	Source of Funds	Description of Violation	Date of Violation	Amount	Base Penalty	Statutory Limit	Notes
17	Bribery	2.25.070(A)	Elizabeth Williams	Soliciting \$300 from Williams in exchange for building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing rough inspections	1-Mar-16	\$300	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the amount of money that Espinosa charged Williams for the inspection (Attachment 34)
18	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Influencing the Building Department's decision to issue Williams a building permit for 877/879 27th Street	14-Mar-16	1. \$177,029 or 2. \$0	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the total amount of money that Espinosa received from Williams in the twelve months prior to 14-Mar-16. There are no payments from Williams to Espinosa around 14-Mar-16 that we are aware of. (There is a payment of \$850 on 3-Mar-16 but that is closer in time to Espinosa's actions underlying counts 5-6, above)
19	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Influencing the Building Department's decision to issue Williams an electrical permit for 877/879 27th Street	14-Mar-16	1. \$177,029 or 2. \$0	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the total amount of money that Espinosa received from Williams in the twelve months prior to 14-Mar-16. There are no payments from Williams to Espinosa around 14-Mar-16 that we are aware of. (There is a payment of \$850 on 3-Mar-16 but that is closer in time to Espinosa's actions underlying counts 5-6, above)
20	Conflict of Interest	2.25.040(A)	Elizabeth Williams	Influencing the Building Department's decision to issue Williams a plumbing permit for 877/879 27th Street	14-Mar-16	1. \$177,029 or 2. \$0	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the total amount of money that Espinosa received from Williams in the twelve months prior to 14-Mar-16. There are no payments from Williams to Espinosa around 14-Mar-16 that we are aware of. (There is a payment of \$850 on 3-Mar-16 but that is closer in time to Espinosa's actions underlying counts 5-6, above)
21	Bribery	2.25.070(A)	Bill Charman	Accepting \$1,500 from Bill Charman in exchange for resolving outstanding permit issues for 4163 Rifle Lane	9-Feb-16	\$1,500	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the amount of money that Espinosa received from Charman in exchange for resolving permit issues at 4163 Rifle Lane

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22	Conflict of Interest	2.25.040(A)	Bill Charman	Using his official position to influence the Building Department's decision to issue Charman a building permit for 4163 Rifle Lane	9-Feb-16	\$1,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the total amount of money that Espinosa received from Charman in the twelve months prior to taking an official act on 9-Feb-16. Espinosa also expressly conditioned his taking of that official act on receiving \$1,500 from Charman (based on Charman's testimony), so we are able to tie this particular payment directly to Espinosa's official act.
23	Conflict of Interest	2.25.040(A)	Bill Charman	Using his official position to influence the Building Department's decision to issue Charman an electrical permit for 4163 Rifle Lane	9-Feb-16	\$1,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the total amount of money that Espinosa received from Charman in the twelve months prior to taking an official act on 9-Feb-16. Espinosa also expressly conditioned his taking of that official act on receiving \$1,500 from Charman (based on Charman's testimony), so we are able to tie this particular payment directly to Espinosa's official act.
24	Conflict of Interest	2.25.040(A)	Bill Charman	Using his official position to influence the Building Department's decision to issue Charman a plumbing permit for 4163 Rifle Lane	9-Feb-16	\$1,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the total amount of money that Espinosa received from Charman in the twelve months prior to taking an official act on 9-Feb-16. Espinosa also expressly conditioned his taking of that official act on receiving \$1,500 from Charman (based on Charman's testimony), so we are able to tie this particular payment directly to Espinosa's official act.
25	Economic Interest Disclosure	2.25.040(B)	Bill Charman	Failure to report all income received from Charman in 2016	15-Sep-16	\$1,500	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his leaving office Form 700. The amount given is the total reportable income from Charman that he failed to report in 2016
26	Economic Interest Disclosure	2.25.040(B)	Alex Machado	Failure to report all income received from Machado in 2016	15-Sep-16	\$12,850	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his leaving office Form 700. The amount given is the total reportable income from Machado that he failed to report in 2016, according to the hearing officer's findings of fact
27	Conflict of Interest	2.25.040(A)	Alex Machado	Issuing a "work-stop order" on 6220 Valley View, a property owned and being remodeled by Machado	31-Mar-16	1. \$2,400 or 2. \$4,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the amount of income Espinosa received from Machado in the 12 months prior to 31-Mar-16, as described in the Findings of Fact for this count 2. This is the next payment Machado made to Espinosa after the stop-work threat of 31-Mar-16. There is no documentary or testimony evidence directly linking this payment to the act of 31-Mar-16, so my connection here is approximate and not definite. The finder of fact did not include this payment in her calculation of \$2,400 (above)

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28	Misuse of City Authority	2.25.060(A)	Alex Machado	Issuing a “work-stop order” on 6220 Valley View, a property owned and being remodeled by Machado, for the purpose of inducing or coercing Machado into providing Respondent with payments.	31-Mar-16	\$9,700	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.	This is the total amount of money cited in the Findings of Fact associated with this count
29	Economic Interest Disclosure	2.25.040(B)	Vivian Tang	Failure to report all income received from Tang in 2015	1-Apr-16	\$24,600	\$1,000	\$5,000 or three times the unlawful amount, whichever is greater.	The date of violation is the final day that Espinosa could have filed his annual Form 700. The amount given is the total reportable income from Tang that he failed to report in 2015
30	Conflict of Interest	2.25.040(A)	Vivian Tang	Closing a code enforcement case against Tang for 8925 Lawlor Street	21-Jan-15	1. \$24,600 or 2. \$2,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Tang in 2015 2. The payment of \$10,000 from Tang to Espinosa on 29-Jan-15 is the closest payment in-time to Espinosa official act of 21-Jan-15; divided between four counts, that would be \$2,500 per count. The the memo line of the check indicates that it was for the Lawlor property (though it does not refer specifically to inspections or the code enforcement case)
31	Conflict of Interest	2.25.040(A)	Vivian Tang	Passing an inspection for Ms. Tang’s building permit for 8925 Lawlor Street	21-Jan-15	1. \$24,600 or 2. \$2,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Tang in 2015 2. The payment of \$10,000 from Tang to Espinosa on 29-Jan-15 is the closest payment in-time to Espinosa official act of 21-Jan-15; divided between four counts, that would be \$2,500 per count. The the memo line of the check indicates that it was for the Lawlor property (though it does not refer specifically to inspections or the code enforcement case)
32	Conflict of Interest	2.25.040(A)	Vivian Tang	Passing an inspection for Ms. Tang’s electrical permit for 8925 Lawlor Street	21-Jan-15	1. \$24,600 or 2. \$2,500	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Tang in 2015 2. The payment of \$10,000 from Tang to Espinosa on 29-Jan-15 is the closest payment in-time to Espinosa official act of 21-Jan-15; divided between four counts, that would be \$2,500 per count. The the memo line of the check indicates that it was for the Lawlor property (though it does not refer specifically to inspections or the code enforcement case)
33	Conflict of Interest	2.25.040(A)	Vivian Tang	Passing an inspection for Ms. Tang’s plumbing permit for 8925 Lawlor Street	21-Jan-15	1. \$24,600 or 2. \$10,000	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the total amount of money that Espinosa received from Tang in 2015 2. This payment of \$10,000 from Tang to Espinosa on 29-Jan-15 is the closest payment in-time to Espinosa official act of 21-Jan-15, and the memo line of the check indicates that it was for the Lawlor property (though it does not refer specifically to inspections or the code enforcement case)

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34	Conflict of Interest	2.25.040(A)	Vivian Tang	Passing an inspection for Ms. Tang's building permit for 8925 Lawlor Street	19-Feb-15	1. \$21,500 or 2. \$2,875	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the amount of income Espinosa received from Tang in the 12 months prior to 19 Feb-15, as described in the Findings of Fact for this count 2. The nearest-in-time payment made by Tang to Espinosa is \$10,000; divided between four permits would be \$2,875 each. The memo line of the check says that it is for the Lawlor property, but there is no documentary or testimonial evidence to definitively tie this particular payment to this particular act.
35	Conflict of Interest	2.25.040(A)	Vivian Tang	Passing an inspection for Ms. Tang's electrical permit for 8925 Lawlor Street	19-Feb-15	1. \$21,500 or 2. \$2,875	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the amount of income Espinosa received from Tang in the 12 months prior to 19 Feb-15, as described in the Findings of Fact for this count 2. The nearest-in-time payment made by Tang to Espinosa is \$10,000; divided between four permits would be \$2,875 each. The memo line of the check says that it is for the Lawlor property, but there is no documentary or testimonial evidence to definitively tie this particular payment to this particular act.
36	Conflict of Interest	2.25.040(A)	Vivian Tang	Passing an inspection for Ms. Tang's plumbing permit for 8925 Lawlor Street	19-Feb-15	1. \$21,500 or 2. \$2,875	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the amount of income Espinosa received from Tang in the 12 months prior to 19 Feb-15, as described in the Findings of Fact for this count 2. The nearest-in-time payment made by Tang to Espinosa is \$10,000; divided between four permits would be \$2,875 each. The memo line of the check says that it is for the Lawlor property, but there is no documentary or testimonial evidence to definitively tie this particular payment to this particular act.
37	Conflict of Interest	2.25.040(A)	Vivian Tang	Passing an inspection for Ms. Tang's mechanical permit for 8925 Lawlor Street	19-Feb-15	1. \$21,500 or 2. \$2,875	\$3,000	\$5,000 or three times the unlawful amount, whichever is greater.	1. This is the amount of income Espinosa received from Tang in the 12 months prior to 19 Feb-15, as described in the Findings of Fact for this count 2. The nearest-in-time payment made by Tang to Espinosa is \$10,000; divided between four permits would be \$2,875 each. The memo line of the check says that it is for the Lawlor property, but there is no documentary or testimonial evidence to definitively tie this particular payment to this particular act.
38	Economic Interest Disclosure	2.25.040(B)	Ana Siu	Failing to report income received from Ana Siu in 2015	1-Apr-16	\$66,277	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his annual Form 700. The amount given is the total reportable income from Siu that he failed to report in 2015
39	Economic Interest Disclosure	2.25.040(B)	One Development & Investment Corp.	Failing to report income received from ODIC in 2015	1-Apr-16	\$19,770	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his annual Form 700. The amount given is the total reportable income from ODIC that he failed to report in 2015
40	Economic Interest Disclosure	2.25.040(B)	One Development & Investment Corp.	Failing to report business position in ODIC in 2015	1-Apr-16	\$130,425.16	\$1,000.00	\$5,000 or three times the amount not timely reported, whichever is greater.	The findings of fact do not assign a dollar value to Espinosa's position. ODIC bank statements submitted as evidence in this case show that ODIC's gross revenue in 2015 was approximately \$130,425.16
41	Economic Interest Disclosure	2.25.040(B)	Jerry Tran	Failing to report income received from Jerry Tran in 2016	15-Sep-16	\$3,500	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his leaving office Form 700. The amount given is the total reportable income from Tran that he failed to report in 2016

Count	Violation Type	GEA Section	Source of Funds	Description of Violation	Date of Violation	Amount	Base Penalty	Statutory Limit	Notes
42	Economic Interest Disclosure	2.25.040(B)	Pat Viswanathan	Failing to report income received from Viswanathan in 2016	15-Sep-16	\$1,000	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his leaving office Form 700. The amount given is the total reportable income from Viswanathan that he failed to report in 2016
43	Economic Interest Disclosure	2.25.040(B)	Zati Uysal	Failing to report income received from Uysal in 2015	1-Apr-16	\$3,000	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his annual Form 700. The amount given is the total reportable income from Uysal that he failed to report in 2015
44	Economic Interest Disclosure	2.25.040(B)	Apex Construction	Failing to report income received from Apex Construction in 2016	15-Sep-16	\$3,000	\$1,000	\$5,000 or three times the amount not timely reported, whichever is greater.	The date of violation is the final day that Espinosa could have filed his leaving office Form 700. The amount given is the total reportable income from Apex that he failed to report in 2016
45	Misuse of Public Resources	2.25.060(A)	City of Oakland	Use of City vehicle		No \$ value assigned	\$2,000	\$5,000 or three times the unlawful amount, whichever is greater.	
46	Misuse of Public Resources	2.25.060(A)	City of Oakland	Use of City computer and printer		No \$ value assigned	\$2,000	\$5,000 or three times the unlawful amount, whichever is greater.	
47	Misuse of Public Resources	2.25.060(A)	City of Oakland	Use of City cell phone		No \$ value assigned	\$2,000	\$5,000 or three times the unlawful amount, whichever is greater.	
						No \$ value assigned	\$2,000	\$5,000 or three times the unlawful amount, whichever is greater.	

Public Ethics Commission

ENFORCEMENT PENALTY GUIDELINES

The Public Ethics Commission (PEC) is authorized by the Charter of the City of Oakland (City Charter) to impose penalties, remedies, and fines as provided for by local ordinances that are within the PEC's jurisdiction, including the Government Ethics Act, Oakland Campaign Reform Act and Lobbyist Registration Act. This Guideline includes general principles and factors to consider in determining a penalty, and a tiered approach to penalties based on the seriousness of the violation. This Guideline is advisory only, and does not limit the PEC from using discretion to deviate from the guidance when atypical or egregious circumstances exist.

The penalties set forth in this Guideline are separate and apart from any late filing fees that may be owed by a respondent.

Guiding Principles for Enforcement

The overarching goal of the PEC's enforcement activity is to obtain compliance with rules under its responsibility, and provide timely, fair and consistent enforcement that is proportional to the seriousness of the violation. The following principles guide the PEC's compliance activities as part of an effective enforcement program:

- 1. Timeliness** – For all violations, timeliness brings accountability. Public confidence in government and the deterrence effect of enforcement is reduced when enforcement is delayed. Compliance should be timely to provide the public with required disclosures, and to mitigate harm caused by a violation(s). Enforcement resolutions should be viewed through this lens to craft a range of penalties and enforcement actions that drive timely compliance and mitigate harm. For campaign violations, this should mean swift resolution and correction of violations, especially before an election. Timely public disclosure is crucial in these cases, as the value of required pre-election disclosure declines significantly after the election. Similarly, PEC enforcement of violations should also be pursued in a diligent and timely manner as allowed by PEC staffing/priorities.
- 2. Fairness** – The core of the PEC's work is fairness to ensure that enforcement actions are even-handed and consistent, as well as to ensure due process for those accused of violating the law. The PEC frequently investigates and administratively prosecutes public officials, and it is essential that politics and rivalries not become part of such investigations. The PEC shall track penalty amounts over time and articulate in each enforcement action its consistency with previous actions. This allows the public, respondents, and future PEC Commissioners to see the articulated rationale for the decision and the reasons for any variation. Additionally, effective enforcement of violations leads to fairness in government, as timely enforcement of government ethics rules also shows respect and fairness to those who follow the rules.
- 3. Focus on Serious Violations and Repeat Offenders** – The focus of the PEC's work – both in terms of resources spent as well as the level of penalty imposed – should reflect the seriousness of each violation so that penalties urge compliance, while preserving PEC resources for major

violations that may occur. Minor violations will not be ignored, but proportionality in penalties and an ability to take on more significant cases is important to creating a culture of compliance. Violations will not be considered minor where a pattern of violations exists.

- 4. Education and Support** – To fully embrace the goals of its enforcement responsibilities, the PEC has implemented a full range of services for the purpose of educating and supporting the regulated community, including: voluntary and mandatory training sessions; published materials and guidebooks explaining rules and requirements; on-line access to rules, forms, guidebooks and advice; access to staff members in person, via email and by phone for guidance and assistance; proactive monitoring, communication and reminders regarding filing deadlines; and electronic filing platform for most filing requirements. These services are intended to ensure that the regulated community is advised of, and aware of, filing and reporting requirements, and to ensure full and timely compliance with various regulatory requirements. Given the array of services, including the availability of PEC staff for questions, claims of ignorance regarding the obligations of the regulated community will not be given much weight, if any, in an enforcement action.

Specific Factors to Consider in Determining a Penalty

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty.

Penalty Options Based on Levels

To obtain compliance with the law and provide timely and fair enforcement that is proportional to the seriousness of the violation, the PEC institutes a three-tiered approach that utilizes warning letters, streamlined stipulations, and more severe penalties based on the level of public harm and the articulated aggravating and mitigating circumstances. This approach aims to provide consistency across similar violations and an expedited way to handle cases according to the level of seriousness so that staff resources are allocated according to the level and significance of the violation.

1. **Warning Letter:** A warning letter is an enforcement option for any minor violations without any aggravating circumstances. It is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of a potential or proven low-level violation. This allows for respondents to be educated about the rules and provides the PEC with a historical list of prior violations for future consideration in enforcement cases. A warning letter may be used to address a violation where the evidence demonstrates that a monetary penalty is not justified, or in the interest of justice. A warning letter will not be available where the respondent has had a prior violation of the same or similar type.
2. **Streamline Stipulation:** The streamlined stipulation program takes common violations, such as the non-filing of a campaign statement, and provides a scaled-down stipulation document and set penalties. These more common cases can be quickly handled with a penalty commensurate to the violation, which helps preserve staff time to focus on more serious cases. The streamlined stipulation program is an option (but is not required) to resolve the following types of violations:
 - a. Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040);
 - b. Gift Restrictions (GEA § 2.25.060C);
 - c. Form 301 Non-Filer (CRA § 3.12.190);
 - d. Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.240);

The streamlined stipulation program takes into account that the articulated evidence demonstrates a greater degree of public harm than a case that qualifies for a warning letter and is therefore worthy of a penalty. Streamlined stipulations will be offered based on a tiered penalty structure. Additionally, the stipulation documents for streamlined stipulations have been standardized and shortened to promote efficiency.

The penalty tiers applying to streamlined stipulations are set forth below and are contingent upon the following conditions:

- the respondent has filed the form or amendment that forms the basis of the violation;
- the respondent has agreed to the terms of the streamlined stipulation;
- the respondent has paid all late filing fines; and
- the penalties are applied on a per-violation basis.

Violation	Compliance prior to or in response to first PEC enforcement contact	Compliance prior to publication of PEC investigation report
<u>Form 700 Non-Filer and Non-Reporter (GEA § 2.25.040):</u>	<u>\$400</u>	<u>\$800</u>
<u>Gift Restrictions (GEA § 2.25.060C)</u>	<u>\$400, plus unlawful amount</u>	<u>\$800, plus unlawful amount</u>
<u>Form 301 Non-Filer (CRA § 3.12.190)</u>	<u>\$400, plus 2% of contributions received over limit prior to filing form</u>	<u>\$800 plus 2% of contributions received over limit prior to filing form</u>
<u>Campaign Statement/Report Non-Filer and Non-Reporter (CRA § 3.12.340)</u>	<u>\$400, plus 1% of all financial activity not timely reported</u>	<u>\$800, plus 1% of all financial activity not timely reported</u>

3. Mainline Penalty. For more serious violations and violations that do not qualify for a warning letter or the streamlined stipulation program, the PEC will start with the following “base-level” penalty amount and then adjust the penalty amount based on mitigating and aggravating factors of the enforcement action, which will be articulated in any decision to impose a monetary penalty.

Violation	Base-Level Per Violation	Statutory Limit Per Violation
Form 700 Non-Filer and Non-Reporter. (GEA § 2.25.040.)	\$1,000.	\$5,000 or three times the amount not timely reported, whichever is greater.
Conflicts of Interest and Personal Gain Provisions. (GEA § 2.25.040.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Revolving Door Provisions. (GEA § 2.25.050.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of City Resources. (GEA § 2.25.060A1.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Misuse of Position or Authority (GEA § 2.25.060A2.)	\$5,000	\$5,000 or three times the unlawful amount, whichever is greater.
Prohibitions Related to Political Activity and Solicitation of Contributions. (GEA § 2.25.060B.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Gift Restrictions. (GEA § 2.25.060C.)	\$1,000 plus the unlawful amount.	\$5,000 or three times the unlawful amount, whichever is greater.
Contracting Prohibition. (GEA § 2.25.060D.)	\$2,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Bribery/Payment for Position.	\$5,000, or three times	\$5,000 or three times the unlawful amount,

(GEA § 2.25.070A-B.)	the unlawful amount, whichever is greater	whichever is greater.
Nepotism/Influencing Contract with Former Employer. (GEA § 2.25.070C-D.)	\$3,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Non-Interference in Administrative Affairs Provision. (GEA § 2.25.070E.)	\$1,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Contribution Limits. (CRA §§ 3.12.050 -3.12.080.) and Contractor Contribution Prohibition. (CRA § 3.12.140.)	\$1,000, plus the unlawful amount.	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.
One Bank Account Rule. (CRA § 3.12.110.)	\$1,000.	\$5,000 or three times the unlawful amount, whichever is greater.
Fundraising Notice Requirement. (CRA § 3.12.140P.)	\$1,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Officeholder Fund Requirements. (CRA § 3.12.150.)	\$2,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Form 301 Requirement. (CRA § 3.12.190.)	\$1,000, plus 2% of contributions received over contribution limit prior to filing Form 301.	\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.
Independent Expenditure Advertisement Disclosure Requirement. (CRA § 3.12.230.)	\$1,000.	\$5,000 or three times the unlawful expenditure, whichever is greater.
Contribution and Expenditure Restrictions. (CRA §§ 3.12.065 and 3.12.130.)	\$1,000	\$5,000 or three times the unlawful contribution or expenditure, whichever is greater.
Campaign Statement/Report Non-Filer and Non-Reporter. (CRA § 3.12.340.)	\$1,000, plus 1% of the all financial activity not timely reported.	\$5,000 or three times the amount not properly reported, whichever is greater.
Public Finance Program Requirements. (LPFA § 3.13.010.)	\$1,000.	\$1,000 and repayment of public financing unlawfully received or expended.
Lobbyist Registration Non-Filer. (LRA § 3.20.040.)	\$750.	\$1,000.
Lobbyist Report Non-Filer and Non-Reporter. (LRA § 3.20.110.)	\$750.	\$1,000.

Application of this Guideline

While most enforcement matters will likely fall within the penalty structure outlined in this guideline, this document was created merely to assist the PEC in determining an appropriate penalty in certain

types of cases; it does not limit the PEC or its staff from agreeing to a settlement or imposing a penalty that deviates from this guideline or from the PEC's past practice. Additionally, this guideline is not a comprehensive list of violations for which the PEC has jurisdiction to investigate and impose a penalty, and exclusion of a type of violation from this guideline does not in any way limit the PEC or its staff from investigating and imposing a fine or penalty on any person who commits such a violation.

PEC LIST OF PAST PENALTIES IMPOSED ON OAKLAND GOVERNMENT ETHICS ACT VIOLATIONS

GEA 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 unlawful amount on any person who commits a violation of GEA. The list below contains all the PEC cases and penalty amounts imposed on GEA violations relevant to PEC Case #16-14, since the ordinance was adopted in 2014.

Closure Year	Complaint no.	Respondent	OMC §/Violation	Commission action	Fine Amount	Brief Factual Synopsis
2021	20-03	In the Matter of Oakland Everette Cleveland Jr Members Et. al	2.25.060(A)(2)- Misuse of City Position/Authority	Diversion	(blank)	The Respondent, new to his position with the City, served on a housing fund selection committee that considered the application request for funding of a non-profit organization that was controlled by his father-in-law. The Respondent did not recuse himself from the selection process, in violation of GEA.
2021	18-11	In the Matter of Oakland Anthony Harbaugh Members Et. al	2.25.070(A)- Bribery; 2.25.060(A)(1)-Misuse of City Position/Authority; 2.25.060(A) (2)- Misuse of City Resources, 2.25.040(A)-Conflict of Interest 2.25.040(B)- Fail to File Economic Disclosure	Fine	Total = \$55,000.00* \$5,000 x 11 = *The Commission imposed \$5,000 per GEA count (eleven counts total) to arrive at the final penalty amount.	The Respondent was an Inspector with the City of Oakland Building and Planning Department who aided and abetted another employee in a pay to play/bribery scheme for money. The Respondent falsified documents/reports. entered false information into the City database, falsified inspections and issued permits in exchange for money he received under the table. The Respondent failed to report the money he earned, in violation of GEA.

Item #4 - Staff Memo

<p>2020</p>	<p>18-03</p>	<p>In the Matter of Dorian Gray</p>	<p>2.25.070(A)- Bribery</p>	<p>Fine</p>	<p>Total = \$8,000.00</p>	<p>The Respondent, in attempt to assist a friend start a marijuana business, contacted City Councilman Larry Reed and offered him \$10,000 in exchange for a City of Oakland marijuana permit, in violation of GEA.</p>
<p>2018</p>	<p>15-07</p>	<p>In the Matter of CM Lynette Gibson-McElhaney</p>	<p>2.25.040(A)- Conflict of Interest; 2.25.040(B)- Fail to File Economic Disclosure,</p>	<p>Fine</p>	<p>Total = \$2,550.00* \$0. \$0. *The fine was imposed on the first of three counts which was a gift rule violation different from the relevant GEA violations related to PEC Case No. 16-14. The Commission did not impose any additional/separate penalties on the remaining GEA counts two and three.</p>	<p>The Respondent, a City of Oakland Councilmember, became aware of a housing development project that was given permits by the city to start a development project next to her property and she and her spouse went down to the Planning and Building Department to lodge a complaint/opposition to the development and requested an appeal. The Respondent contacted a respected member of a different development company, JRDV and asked one of its employees to speak on her behalf at the hearing. The JRDV representative agreed. In preparation for the hearing the JRDV prepared by researching the property, developing an alternative plan and contacting members of the City Building and Planning Department. The services he provided for free was valued at \$800. The Respondent failed to report the gift/services she received from JRDV on her Economic Interest Statement and subsequently participated in making a decision on a City Contract that was awarded to JRDV, without recusing herself or disclosing the services that JRDV had provided, in violation of GEA.</p>

Item #4 - Staff Memo

<p>2017</p>	<p>16-30</p>	<p>In the Matter of James W. Moore</p>	<p>2.25.040(B)- Fail to File an Economic Interest Form</p>	<p>Fine</p>	<p>Total= \$400.00</p>	<p>This case was referred to the PEC by the California Fair Political Practices Commission after they imposed a \$100 fine against the Respondent for similar state violations. The Respondent, a former City Councilmember and Planning Commission member, failed to disclose reportable income (between \$10,001-\$100,000) he earned from consulting while he served on the Planning Commission, in violation of GEA.</p>
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