

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, March 2, 2020
Hearing Room 1
6:30 p.m.



Commissioners: James E.T. Jackson (Chair), Nayeli Maxson Velázquez (Vice-Chair), Jill M. Butler, Michael MacDonald, Janani Ramachandran, Joseph Tuman, and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION (PEC or COMMISSION)
REGULAR MEETING AGENDA

- 1. Roll Call and Determination of Quorum.**
- 2. Staff and Commission Announcements.**
- 3. Open Forum.**

ACTION ITEMS

- 4. Approval of Commission Meeting Draft Minutes.**
 - a. January 17, 2019 Special Meeting Minutes ([Attachment 1 – Minutes](#))
 - b. February 3, 2020 Regular Meeting Minutes ([Attachment 2 – Minutes](#))
- 5. *In the Matter of Anthony Harbaugh; Case No. 18-11.*** In October 2016, during the course of a pro-active investigation into allegations of bribery and misuse of position by a building inspector, Commission Staff found that an additional City building inspector, Anthony Harbaugh, committed, participated in, or aided and abetted Thomas Espinosa in committing multiple 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 for economic gain; and failing to report significant income from individuals with matters before him as a City building inspector. Between January 2015 and December 2016, Harbaugh actively participated in and assisted in the execution of another building inspector’s unlawful permit approvals and bribery scheme. Staff recommends that the PEC find probable cause and schedule this matter for a hearing. ([Attachment 3 – Staff Memorandum](#))

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6. ***In the Matter of Andrew Haydel and Lane Partners; Case No. 19-24.*** In June 2019, Commission Staff initiated a pro-active investigation after Andrew Haydel, a commercial real-estate investor and principal at Lane Partners, LLC., called (through his lawyer) to self-report a potential contractor contribution made in violation of Oakland’s contractor contribution ban. Staff’s preliminary investigation determined that Lane Partners, on October 21, 2018, made a \$1,000 contribution to the Lynette Gibson-McElhaney Defense Fund at a time when they were subject to the City’s ban on contributions from City contractors to candidates, in violation of Oakland Municipal Code section 3.12.140. Staff and the Respondent reached a stipulated settlement agreement, and Staff recommends that the PEC approve the stipulation, with a \$2,000 fine. ([Attachment 4 – Stipulation and Case Summary](#))

7. ***In the Matter of The City of Oakland Police Department; (Case No. 16-15).*** On August 24, 2016, the Commission received a complaint alleging that the Oakland Police Department (OPD) failed to disclose records in response to multiple public records requests made by the Requestor. On November 10, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Once Staff initiated mediation, the Requestor received several responsive documents from OPD. However, upon conclusion of the mediation program on July 16, 2018, the requester had not received responsive documents to PRR No. 14437. This request remains open in NextRequest with relevant records still unproduced by OPD, even though this public records request was made on March 10, 2016. Commission Staff attempted to resolve this matter through mediation for two years with moderate success. However, OPD has not released responsive documents to PRR No. 14437 and the Staff has exhausted all avenues in attempting to facilitate production of the documents. For those reasons, Commission Staff recommends that the Commission close this matter. ([Attachment 5 – Mediation Summary](#))

8. **Oakland City Council Salary Adjustment as Required by City Charter.** The Commission will discuss and take action to adjust the salaries of Oakland City Councilmembers according to the increase in the Consumer Price Index as required by the Oakland City Charter. ([Attachment 6 – Staff Memorandum](#); [Attachment 7 – Proposed Resolution](#))

DISCUSSION ITEMS

9. **Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission’s last regular meeting. Commissioners

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may also discuss assignments, efforts, and initiatives they undertake to support the Commission's work. Current or recent subcommittees include the following:

- a. **Limited Public Finance Policy Development Subcommittee** (ad hoc) – Nayeli Maxson Velázquez (Chair), Jill M. Butler and James Jackson

INFORMATION ITEMS

10. **Disclosure and Engagement.** Lead Analyst Suzanne Doran provides a report of recent education, outreach, disclosure and data illumination activities. ([Attachment 8 – Disclosure Report](#))
11. **Enforcement Program.** Enforcement Chief Kellie Johnson reports on the Commission's enforcement work since the last regular Commission meeting. ([Attachment 9 – Enforcement Report](#))
12. **Executive Director's Report.** Executive Director Whitney Barazoto reports on overall projects, priorities, and significant activities since the Commission's last meeting. ([Attachment 10 – Executive Director's Report](#))

The meeting will adjourn upon the completion of the Commission's business.

A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chairperson allocates additional time.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit our webpage at www.oaklandca.gov/pec.

2/20/2020

Approved for Distribution

Date



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ATTACHMENT 1

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Friday, January 17, 2020
Hearing Room 4
5:30 p.m.

DRAFT



Commissioners: James E.T. Jackson (Chair), Nayeli Maxson Velázquez (Vice-Chair), Jill M. Butler, Gail Kong, Jodie Smith, Joseph Tuman, and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Kellie Johnson, Enforcement Chief

City Attorney Staff: Ravi Patel, Deputy City Attorney

PUBLIC ETHICS COMMISSION (PEC or COMMISSION) **SPECIAL MEETING MINUTES**

1. Roll Call and Determination of Quorum.

The meeting was called to order at 5:33 p.m.

Members present: Commissioners Jackson, Kong, Smith, Tuman, and Yan. Commissioner Smith chaired the meeting at the request of Chair Jackson.

Staff present: Whitney Barazoto and Kellie Johnson.

City Attorney Staff: Ravi Patel

2. Staff and Commission Announcements.

3. Open Forum.

There was one public speaker.

CLOSED SESSION

4. Executive Director Performance.

The Commission met in closed session to discuss the Executive Director's performance. This is a personnel-related matter authorized to occur in closed session pursuant to Government Code Section 54957(b).

The Commission reconvened into open session, and Commissioner Smith said there were no announcements to make following the closed session.

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INFORMATION ITEMS

5. Reports on Subcommittees and Commissioner Assignments.

- a. **Limited Public Finance Policy Development Subcommittee** (ad hoc) – Nayeli Maxson Velázquez (Chair), Jill M. Butler and James Jackson

Commissioner Smith suggested that the Commission create a subcommittee soon to begin working on the Sunshine Report Card project.

6. Executive Director's Report.

Whitney Barazoto, Executive Director, mentioned that the Commission's annual retreat typically occurs in March and that Commissioners will receive scheduling requests soon to arrange the date.

7. Commissioner Farewell.

Ms. Barazoto thanked Commissioners Kong and Smith for their outstanding service to the Commission and the City of Oakland.

The meeting adjourned at 7:10 p.m.

ATTACHMENT 2

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Regular Commission Meeting
Monday, February 3, 2020
Hearing Room 1
6:30 p.m.

DRAFT



Commissioners: James E.T. Jackson (Chair), Nayeli Maxson Velázquez (Vice-Chair), Jill M. Butler, Michael MacDonald, Janani Ramachandran, Joseph Tuman, and Jerett Yan

Commission Staff to attend: Whitney Barazoto, Executive Director; Suzanne Doran, Lead Analyst – Civic Technology and Engagement; Kellie Johnson, Enforcement Chief; Simon Russell, Investigator

City Attorney Staff: Trish Shafie, Deputy City Attorney

PUBLIC ETHICS COMMISSION (PEC or COMMISSION) **REGULAR MEETING MINUTES**

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:32 p.m.

Members present: Commissioners Jackson, Butler, MacDonald, Ramachandran, Tuman and Yan.

Commissioner Maxson Velázquez was absent.

Staff present: Whitney Barazoto, Suzanne Doran, and Kellie Johnson.

City Attorney Staff: Trish Shafie

2. Staff and Commission Announcements.

There were no announcements

3. Open Forum.

There were two public speakers.

ACTION ITEMS

4. Approval of Commission Meeting Draft Minutes.

- a. January 6, 2020 Regular Meeting Minutes

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Commissioner Yan moved, and Commissioner Butler seconded to approve the minutes. The motion passed 4-0.

Commissioners MacDonald and Ramachandran abstained as they were not present at the meeting.

b. January 17, 2020 Special Meeting Minutes

The approval of the January 17, 2020 Special Meeting Minutes was tabled for next month.

There were no public speakers.

5. Oakland Campaign Reform Act Guide.

Whitney Barazoto, Executive Director, presented the new Oakland Campaign Reform Act Guide to the Commission.

Commissioners reviewed and discussed the guide.

There were two public speakers.

Commissioner MacDonald moved, and Commissioner Ramachandran seconded to approve the guide with amendments suggested by Commission members.

The motion passed 6-0.

6. Proposed Amendments to the PEC Ordinance (OMC Chapter 2.25).

Ms. Barazoto presented the proposed amendments to the Commissioners.

Commissioners reviewed and discussed the proposed amendments to the PEC Ordinance.

There were two public speakers.

Commissioner Yan moved, and Commissioner Tuman seconded to adopt the proposal with the amendments as stated.

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DISCUSSION ITEMS

7. Reports on Subcommittees and Commissioner Assignments.

- a. **Limited Public Finance Policy Development Subcommittee** (ad hoc) – Nayeli Maxson Velázquez (Chair), Jill M. Butler and James Jackson

There were no updates.

There were no public speakers.

INFORMATION ITEMS

8. Oakland Campaign Reform Act Contribution Limit and Expenditure Ceiling Annual Adjustment for 2020.

Ms. Barazoto shared the new contribution limits and expenditure ceilings for 2020.

There was one public speaker.

9. Disclosure and Engagement.

Suzanne Doran, Lead Analyst, provided a report of recent education, outreach, disclosure and data illumination activities.

There was one public speaker.

10. Enforcement Program.

Kellie Johnson, Enforcement Chief, reported on the Commission's enforcement work since the last regular Commission meeting.

Gene Hazard, the complainant in 19-19, spoke to the Commission.

There were no other public speakers.

11. Executive Director's Report.

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Ms. Barazoto reported on overall projects, priorities, and significant activities since the Commission's last meeting.

She shared that Ryan Sim is interning for the Public Ethics Commission assisting with enforcement investigations and research

There was one public speaker.

The meeting adjourned at 8:14 p.m.

CITY OF OAKLAND
Public Ethics CommissionWhitney Barazoto, Executive Director

TO: Public Ethics Commission
 FROM: Kellie F. Johnson, Enforcement Chief
 Simon Russell, Investigator
 DATE: February 18, 2020
 RE: Case No. 18-11; *In the Matter of Anthony Harbaugh*

BACKGROUND:

In October 2016, during the course of a pro-active investigation into the alleged bribery and misuse of position by building inspector Thomas Espinosa, Commission Staff found evidence that an additional City building inspector, Anthony Harbaugh committed, participated in, or aided and abetted Thomas Espinosa in committing multiple violations of the Oakland Government Ethics Act, including the following: soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; misusing his City position to induce/coerce others to provide him with economic gain, and; failing to report significant income from individuals with matters before him as a City building inspector.

In sum, Between January 2015 and December 2016, Thomas Espinosa was planning and executing unlawful permit approvals on various properties within the City of Oakland and Harbaugh actively participated in and assisted in the execution of Espinosa's inspection bribery scheme.

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. 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.¹

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.² The City's Conflict of Interest Code requires designated employees file their statement of economic interests with the City Clerk's Office.³

¹ O.M.C. §2.25.040(B).

² O.M.C. §3.16.010.

³ O.M.C. § 3.161.020.

ATTACHMENT 3

A Specialty Combination Inspector (“Building Inspector”) is required to report by April 1st 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.⁴ He or she is also required to report within 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.⁵

Reportable income is any payment received by the Specialty Combination Inspector and includes loans other than those received from a commercial lending institution.⁶ 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 discovered by the statement of economic interests, the amount of income received, and a description of the consideration for which the income was received.⁷

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.⁸

B. Conflict of Interest

A City employee may not make, participate in making, or seek to influence decision of the City in which the City employee has a disqualifying financial interest.⁹ 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 of his or her qualifying financial interests.¹⁰

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.¹¹

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.¹²

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.¹³

⁴ FPPC Regulation 18730, subds. (b)(6)(C).

⁵ FPPC Regulation 18704 (b)(5)(D).

⁶ Government Code (G.C.) § 82030.

⁷ G.C. § 18700(a).

⁸ G.C. § 87209.

⁹ O.M.C. § 2.25.040 (A); GC 87100.

¹⁰ FPP Regulation 18700 (a).

¹¹ FPPC Regulation 18704(a).

¹² FPPC Regulation 18704 (c)(1).

¹³ G.C. § 87103(c).

ATTACHMENT 3

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.¹⁴

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.¹⁵

C. Bribery

A City employee may not solicit or accept anything of value in exchange for the performance of any official act.¹⁶

D. 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.¹⁷

E. Misuse of Public Resources

A City employee may not use public resources for personal purposes.¹⁸ Personal purposes means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business.¹⁹ 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.²⁰ 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.²¹

FACTUAL SUMMARY:

Bribery Scheme Overview

Harbaugh was hired by the City of Oakland on March 12, 2007. At all relevant times within this report, he worked as a building inspector in the Planning and Building department and had a personal and professional relationship with former City building inspector Thomas Espinosa.

¹⁴ FPPC Regulation 18701.

¹⁵ FPPC Regulation 18702.3 (a)(1).

¹⁶ O.M.C. § 2.25.070.

¹⁷ O.M.C. § 2.25.060 (A)(2).

¹⁸ O.M.C. § 2.25.060 (A)(1).

¹⁹ O.M.C. § 2.25.060 (A)(i) (a)(i).

²⁰ O.M.C. § 2.25.060 (A) (1)(a)(iii).

²¹ O.M.C. § 2.25.060(A)(1)(a)(iv).

Espinosa would generally arrange for properties to be inspected and solicit Harbaugh to execute the inspections on the property. In return, Espinosa or the owner of the properties would pay Harbaugh around \$300 or more in cash (under the table) for the inspection and subsequent approval.

Harbaugh filed Annual Statements of Economic Interest, (Form 700) with the City Clerk's Office for 2015 and 2016. Harbaugh failed to report any of the cash payments he received from Espinosa or the property owners.

Under the Table Income from Inspections:

Harbaugh's and Espinosa's activities were grouped around three separate and distinct sets of properties: Elizabeth Williams properties, Bill Charman properties and Alex Machado properties.

i. Elizabeth Williams Properties

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

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

857-859 Mead Avenue Properties:

The City of Oakland has sued Elizabeth Williams multiple times for failing to adequately maintain her properties. Between 2015 and 2016, Ms. Williams hired Espinosa and a construction work crew he operated, to do remodeling work on some of her properties. She denied that she hired Espinosa for the unlawful purpose of bypassing legitimate City inspections. Ms. Williams, however, admitted that she paid Espinosa fees after other inspectors, namely Harbaugh, gave a passing result on the inspections of her properties.

Ms. Williams also acknowledged that on at least one occasion, Harbaugh told her directly that he would not sign off/pass for permit one of her properties because he had not received a cash payment.

Derrick Canada was a construction contractor who also worked for Ms. Williams between 2015-2016. Canada said that Ms. Williams on at least one occasion gave him an envelope full of cash, what appeared to be thousands of dollars, to deliver to Harbaugh. Although he could not recall if Ms. Williams explained to him what the money was for, he believed the payments were in exchange for Harbaugh giving Williams' property a pass on inspections.

859 Mead Avenue is a four-unit apartment building that Ms. Williams owns in West Oakland. The property also includes a house, 857 Mead. In January 2016, Ms. Williams hired Espinosa to do some renovations on the property which included some electrical work.

On January 13, 2016, the West Oakland Mead property was scheduled for an inspection. Even though Harbaugh was scheduled that day to conduct inspections in East Oakland, several miles away from Williams property, he personally conducted the inspection on Ms. Williams property.

On January 14, 2016 around 8:56 AM, Harbaugh logged into the City's Planning and Building Department Accela²² database and notes that at 12:30 PM on January 13, 2016, he conducted the inspection and gave the property a "Pass" for a permit.²³

On January 22, 2016, Ms. Williams acknowledged that Espinosa informed her that she owed him \$300 for paying the inspector who handled the electrical inspection and asked her to deposit the money for him. Ms. Williams told staff that she believes she likely reimbursed Espinosa for the \$300 but doesn't specifically remember.

2735 Market Street Property:

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

On two occasions Espinosa attempted to assign²⁴ himself to the inspections on the property but City Inspector Greg Clarke cancelled them. Thereafter, Inspector Clarke made notes into the Accela database and related permit files, instructing that only he or Inspector Bergstrom should conduct inspections at the property.

²² All inspectors have a unique login ID for Accela. The system records the login ID of any user adding data to the system (for example, when an inspection is scheduled, or when an inspection result is inputted to the system, the name of the employee making that entry will be displayed next to the actual data that was entered). According to IT, it is impossible to "fake" an entry by having another inspector's name appear, unless you were to actually steal that inspector's login and password and access the system with them.

²³ After a permit inspection is performed, the result can be either "Pass", "Partial" or "Not Pass." "Pass" results are recorded in two ways. First, the inspector initials and dates what's called a "job card" or "inspection card." That card is in the possession of the permit applicant, not the City. It is typically kept at the job site by the applicant (or their contractor). Second, the inspector inputs the result on Accela, for the City's own records. "Partial" and "Not Pass" results are also recorded on Accela, but not the job card. In those instances, a list of deficiencies is given to the permit applicant.

²⁴ According to Supervisors at Building, inspectors generally do not schedule their own inspections. Instead, they are given a daily list of properties to inspect, usually within the same geographic area. (The exception is when an inspector needs to perform a quick follow-up inspection, if he knows he will be in the area that day; in those cases, they sometimes schedule the inspections themselves). The department has other employees whose job it is to schedule inspections.

ATTACHMENT 3

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

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

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

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

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

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

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

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

877 27th St. Property:

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

Permit no.	Permit Type	Description on Accela
RB1504824	Building	“Kitchen and bathroom remodel.”
RE1503704	Electrical	“Electrical for kitchen and bathroom remodel.”

ATTACHMENT 3

RM1501795	Mechanical	“Mechanical for kitchen and bathroom remodel; new F. A. U..”
RP1502935	Plumbing	“Plumbing for kitchen and bathroom remodel.”

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

On or around December 11, 2015, Supervisor David Miles reassigned the inspection of 877 27th St. to two other inspectors, nor Harbaugh. Harbaugh re-assigned the inspection to himself and performed frame inspections at 877 27th St. on those same electrical and plumbing permits. Harbaugh also performed inspections on two other permits for building and mechanical and gave a “Pass” result to each one.

On December 16, 2015 Harbaugh returned to perform a frame inspection on 877 27th Street. On December 17, a day after the inspection was conducted, Harbaugh assigned his name to the December 16th, inspection in the City Building and Planning Accela database and gave the property a “Pass” result.

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

ii. Gimme Shelter Property Owned by Bill Charman

4163 Rifle Lane Property

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

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

Espinosa visited the property on February 2, 2016 and spoke with the potential buyers. Espinosa appeared agitated and warned of a significant fine being levied against the property as well as major inspections that

ATTACHMENT 3

may require opening up the walls of the structure. The seller's representative was present, Megan Micco and asked Espinosa to speak to her boss Bill Charman. Espinosa told Charman that the permit issue could be resolved.

On that same day, Harbaugh also visited the property and performed an inspection. Harbaugh gave Micco a printout with his handwritten notes about repairs needed for the property. The Accela database has no record of Espinosa or Harbaugh's visit to the property nor of Harbaugh's inspection. Failure to log an inspection of a property is a violation of the City Planning and Building Department policy. Harbaugh, however, did make a handwritten record of this inspection on his schedule for the day.

Ultimately, Iriso and Cole retracted their offer for the property because the licensing and permitting issues remained unresolved.

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

The next day, Espinosa logged into Accela and changed the description of the permits for the Rifle Lane property. On February 10, 2016, Espinosa logged into Accela and entered into the database that the complaint on the property had been "abated." On or about February 11, 2016 Harbaugh logged into Accela and reported that he conducted frame inspections pursuant to each permit on the Rifle Lane property and gave a "Pass" result to each. He made a note that it was a "rough ok." None of Harbaugh's daily log sheets included the inspections he conducted at the Rifle Lane address.

On February 16, 2016, Harbaugh without permission reassigned inspections of the Rifle Lane property from Supervisor David Miles, to himself. Harbaugh performed the final inspections and gave each a "Pass" result.

Harbaugh was interviewed by Staff and he admitted that, in fact, he did not do the rough or final inspections on the property, but that he made the entries into Accela with the misrepresentation because Espinosa asked him to do it. Harbaugh intentionally entered a false record of an inspection of a residential property. Despite the inspection inaccuracies, the property was finally sold on March 25, 2016.

iii. Alex Machado Properties

2326 Myrtle Street Property

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

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On December 25, 2015 title passed from Elvecio Machado to his brother, Alex Merchado, a locally known house flipper. His intention was to remodel it and sell it.

On January 21, 2015, Alex Machado applied for a building permit. On February 9, 2016, Inspector Felix Menendez inspected the property's foundation and issued a "Not Passed" result. On February 10, 2016, Building Supervisor David Miles changed the permit status to "Inspections-Stop-Work," and commented on Accela that "Work must stop, approval was based on incorrect representations of existing conditions, fees need to be adjusted as well.

On February 11, 2016, Inspector Martinelli inspected the property again and issued a "Not Pass" result. On that same day, Machado applied for and obtained approval from the City for a design review exemption to, among other things, "remodel interior." A job card was created for 2326 Myrtle bearing entries with the initials A.H.²⁵ There is no corresponding record of this inspection on the Accela system records, as required by department policy, however, Harbaugh had a handwritten note on his schedule for February 23, 2016, the day of the entry on the job card, "2326 Myrtle, RB OK to pour footings."

On February 27, 2016, Machado made three cash withdrawals totaling \$1,700 and paid the cash to Espinosa.

On March 2, 2016 a member of the City Building and Planning department made a note in Accela that the Myrtle property " needs 2x fees, FC & valuation adjusted for Stop Work orders & exceeding scope of work. Needs revised plans that address all work."

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

On March 8, 2016 the following occurs:

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

On March 29, 2016, Harbaugh scheduled himself to perform a frame inspection at the property that day. He entered a "Pass" result on Accela, commenting: "Wall frame and shear nail ok. Roof frame and plywood nail ok." The job card has no corresponding entry for an inspection that day. Harbaugh's schedule for the day does not mention 2326 Myrtle.

On April 11, 2016, Machado withdrew \$1000 in cash from one of his bank accounts and paid Espinosa.

²⁵ During the relevant times of the listed inspections, Anthony Harbaugh was the only person in Planning and Building with the initials AH.

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On April 13, 2016, the job card for Myrtle had an entry that AH inspected the property. The Accela database had no record of Harbaugh conducting the inspection.

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

Harbaugh admitted in an investigation interview that he performed some inspections at the 2326 Myrtle property but claimed some of the initials looked like someone else had written them.

6220 Valley View

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

On December 9, 2015, the City received a complaint from an unknown person regarding 6220 Valley View: “WORKING OUTSIDE OF SCOPE OF PERMIT RB1504860 ADDING ON TO HOME.”

On January 20, 2016, City building inspector Benjamin Lai conducted an inspection at 6220 Valley View on January 20, 2016 and 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. Inspector Lai noted in Accela the following:

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

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

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

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

On February 29, 2016, Harbaugh performed a final inspection on the Valley View property (the “minor dry rot repair” permit that Lai had discovered was downplaying the actual scope of work), according to Accela.

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Harbaugh gave a “Pass” result, and the permit was finalised. Harbaugh had scheduled that inspection himself earlier that morning, according to Accela.

On May 10, 2016, inspector Lai enters the following comment on Accela re: complaint no. 1504310:

Field check to be performed and 2X permit fees. Met with Yvonne²⁶, property owner's representative, and reviewed plans to rehab 985sf of 2nd fl. existing, convert 1,323sf basement into habitable space, and 225sf of new construction with a revised valuation of \$271,000. Monitor case

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

On May 13, 2016, Harbaugh performed a field check on the Valley View property and stated on Accela that the permit was “OK to issue,” and that the job valuation should be lowered to \$125,000. Despite Harbaugh’s note, the value of the job remained \$271,000 on Accela until it was lowered to \$207,800 on July 6, 2016, on Inspections Manager Tim Low’s decision. Harbaugh had scheduled that field check himself that morning.

Staff has obtained copies of cell phone records and text messages that track the cellphone communications between Harbaugh and Espinosa during all of the above referenced, relevant transactions.

VIOLATIONS:

For the reasons stated above, staff submits that there is probable cause to find Anthony Harbaugh violated the following violations of the Government Ethics Act.

Count 1: Soliciting and Receiving Bribes in Exchange for Performance of an Official Act

On or between January 1, 2015 through December 31, 2016, Respondent, Anthony Harbaugh, violated O.M.C.2.25.070(A) of the Oakland Government Ethics Act by demanding, seeking, receiving, accepting or agreeing to receive or accept money or a thing of value as a bribe to influence his government actions as a building inspector for the City of Oakland, for personal enjoyment and/or non-government purposes.

On or between January 2015 and December 2016, Respondent violated Section 2.25.070 (A) of the Oakland Government Ethics Act by soliciting \$300 from Ms. Williams in exchange for a “Pass” result on an electrical inspection at her Mead Ave. property.

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

²⁶ Likely Ivonne Gomez, an architect affiliated with Espinosa.

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

By using 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 3: Conflict of Interest Violation: Make or Participate in Making a Governmental Decision Involving a Source of Income

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On or between January 1, 2015 through December 31, 2016, Respondent, Anthony Harbaugh, violated O.M.C.2.25.040(A) of the Oakland Government Ethics Act by using his official position make a

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governmental decision to issue Elizabeth Williams building permits, for multiple properties, when that decision involved an individual from whom he was promised or provided income totaling \$500 or more within 12 months prior to the time the decision to issue permits were made.

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

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

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

Count 11 : Misuse of City Resources for personal financial gain

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

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

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

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

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

PENALTIES:

GEA authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported or received (whichever is greater), per violation of the Oakland Government Ethics Act.

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;

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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

For serious violations, such as Bribery and violations that do not qualify for a warning letter or the streamlined stipulation program, the PEC will start a penalty amount with a “base-level” amount and then adjust the penalty amount based on mitigating and aggravating factors of the enforcement action.

Aggravating Factors

Here, the circumstances of Harbaugh's conduct establish several aggravating factors that should increase the severity of the penalty:

1. The Respondent is a public servant in a high-level decision-making position that abused his position of trust and authority. His willful abuse of a trusted position of authority designed to protect the public and the safety of their homes posed great harm to the Oakland Community;
2. Harbaugh engaged in several instances of deception to cover up the inspections of which he was getting paid under the table, including failing to properly log the Accela system, failing to note the property owner's job card and assigning himself to inspections that he was not assigned to do. Most egregious was that he deliberately entered a misrepresentation into the Accela data base representing that he inspected a property and approved the permit when, in fact, he had not;
3. Harbaughs conduct was deliberate, including multiple instances where he changed assigned inspectors to jobs for his own personal gain;
4. His conduct was part of a pattern of conduct that went on for several months;
5. Harbaugh has failed to take any steps to cure any of the enumerated violations. For example, he has not informed the Planning and Building Department of the specific property that he failed to inspect and yet misrepresented that he had conducted its inspection; and

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6. At the time of the Respondent's conduct he had worked for the Oakland Planning and Building Department for more than seven years, Harbaugh was a seasoned public servant, well versed in the department's policies against receiving personal payments under the table and the requirement to input accurate data into the Accela data base. He chose to ignore them for his own personal gain.

Mitigating Factors

As far as the PEC is aware, Harbaugh has no previous history of violations in the City of Oakland.

RECOMMENDATION:

Pursuant to the Public Ethics Commission Complaint Procedures Section IV (D), Staff recommends that the commission find that there is probable cause to believe the aforementioned violations of the Government Ethics Act occurred and refer the matter to a hearing.

1 Kellie F. Johnson
Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza, Rm. 104
3 Oakland, CA 94612
Telephone: (510) 238-4976
4

5 Petitioner

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION

8
9 In the Matter of

) Case No.: 19-24

10 LANE PARTNERS, and
11 ANDREW HAYDEL, PRINCIPAL

)
) **STIPULATION, DECISION AND**
) **ORDER**

12 Respondent.
13

14
15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
17 respondent LANE PARTNERS, agree as follows:

- 18 1. This Stipulation will be submitted for consideration by the City of Oakland Public
19 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 20 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
21 the final resolution to this matter without the necessity of holding an administrative
22 hearing to determine the liability of Respondents;
- 23 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
24 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
25 Procedures, including, but not limited to, the right to personally appear at an
26 administrative hearing held in this matter, to be represented by an attorney at their own
27 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
28 testify at the hearing, and to have the matter judicially reviewed;

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- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. Respondents violated the Oakland Campaign Reform Act by contributing \$1,000 to
6 *Lynette Gibson-McElhaney Legal Defense Fund* in October 2018 at a time when they
7 were subject to the City's ban on contributions from City contractors to candidates, in
8 violation of Oakland Municipal Code section 3.12.140.
- 9 6. The attached exhibit (Exhibit: Case Summary) is a true and accurate summary of the
10 facts in this matter and is incorporated by reference into this Stipulation;
- 11 7. The Commission will impose upon Respondents a total administrative penalty in the
12 amount of \$2,000;
- 13 8. A cashier's check from Respondents, in said amount, made payable to the "City of
14 Oakland," is submitted with this Stipulation as full payment of the administrative
15 penalty, to be held by the Commission until the Commission issues its decision and
16 order regarding this matter;
- 17 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
18 void, and within fifteen business days after the Commission meeting at which the
19 Stipulation is rejected, all payments tendered by Respondents in connection with this
20 Stipulation will be reimbursed to them; and
- 21 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
22 the Commission becomes necessary, neither any member of the Commission, nor the
23 Executive Director, shall be disqualified because of prior consideration of this
24 Stipulation.

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Dated: _____
Kellie F. Johnson, Enforcement Chief of the City of
Oakland Public Ethics Commission, Petitioner

Dated: _____
Andrew Haydel, on behalf of
Lane Partners, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Lane Partners,” PEC Case No. 19-24, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____
James Jackson, Chair
City of Oakland Public Ethics Commission

ATTACHMENT 4

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INTRODUCTION

In June 2019, Commission Staff initiated a pro-active investigation after Andrew Haydel's lawyer called to report that Haydel, a commercial real-estate investor and principal at Lane Partners LLC, "may have made a contribution" to an Oakland political candidate's defense fund during a time when he and Lane Partners, a City contractor, was subject to the contractor campaign contribution ban.

Between 2016-2018, Lane Partners was involved with several different development projects with the City of Oakland. One such project was the Eastline project.

STATEMENT OF FACTS

1. Eastline, located at 2100 Telegraph

Eastline was a City-owned property located at 2100 Telegraph Avenue. The property contained a public parking garage.

On March 26, 2015, the City Council voted to authorize an Exclusive Negotiating Agreement ("ENA") between the City and an entity called TB2 Retail Complex, LLC ("TB2") for the development of a mixed-use residential/retail project at the site. The ENA envisioned either a sale or long-term lease of the property to TB2.

Separately, two other private entities -- Lane Partners and Walton Street Capital -- had been acquiring other privately-owned properties that shared the same block as 2100 Telegraph. Those entities eventually approached TB2 with a proposal to change the envisioned project at 2100 Telegraph into a larger office/retail complex, with possible residential units being added in a second phase. The new project would encompass the entire block, effectively merging the City-owned property at 2100 Telegraph (which TB2 was currently trying to acquire under the ENA with the City) with the adjacent properties owned by Lane Partners and Walton Street Capital. The plan called for TB2, Lane Partners, and Walton Street Capital to form a joint venture called W/L Telegraph Owner, LLC ("W/L") for purposes of developing the project.¹

In order to make the new project a reality, TB2's ENA with the City would need to be reassigned to the new entity, W/L. In November 2015, TB2 submitted a request to the City an assignment of the ENA from TB2 to W/L. That reassignment was approved by the City Council's Community and Economic Development Committee by unanimous vote on June 28, 2016, and via consent calendar by the full City Council on July 5, 2016.

On July 9, 2019, the final terms of the ENA came before the City Council for a vote. The basic terms of the ENA were that W/L would acquire the property from the City for the fair market value of \$28 million, for purposes of constructing an office tower. W/L had earlier worked out an agreement with Kaiser Permanente, whereby Kaiser would become the anchor tenant of the building (assuming Council approved the sale); Kaiser would then probably purchase the property from W/L, and W/L would continue to oversee construction.

¹ The project is referred to as the "Eastline project"; see <http://www.eastline-oakland.com/> (accessed April 30, 2019).

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At the Council meeting, Andrew Haydel spoke during public comment in favor of the sale, and also (by request of Council) returned to the podium during Council discussion to answer a Councilmember's question regarding parking impacts of the project (*see* 6:22:00 of the Council meeting video). The Council voted to approve the deal on first reading (6-0-2; Kaplan and Fortunato Bas abstaining).

On July 16, 2019, a second reading of the proposed agreement took place at the Council (with some portions of the accompany staff report amended, correcting earlier projected tax revenue from the project). Andrew Haydel again spoke in favor of the project during public comment. A public speaker from the main behind-the-scenes developer of the project, SUDA, also thanked Councilmember McElhaneey for her help in moving the project along early on when "technical" problems were arising. The item passed via consent agenda

The main negotiators on the project with the City have been Alan Dones and Regina Davis of SUDA, and that Haydel has been the main negotiator for Lane Partners. Scott Smithers of Lane Partners also occasionally took part. Their legal representatives were from Wendell, Rosen, Black and Dean.

SUMMARY OF THE LAW:

Under the 2014 Oakland Campaign Reform Act (OCRA), no person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, for selling or leasing any land or building to the City, or for purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such elected City Official or candidate at any time between commencement of negotiations and one hundred eighty (180) days after the completion of the termination of negotiations for such contract.²

Pursuant to the 2014 Oakland Campaign Reform Act O.M.C. 3.12.420 a person is defined as, an individual, proprietorship, joint venture, syndicate, business, trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

VIOLATION

Count 1: Making an Unlawful Contractor Contribution During a Prohibited Period

Here, the contract for the Eastline project falls within the contractor contribution ban because it was a contract for the sale /development of land owned by the City, the value of which required a City Council vote. Lane Partners was the counterparty to that contract, and as such was subject to OCRA's ban on contributions to candidates, their committees and/or defense funds from City contractors.

² OMC § 3.12.140 (A)

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The blackout period for Lane Partners began as early as on November 2015, when Lane Partners entered into a reassignment with TB2's ENA with the City to form a new entity, W/L. In November 2015, TB2 submitted a request to the City an assignment of the ENA from TB2 to W/L., and continued through July 9, 2019, When the City voted to approve the final terms of the ENA.

Lane Partners contributed \$1,000 in its own name to *Lynette Gibson-McElhaney's Defense Fund*, the controlled defense fund of an elected official, on October 21, 2018, which was within the blackout period. Because Lane Partners was a City contractor, it therefore contributed \$1,000 to *McElhaney's Defense Fund* in violation of the contractor contribution ban.

Date Rec'd	Contributor	Candidate/Elected Official	Amount
10/21/2018	Lane Partners	Lynette Gibson McElhaney's Defense Fund	\$1,000

CONCLUSION

According to the Enforcement Division's penalty guidelines, the baseline penalty for a violation of the contractor contribution ban is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contribution is \$1,000, which brings the baseline penalty to \$2,000.

In determining an appropriate final penalty amount, the PEC may consider the following aggravating and mitigating 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.

Here, Commission staff recommends the baseline fine of \$2,000. While the violation is mitigated by the fact that the Respondent contacted the PEC to self-report the violation, and the making of the contribution during the contractor ban period appears to be negligent in that respondent was not aware of the rule and had no prior record of such violations, a contribution of \$1,000 is not

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excessive (considering there are no limits on contributions to legal defense funds) but also not insignificant and was made during the time in which the respondent was seeking Council action. Therefore, the baseline fine is appropriate and should not be adjusted in either direction.

the seriousness of the harm caused by both of these violations was minimal. The amount unlawfully contributed by Lane Partners was nominal compared to other donations they had given in the past to other candidates.

There was no evidence here of any intention to conceal, deceive, or mislead. Although it appeared the Respondent may have been prompted by a news article that discussed unlawful campaign contributions, the Respondent did contact the PEC to self-report the violation.

Lane Partners has no previous history of violating this provision of OCRA.

PROPOSED PENALTY

In light of the mitigating factors described above, staff is recommending, and the respondent agrees, that the Commission impose a \$2,000 penalty.



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
Kyle McLean, Law Clerk
DATE: October 24, 2018
RE: *In the Matter of the Oakland Police Department (Case No. 16-15); Mediation Summary*

I. INTRODUCTION

On August 24, 2016, the Commission received a complaint alleging that the Oakland Police Department (OPD) failed to disclose records in response to public records requests (PRR) Nos. 3544, 7354, 8936, 13074, and 14437. On November 10, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Upon conclusion of the mediation program on July 16, 2018, the requester stated that he had no outstanding issues or concerns regarding Request Nos. 7354, 8936, and 13074. However, PRR Nos. 3544 and 14437 remain open with relevant records still unproduced by OPD, even though those public records requests were made on April 6, 2014, and March 10, 2016, respectively.

Commission Staff has attempted to resolve this matter through mediation for almost two years with significant success. However, the parties have reached an impasse regarding PRR Nos. 3544 and 14437. For those reasons, Commission Staff recommends that the Commission close this matter.

II. SUMMARY OF LAW

One of the primary purposes of the Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records are open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

The time limit to respond to a request may be extended in unusual circumstances up to fourteen days by written notice to the person making the request; this notice must set forth the reasons for the extension, and the date on which the determination is expected to be dispatched.³ When a member of the public requests to obtain a copy of a public record, the public agency, in order to

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 6250 et seq.

² Government Code § 6253(b).

³ Government Code § 6253(c).

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assist the member of the public make a focused and effective request, shall assist the member of the public to identify records and information that are responsive to the request.⁴

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of his or her request by Commission Staff.⁵ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in the Commission's mediation program.⁶

Once the Commission's mediation program has been concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁷

III. SUMMARY OF FACTS

PRR No. 3544

On April 6, 2014, OPD received, via RecordTrac, the following public records request: "Please provide in electronic format (pdf) a copy of all documents containing the search terms "Hailstorm" "Hail Storm" "Pen-Link" "Pen Link" "Harpoon", and any documents related to a cell phone mimicking tower, or cell phone signal interceptor."

At the time, RecordTrac was the City's online portal for sharing public records. It allowed members of the public to make requests, receive responses from the City, and search past requests and responses.

On April 7, 2014, OPD stated the following on RecordTrac: "Dear requester: Your request has been forwarded to the public records liaison of the Department of Information Technology. They will be in contact with you for any further clarification, but by reading your request, it might be helpful if you determine a period of time, kind of records, and names of city staff."

Also on April 7, 2014, the requester stated the following on RecordTrac: "You may narrow the time period to years 2009 through April 1, 2014. I seek all records (and specifically emails), including any record meeting the definition of a 'writing' per Cal. Evidence Code Sec. 250."

On April 14, 2014, OPD stated the following on RecordTrac: "Request extended: Additional time is required to answer your public records request. We need to compile data or create a computer report to extract data (Government Code Section 6253(c)(4))."

On May 2, 2014, the requester stated the following on RecordTrac: "Please provide a status update. Thank you."

⁴ Government Code § 6253.1(a).

⁵ O.M.C. § 2.20.270(C)(1).

⁶ O.M.C. § 2.20.270(F).

⁷ Complaint Procedures § IV (C)(5).

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Also on May 2, 2014, OPD stated the following on RecordTrac: “Department of Information Technology does not have any responsive documents pertaining to this request. I am forwarding your request to the Oakland Police Department Public Records Request Liaison to see if they have any responsive documents to your request.”

On May 18, 2014, the requester stated the following on RecordTrac: “The statutory deadline for a response has long passed, and no extension of time has been requested. Please comply with this request.”

On June 5, 2014, OPD stated the following on RecordTrac: “In order for IT staff to conduct an e-mail search, please provide the target mail box names to be searched. The existing request cannot be run without the specific names.”

On June 25, 2014, OPD stated the following on RecordTrac: “Dear requester: We have not heard from you yet in regards to this public records request. Please contact us so we can further assist you (see the note below). Please provide the target mail box names or the departments in the City to be searched.”

On July 7, 2014, OPD stated the following on RecordTrac:

This message is in regard to the below public records request that was submitted to the Department of Information Technology (DIT) for an email search. The City has tried to contact you via the online request you submitted several times. Annie To responded and stated: “In order for IT staff to conduct an e-mail search, please provide the target mail box names to be searched. The existing request cannot be run without the specific names.” I want to clarify which personnel or departments you would like DIT to search for these records. Please be advised that the email search will pick up on each term listed on your request and may provide a voluminous amount of records to be reviewed. Once we receive a response from you we will proceed with your request and update you with our progress.

On August 14, 2014, OPD stated the following on RecordTrac:

The Department of Information & Technology (DIT) is conducting the search for emails. DIT estimates the search for responsive records will be complete around September 20, 2014. Until the search is complete we do not know how many records will need to be reviewed. All records from the search results must be reviewed and in some cases redacted. When we receive the CDs we will provide you with a date your request will be complete. You will receive your next response by September 26, 2014.

On September 5, 2014, OPD stated the following on RecordTrac: “IT Completed the e-mail search and forwarded the CD to OPD for review on 09/03/14.”

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On September 18, 2014, OPD stated the following on RecordTrac: “Dear requester: Do you want all documents containing the below listed terms in your request that relate to a cell phone mimicking tower or cell phone signal interceptor? This message was also sent directly via email.” Also on September 18, 2014, the requester stated the following on RecordTrac: “I want all of the above.”

On October 2, 2014, OPD stated the following on RecordTrac: “At this time we do not have any responsive records to provide. You will receive your next response by October 17, 2014.”

On October 14, October 30, November 13, December 12, December 30, 2014; and January 17, February 20, April 2, April 30, June 8, July 2, August 3, August 28, October 5, December 1, and December 30, 2015; and February 1, March 1, March 31, and April 28, 2016, OPD stated the following on RecordTrac: “At this time the Department still needs additional time to answer your request.”

On May 31, 2016, OPD provided thirty pages of documents.

On July 1, and July 29, 2016, OPD stated the following on RecordTrac: “At this time the Department still needs additional time to answer your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, October 10, and October 31, 2016, OPD stated the following on RecordTrac: “At this time the Department still needs additional time to answer your request.”

On November 10, 2016, Commission Staff started its mediation efforts by sending the complaint to OPD and requesting a response to the allegations.

On November 23, 2016, OPD provided 434 pages of documents, and stated the following on RecordTrac:

Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1). Authorized redactions or omissions made pursuant to 6254(f) CGC (records of security and tactical procedures).

On November 29, 2016, OPD stated the following on RecordTrac: “The remainder of the records are still being reviewed and will be released as soon as possible.”

On November 30, 2016, PEC Staff asked OPD for an update, and OPD informed Commission Staff that some of the responsive records had been provided on November 23, 2016, and that more records would be provided once OPD finished reviewing them.

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On June 29, 2018, Commission Staff reached out to OPD and asked if it was going to upload additional documents in response to the request. No additional documents had been uploaded at this time.

On July 16, 2018, OPD stated that the request previously was being completed by an employee who is no longer with the City while the current supervisor assigned to public records requests was out of the office. OPD stated that records were being reviewed but that the last batch of the records may have to be reviewed again.

As of November 2018, this request was closed and all responsive documents were reported disclosed.

PRR No. 7354

On December 30, 2014, the City received, via RecordTrac, the following public records request:

Please provide in electronic format (pdf) a copy of all writings, defined by California Evidence Code Section 250, including but not limited to training manuals, privacy policy, data retention policy, warrants, court orders, correspondence, emails, purchase orders, invoices, memos, grant applications and awards, funding sources, city council resolutions or information reports, for the following items used by Oakland Police Department, or vendors of equipment used by OPD: 1. Pole Attic camera 2. Under the door camera 3. Thru-wall camera 4. Crawl space camera 5. Stingray van 6. Lincoln System 7. GPS Vehicular tracking devices 8. Cellbrite 9. Penlink 10. Tracking the world 11. Anything relevant or referring to monitoring of social media 12. Handheld Doppler radar 13. Thermal imaging devices 14. FLIR (Forward Looking Infrared Device) For reference, please see to the March 16, 2010 Shawn Knight memo to Chief Batts. #DACPRR

On January 12, 2015, OPD stated the following on RecordTrac: “Your request was received today by our office. The Department needs additional time to respond to your request based on the following reason: The need to search for, collect, or examine a voluminous amount of records (Government Code Section 6253(c)(2)). The Department will continue to update you on the status of your request.”

On January 15, 2015, OPD stated the following on RecordTrac: “In order to proceed with fulfilling your PRR #7354, I would like to get clarity on the information you are requesting. Please contact the PRR Unit at 238-7143.”

On January 20, 2015, the requester stated the following on RecordTrac: “Please add "15. Rang-R" to the list of items I am seeking information about. Thank you.”

On January 30, 2015, OPD stated the following on RecordTrac: “The Alameda County DAs Office PRR is Stephanie Chan. She can assist with copies of warrants or court orders and is located at 1225 Fallon St. Suite 900. 510-272-6213.”

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On February 3, 2015, OPD stated the following on RecordTrac: “Mr. Hofer, the Department does not have an OPD policy, nor any training manuals for cell site simulators or “stingrays”.”

On February 5, 2015, OPD stated the following on RecordTrac: “Mr. Hofer, The Department does not possess templates for judicial orders and/or warrant applications that involve or mention the use of cell site simulators, also known as stingrays.”

On February 9, 2015, OPD stated the following on RecordTrac: “The Department does not have any invoices or purchase orders produced regarding the listed items.”

On February 20, 2015, the requester stated the following on RecordTrac: “The statutory 10 days, plus 14 days extension per code, have expired. I haven’t been provided a single document. Please comply. Thank you.”

Also on February 20, 2015, OPD provided an excel spreadsheet and the following statement: “The City Clerk's Office do not have any resolutions or report regarding the listed item. However, I am attaching the Citywide Record Retention Schedule policy as requested above.”

On March 10, 2015, OPD stated the following on RecordTrac:

The Information Technology Department (ITD) is conducting a comprehensive search for emails and any documents relating to your request. Once we receive the search results the records will need to be reviewed, and if necessary redacted per Government Code 6254(f), so as not to release any confidential information. In addition, consultation with other members of the Department who may have substantial knowledge of this subject matter may also be required. We will provide you with periodic updates and/or any responsive documents as they become available. You will receive your next response by March 31, 2015.

On April 3, May 4, and June 1, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any records to provide.”

On June 30, 2015, OPD stated the following on RecordTrac:

Public Records Request Unit still needs additional time to review the email search results, in addition, consultation with other members of the Department who may have substantial knowledge of this subject matter may also be required in order to ensure no confidential information is released. We will continue to provide periodic updates and/or any responsive records as they become available. You will receive your next response by July 10, 2015.

On July 10, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide. We will provide you with an update by July 17, 2015.”

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On July 17, 2015, OPD stated the following on RecordTrac: “Responsive emails are being reviewed by the custodian of the records. In addition, consultation with other members of the department may also be required. We will provide you with an update by July 24, 2015.”

On July 24, July 31, and August 7, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide. We will provide you with an update by July 31, 2015.”

On August 14, 2015, OPD provided thirty pages of records and the following statement on RecordTrac: “The PRR Unit has provided some material related to your request. You will receive your next response on or before August 21, 2015.”

On August 21, and August 28, 2015, OPD stated the following on RecordTrac: “The PRR Unit has provided some material related to your request.”

On September 3, and September 23, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide.”

On October 15, 2015, OPD provided 57 pages of records and the following statement on RecordTrac: “Our agency needs additional time to respond to your request based on the following reason: The need to search for, collect, or examine a voluminous amount of records (Government Code Section 6253(c)(2)). You will receive a response or an up-date by 29 Oct 15.”

On November 13, November 24, and December 18, 2015, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide.”

On December 30, 2015, OPD provided 25 pages of records and the following statement on RecordTrac: “Our agency needs additional time to respond to your request based on the following reason: The need to search for, collect, or examine a voluminous amount of records (Government Code Section 6253(c)(2)). You will receive a response or an up-date by 15 Jan 16.”

On February 11, and May 11, 2016, OPD stated the following on RecordTrac: “At this time the Department does not have any responsive records to provide.”

On July 14, 2016, OPD stated the following on RecordTrac: “Due to the Departments limited staffing, resources and the numerous public records requests received, our agency needs an additional 30 days to respond to your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On November 10, 2016, Commission Staff started its mediation effort by sending the complaint to OPD and requesting a response to the allegations.

On November 23, 2016, OPD provided 111 pages of records, the following statement on RecordTrac, and closed the records request: “We released all responsive documents.”

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On November 30, 2016, Commission Staff requested an update from OPD. OPD replied and informed Commission Staff that all responsive records had been provided on November 23, 2016, and the request was closed and considered resolved.

On December 28, 2016, Commission Staff relayed this statement to the requestor, who found the response unsatisfactory and stated that he had “firsthand knowledge of the existence of documents” related to several categories of the request.

On July 2, 2018, Commission Staff reached out to OPD and requested confirmation that no additional documents existed. OPD responded and stated that the requester had been informed by Supervisor Davis of the Oakland Police Department via email that all responsive documents had been released.

PRR No. 8936

On April 15, 2015, the City received, via RecordTrac, the following public records request: “Please provide in electronic format (pdf) all emails and attachments sent to or from the following email accounts, and for the time period of January 1, 2010 through April 14, 2015: 1) Jason Saunders jsaunders@oaklandnet.com; 2) Shawn Knight sknight@oaklandnet.com.”

On April 23, 2015, the requester stated the following on RecordTrac: “Please amend this request to include all faxes, including cover sheets and all attachments, sent to or from Jason Saunders and Shawn Knight for the same time period.”

On May 7, 2015, OPD stated the following on RecordTrac: “Request extended.”

Also on May 7, 2015, OPD stated the following on RecordTrac:

Dear requester: Staff from the Information Technology Department (ITD) has informed today (see history tab here in RecordTrac system), that they had run a search and produced two CD's. Staff will now have to review and redact (if necessary) those records. Representatives from those departments shall contact you no later than May 29 to provide you a status update and/or responsive records.

On July 6, 2015, OPD stated the following on RecordTrac: “The Department is still waiting on the search results from the City's Information & Technology Department. We will provide you with any updates and/or responsive records as they become available. You will receive your next response on or before July 20, 2015.”

On July 14, August 3, August 29, and September 29, 2015, OPD stated the following on RecordTrac: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On October 14, 2015, OPD stated the following on RecordTrac: “The Oakland Public Works Department does not have any info regarding this request.”

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On October 29, November 30, December 30, 2015; and February 3, March 1, March 31, April 28, May 31, July 1, and July 29, 2016, OPD stated the following on RecordTrac: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, October 11, and November 15, 2016, OPD stated the following on RecordTrac: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On November 22, 2016, OPD provided 343 pages of documents.

On November 24, 2016, OPD provided 1,299 pages of documents and stated the following on RecordTrac:

Dear requester: I apologize for the delay in providing you with all the responsive records for this request in a timely manner. There are over 8,000 records. Your request asks for all emails to and from the listed accounts. I am providing you with the releasable records while the others are being reviewed. If you do not wish to receive further emails that were sent to these accounts from the system administrator, such as the ones I have recently provided, please let me know and I will stop uploading them to this request. The remainder of the records are being reviewed and will be released as soon as possible.

Also on November 24, 2016, the Complainant stated the following on RecordTrac: “Ms. Fuller, first, why are you working on Thanksgiving? Don't do it! Secondly, I want real emails. You have uploaded thousands of pages of a form response stating the inbox is full. Those are NOT responsive, nor helpful. I need the real emails from the requested date range. Thanks, and happy thanksgiving.”

On November 29, 2016, OPD provided 310 pages of documents and stated the following on RecordTrac: “Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1).”

On November 30, 2016, in response to the requester's request for mediation, Commission Staff reached out to Records Division and requested an update on the request. Records Division replied and informed Staff that the documents responsive to the records request were in the process of being reviewed by the custodian of the record for consultation and possible redactions, and that Records Division would forward the documents to the requester once received from the custodian of the record.

In December 2016 and January 2017, Commission Staff, as part of its mediation effort, discussed this matter with OPD and the requester.

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On January 30, 2017, OPD provided 108 pages of documents.

On February 1, 2017, OPD stated the following on RecordTrac: “Authorized redactions or omissions made so as not to release any personnel information pursuant to California Government Code 6254(c).”

On April 3, 2017, OPD stated the following on RecordTrac: “The Department is still reviewing records responsive to your request. Some documents have been omitted pursuant to California Government Code 6254(f) (confidential intelligence records and officer safety information). We will continue to provide you with updates and/or any responsive non-exempt documents as they become available.”

On December 19, 2017, OPD provided 19 pages of records, the following statement on RecordTrac, and closed the records request:

We released the requested documents. Personal information, such as home addresses, telephone numbers, and credit card numbers, were removed from the documents to protect the privacy or identity of another individual (Government Code Section 6254(k)) and the constitutional right to privacy Article 1 Declaration of Rights Section 1). Authorized redactions or omissions made pursuant to 6254(f) (investigative records) and (The case is pending, still active, under appeal or may be recharged; or the release may deprive a person(s) of a fair trial and release of this information may endanger the successful completion of any current or prospective investigation, or may disclose investigative techniques).

PRR No. 13074

On December 17, 2015, the City received, via RecordTrac, the following public records request:

Please provide in electronic format (pdf) a copy of all writings, defined by California Evidence Code Section 250, including but not limited to training manuals, privacy policy, data retention policy, warrants, court orders, correspondence, emails, purchase orders, invoices, memos, grant applications and awards, funding sources, city council resolutions or information reports, for the following items/social media monitoring software: 1. MediaSonor 2. Beware

On December 21, 2015, OPD stated the following on RecordTrac: “No records of legislations or any other materials were found in the City Clerk's Office.”

On January 6, 2016, OPD stated the following on RecordTrac: “Dear requester: Please advise the date range you would like the Department to search for the requested records. Also if possible please clarify the term beware, as this will produce a response for all records containing this word and may result in an excess of unresponsive documents and prolong the completion of your request.”

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Also on January 6, 2016, the requester stated the following on RecordTrac: "Use date range 1/1/12 to 1/6/16. Beware is made by Intrado. Search "Intrado Beware", "Intrado", "Beware"."

On January 11, 2016, OPD stated the following on RecordTrac: "Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2))."

On February 8, 2016, OPD stated the following on RecordTrac:

The Department did not locate any training manuals, purchase orders, invoices, memos, grant applications and awards, funding sources, privacy policy, data retention policy, warrants, or court orders related to the MediaSonor and Beware. We are still in the process of conducting an email search for any correspondence related to these terms. We will continue to provide you with periodic updates and/or any responsive records as they become available. You will receive your next response by February 29, 2016.

On March 1, 2016, OPD stated the following on RecordTrac: "The Department is still waiting on the search results from the City's Information & Technology Department. We will provide you with any updates and/or responsive records as they become available. You will receive your next response on or before March 31, 2016."

On March 25, 2016, the requester stated the following on RecordTrac: "Please add Geofeedia to the request."

On March 31, 2016, OPD stated the following on RecordTrac: "Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request. You will receive an update by April 30, 2016."

On April 28, 2016, OPD stated the following on RecordTrac:

The previous message for this request was incorrect. The Public Records Request Unit is still waiting on the search results from the City's Information & Technology Department (ITD). ITD is currently backlogged and working to provide records as soon as possible. We will continue to provide you with any updates as they become available. You will receive your next response on or before May 31, 2016.

On May 31, 2016, OPD stated the following on RecordTrac: "The Public Records Request Unit has received the CD containing the results of the email search. Additional time is needed to review each document. Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request. You will receive an update by June 30, 2016."

On July 1 and July 29, 2016, OPD stated the following on RecordTrac, and stated that Complainant would receive an update by the end of the next month: "Due to limited staffing resources the

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Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, October 10, and November 30, 2016, OPD stated the following on RecordTrac, and stated that the requester would receive an update by the end of the next month: “Due to limited staffing resources the Oakland Police Department needs additional time to review the search results and determine if there are any documents responsive to your request.”

On November 30, 2016, in response to Complainant’s request for mediation, Commission Staff reached out to Records Division and requested an update on the request. Records Division replied and informed Staff that the documents responsive to the records request would be provided by December 30, 2016.

On December 30, 2016, OPD provided 522 pages of records and stated the following statement on RecordTrac: “We released all responsive documents.”

On January 26, 2017, the requester informed Commission Staff that the records provided in response were erroneous and “not what I was seeking.” On January 27, 2017, Commission staff relayed this concern to OPD.

On February 6, 2017, OPD stated that the request was completed because there were no additional documents to provide and that it had informed the requester by posting a message on RecordTrac.

On February 6, 2017, OPD stated the following on RecordTrac and closed the records request: “The Department did not locate any other records for this request. Although some of the responses provided to you were not responsive to this request, we provided the records we found relating to your requested search terms.”

PRR No. 14437

On March 10, 2016, the City received, via RecordTrac, the following public records request:

Please provide in electronic format (pdf) a copy of all writings, defined by California Evidence Code Section 250, related to CCTV surveillance, video surveillance, or other electronic surveillance within the City of Oakland and involving the following agencies during the date range of 01/01/2010 through 03/10/2016: 1. Bureau of Alcohol Tobacco Firearms and Explosives (ATF) 2. US Department of Justice 3. Drug Enforcement Agency 4. Department of Homeland Security 5. US Immigration and Customs Enforcement 6. Northern California Regional Intelligence Center 7. US Marshals 8. Federal Bureau of Investigations The writings shall include, but not be limited to, privacy policies, data sharing agreements, memoranda of understanding, emails or any other correspondence, legal authorization or justification for the surveillance, invoices, purchase orders, and grant applications.

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On March 17, 2016, OPD stated the following on RecordTrac: “Request extended: Additional time is required to answer your public records request. We need to search for, collect, or examine a large number of records (Government Code Section 6253(c)(2)).”

On April 19, 2016, OPD stated the following on RecordTrac:

The Oakland Police Department did not locate any privacy policies, data sharing agreements, memoranda of understanding, invoices, purchase orders, or grant applications. The Information Technology Department (ITD) is conducting a search for emails or writings responsive to your request. There is a backlog of requests and at this time we cannot provide a date the search will be complete. We will provide you with any updates as they become available. You will receive your next response by April 30, 2016.

On April 28, May 31, July 1, and July 29, 2016, OPD stated the following on RecordTrac: “The Public Records Request Unit is still waiting on the search results from the City's Information & Technology Department (ITD). ITD is currently backlogged and working to provide records as soon as possible. We will continue to provide you with any updates as they become available.”

On August 24, 2016, the requester filed his complaint with the Commission.

On September 6, and October 11, 2016, OPD stated the following on RecordTrac: “The Public Records Request Unit is still waiting on the search results from the City's Information & Technology Department (ITD). ITD is currently backlogged and working to provide records as soon as possible. We will continue to provide you with any updates as they become available.”

On November 10, 2016, Commission Staff started its mediation efforts by sending the complaint to OPD and requesting a response to the allegations.

On November 29, 2016, OPD stated the following on RecordTrac: “The Department is still working on obtaining the search results for this request. We will continue to provide you with any updates and/or responsive records as they become available.”

On November 30, 2016, Commission Staff requested an update from OPD. Records Division replied and informed Commission Staff that IT was still working on searching for all responsive records due to the scope of the request.

On January 27, 2017, Commission Staff requested an update from OPD because no records had been provided. On February 6, 2017, OPD stated that it was still working on this request and did not have responsive records to provide at that time.

On February 6, 2017, OPD stated the following on RecordTrac: “The Department is still working on obtaining the search results for this request. We will continue to provide you with any updates and/or responsive records as they become available.”

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On June 29, 2018, Commission Staff requested an update as no records had been provided. On July 16, 2018, Fuller stated that she submitted an e-discovery request to the IT Department to conduct a search for emails but did not receive a response. Fuller stated she will need to submit a new request.

As of October 15, 2018, this request remains open and OPD has not provided any records.

IV. RECOMMENDATION

Mediation efforts have resolved Complainant's concerns regarding PRR Nos. 7354, 8936, 13074, and 3544. Request 14437 has not been closed. However, because this matter has been in mediation status for more than two years and the parties have reached an impasse regarding OPD's lack of response to PRR No. 14437, Commission Staff recommends that the Commission close mediation and not take any further action.

ATTACHMENT 6



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: February 18, 2020
RE: City Council Salary Adjustment as Required by Law

Every two years, the Public Ethics Commission (PEC or Commission) is responsible for adjusting the City Councilmember salary level according to the increase in the Consumer Price Index (CPI) for the preceding two years, and for making additional salary increases as deemed necessary by the Commission.

This memorandum provides background information for the Commission to do the following:

- 1) adjust Councilmember salaries per the CPI increase as mandated by law, and
- 2) determine whether to adjust Councilmember salaries beyond the required increase up to a total of five percent per year.

Background

Oakland City Charter Section 202, as amended in 2014, requires the Public Ethics Commission to “bi-annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding two years.” In addition, the Commission may adjust the salaries beyond the increase up to a total of five percent for each year, and any excess of five percent per year must be approved by the voters.

Payroll adjustments take effect on the first payroll period after the beginning of the new fiscal year, which will begin in July 2020. The Commission last adjusted the salary for City Councilmembers by the CPI increase of 6.6 percent in 2018, resulting in a total annual salary of \$91,018.25.

The table below shows salary increases approved by the Commission since 2004. Note that the most recent two adjustments, made in 2016 and 2018, were over the two-year period as required by changes made to the City Charter in 2014, which moved the adjustment from every year to every two years.

City Council Salary Adjustments

Year	PEC-Authorized Increase (%)	Annual Salary with Increase (\$)
February 2018	6.6 (CPI for two years)	91,018.25
January 2016	4.7 (CPI for two years)	85,382.97
June 2014	2.4 (CPI)	81,550.11
June 2013	2.4 (CPI)	79,638.78
July 2012	2.1 (CPI)	77,772.25

ATTACHMENT 6

June 2011	2.8 (CPI)	76,172.62
June 2010	1.7 (CPI)	74,097.88
June 2009	0.8 (CPI)	72,859.28
June 2008	2.9 (CPI)	72,281.04
June 2007	5	70,243.94
July 2006	4	66,899.04
July 2005	2.1 (CPI)	64,326.08
June 2004	5	63,003.94

Below is a list of the annual salary amount that each Council Member currently receives:

Council Member	Salary (as of February 2020) ¹ (\$)
Nikki Fortunato Bas	91,018.20
Gallo, Noel	91,018.20
Gibson, Lynette Vania	91,018.20
Kalb, Daniel Edward	91,018.20
Kaplan, Rebecca Dawn	91,018.20
Reid, Laurence E.	91,018.20
Loren Manuel Taylor	91,018.20
Shen Thao	91,018.20

Salary Adjustment Mandated by City Charter

The Commission is required to adjust the annual salary according to the change in the Consumer Price Index for the preceding two years. The U.S. Bureau of Labor Statistics reports that the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose metropolitan area rose 7.1 percent from December 2017 – December 2019.² This increase of 7.1 percent since the last mandated salary adjustment would result in a new annual salary for City Councilmembers of **\$97,480.55**.

Additional Salary Increase Option

In addition to the required increase per CPI, the Commission has the discretion to increase City Councilmember salaries beyond the CPI up to a maximum total of 5 percent per year, for a total of 10 percent for both the CPI and the discretionary increase over the two-year period. The required CPI increase at this time is 7.1 percent for the two-year period; therefore, the Commission has discretion to approve an additional increase of an additional 2.9 percent for the two-year period as provided by the City Charter.

Recommendation

Staff recommends that the Commission issue a resolution to adjust City Councilmember salaries by the required 7.1 percent increase in the Consumer Price Index as required by law, for a total annual salary of \$97,480.55. Following Commission approval, Commission staff will transmit the salary adjustment resolution to the City Administrator, the Department of Human Resources (to amend the salary ordinance), and the Treasury Division - Payroll (to implement the increase).

¹ Salary data provided by Doris Cheng, Human Resources Systems Analyst Supervisor, Treasury Department. February 4, 2020.

² U.S. Bureau of Labor Statistics. San Francisco Region Consumer Price Index. December 2017 – December 2019.

<https://data.bls.gov/timeseries/CUURS49BSA0>. Data accessed February 19, 2020. Formula using raw numbers: (Current year/prior year) – 1 x 100 = ___%

ATTACHMENT 7

CITY OF OAKLAND
Public Ethics Commission

RESOLUTION NO. 20-01
[Proposed 3-2-20]



By action of the Oakland Public Ethics Commission:

WHEREAS, Oakland City Charter Section 202 requires the Public Ethics Commission (Commission) to bi-annually adjust City Councilmember salaries by the increase in the Consumer Price Index over the preceding two years and to optionally adjust salaries beyond the increase in the Consumer Price Index up to a total of five percent per year; and

WHEREAS, the Commission-authorized annual salary for Oakland City Councilmembers is \$91,018.25, effective July 2018; and

WHEREAS, the consumer price index for the San Francisco Bay Area increased by a total of 7.1 percent between December 2017 and December 2019; and

Now, therefore be it:

RESOLVED, that the Commission does hereby authorize a salary increase of 7.1 percent for the office of City Councilmember as mandated by City Charter Section 202, for a total annual salary of up to \$97,480.55, effective as of the first payroll period of Fiscal Year 2020-21; and

RESOLVED, that the Commission does not authorize any additional increase beyond that required by the Oakland City Charter.

CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission held on March 3, 2020, where a quorum of the membership of the Commission was present. The Commission approved the resolution by a vote of ____ to ____.

I hereby certify that the foregoing is true and correct.

Whitney Barazoto, Executive Director
Oakland Public Ethics Commission

Date

ATTACHMENT 7

ATTACHMENT 8



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Lead Analyst
Jelani Killings, Ethics Analyst
Whitney Barazoto, Executive Director
DATE: February 20, 2020
RE: Disclosure and Engagement Report

This memorandum provides a summary of the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities since the last monthly meeting. Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for PEC projects and programs as required. Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Filing Officer - Compliance

Campaign finance disclosure – Two Oakland elections are scheduled this year: a special election on March 3 and the general election on November 3, 2020. Three local measures are certified for Oakland's March 3, 2020, Special Election - Measures Q, R and S - and committees engaging in campaign activity to support or oppose measures on the March 3 ballot are subject to pre-election disclosure deadlines on January 23 and February 20. Two ballot measure committees are registered in connection with a proposed parcel tax, Measure Q, the Oakland Parks and Recreation Preservation, Litter Reduction, and Homelessness Support Act.

To date, almost \$300,000 in contributions have been reported in connection with Measure Q, \$177,000 to support and \$94,264 to oppose. In addition, \$205,835 worth of independent expenditures to oppose the measure have been reported so far by two state committees formed by realtors.

In addition to March pre-election reports, all Oakland registered committees were required to submit semi-annual campaign statements by January 31 for the period from July 1 through December 31, 2019. The ninety statements received are now undergoing facial review.

Twenty-four candidates have declared their intention to run for Oakland offices. Only nine candidates registered campaign committees for the November election so far. The 2020 candidate committees reported \$226,856 in contributions raised. Approximately 93 percent of reported contributions were \$100 or more. Of those itemized contributions, 39 percent came from individuals with Oakland addresses.

ATTACHMENT 8

Illuminating Disclosure Data

Lobbyist e-filing – Commission staff continues to meet weekly with IT staff to refine the lobbyist reporting app utilizing the [OakApps](#) portal. The IT Department assigned an additional developer to fast-track work on the administrative system portion of the app as we approach the first 2020 reporting deadline on April 30.

Open Disclosure – Commission staff continues to act as product manager for the campaign finance website <http://www.opendisclosure.io>, produced in partnership with Open Oakland volunteers. This month, team members successfully added the March and November 2020 election pages to the development site and connected to the current data. The team also worked on updated designs to incorporate highlights from the election data to the home page, such as the percentage of contributions originating in Oakland and top independent expenditures.

Advice and Engagement

New Employee Orientation – Staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the PEC and overview of the Government Ethics Act (GEA). On February 19, staff trained 40 new employees on GEA provisions.

Boards and Commissions – On January 30 and 31, Commission staff held ethics trainings for the City’s board and commission members. Ninety-two board and commission members received training on provisions of the Government Ethics Act including Form 700 requirements, conflicts of interests, gift rules, misuse of City resources/position, and revolving door rules. Additional trainings in the works for board and commission members unable to attend in January.

Candidates and Campaigns – Commission staff has been coordinating with the Fair Political Practice Commission (FPPC) to host a candidate and treasurer training on both state and local campaign rules. The training date has been set for Wednesday, April 8 and will cover topics such as recordkeeping, campaign forms, advertisement disclaimers, local expenditure ceilings and contributions limits, as well as the Limited Public Financing Program.

Campaign Rules for Public Servants – Requests for information and advice increased in connection with multiple disclosure deadlines and the upcoming primary. Commission staff received several inquiries from City officials and staff related to ballot measure activities in connection with the March primary election. In response, staff issued an advisory flyer highlighting state and local rules surrounding campaign activity by City staff and officials for wider reach.

Online Engagement

Social Media – Each month Commission staff post social media content to highlight specific PEC policy areas, activities or client-groups. In February, our posts focused on 2020 contribution limits and campaign finance resources.

ATTACHMENT 9



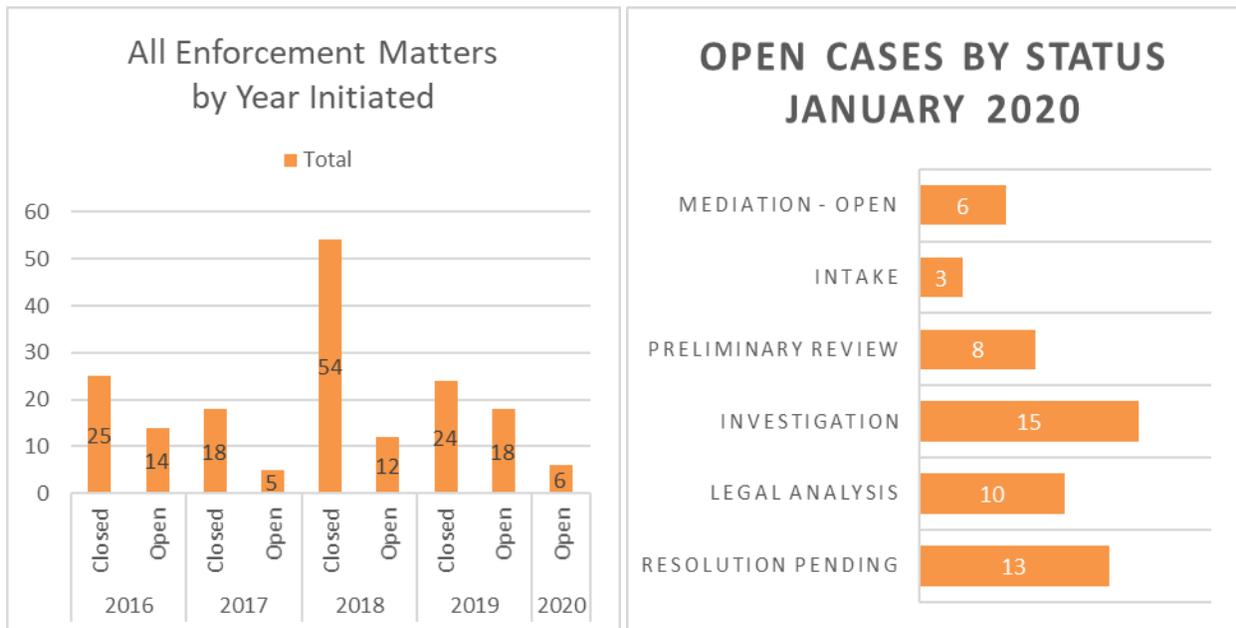
James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice Chair
Jill M. Butler
Michael MacDonald
Janani Ramachandran
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: February 18, 2020
RE: Enforcement Program Update

Current Enforcement Activities:

Since the last Enforcement Program Update on February 3, 2020, Commission staff received three complaints. This brings the total Enforcement caseload to 55 enforcement and mediation cases: 8 matters in the intake or preliminary review stage, 15 matters under active investigation, 10 matters under post-investigation analysis, 13 matters in settlement negotiations or awaiting an administrative hearing, and 6 ongoing public records request mediations.



Summary of Cases:

Since the last Enforcement Program Update in February 2020, the following status changes occurred:

1. *In the Matter of Anthony Harbaugh* (Complaint No. 18-11) Around October 2016, PEC Staff opened a pro-active investigation into allegations of a bribery and misuse of position scheme

by a senior building inspector, Commission Staff found evidence that Anthony Harbaugh, a City building inspector, between January 2015 and December 2016, committed, participated in, or aided and abetted Thomas Espinosa in committing multiple violations of the Oakland Government Ethics Act. The alleged violations include the following: soliciting and receiving bribes; making, and seeking to use his official position to influence, governmental decisions in which he had a disqualifying financial interest; misusing City resources for personal financial gain; misusing his City position to induce/coerce others to provide him with economic gain, and; failing to report significant income from individuals with matters before him as a City building inspector. Staff recommends that the PEC find probable cause for the enumerated violations and schedule this matter for a hearing. (See Action Items)

2. *In the Matter of Andrew Haydel and Lane Partners* (Complaint No. 19-24) In June 2019, Commission Staff initiated a pro-active investigation after Andrew Haydel's lawyer called to report that Haydel, a commercial real-estate investor and principal at Lane Partners LLC, "may have made a contribution" to an Oakland political campaign during a time when he and Lane Partners was subject to the contractor contribution ban. Staff's preliminary investigation determined that Lane Partners, on October 21, 2018, made a \$1,000 contribution to the Lynette Gibson-McElhaney Defense Fund at a time when they were subject to the City's ban on contributions from City contractors to candidates, in violation of Oakland Municipal Code section 3.12.140. Staff and the Respondent reached a stipulated settlement agreement. Staff recommends that the PEC approve the Stipulation and impose a \$2,000 penalty. (See Action Items)
3. *In the Matter of City of Oakland Police Commissioner Ginale Harris* (ProActive/Informal Complaint). On or about November 15, 2019, Commission Staff received an informal complaint alleging that the City of Oakland Police Commissioner Ginale Harris violated the Government Ethics Act by misusing her position to induce or coerce a person to provide her with a private advantage or benefit. Staff initiated a preliminary review of the allegations and the law and determined that the allegations did not constitute a violation of the Government Ethics Act within the Commission's enforcement jurisdiction. The informal complaint was dismissed. (See Attachment)
4. *In the Matter of Libby Schaff* (Complaint No. 19-20) On November 12, 2019, Commission Staff received a complaint alleging that the Mayor violated the Oakland City Charter, Sunshine Ordinance, and the California Brown Act when she failed to deliver a general address on the State of the City at the first meeting of the City Council in October 2019. Further, the complaint alleged the Mayor did not have the authority to move the address and require the public to register to attend the State of the City Address. After conducting a preliminary review of the allegations and a close review of the facts and the law, Staff dismissed the complaint because the PEC lacks jurisdiction. (See Attachment)
5. *In the Matter of The City of Oakland Police Department, Mediation Summary* (Case No. 16-15). On August 24, 2016, the Commission received a complaint alleging that the Oakland Police Department (OPD) failed to disclose records in response to multiple public records requests made by the Requestor. On November 10, 2016, Commission Staff initiated its mediation program pursuant to the Oakland Sunshine Ordinance. Once Staff initiated mediation, the Requestor received several responsive documents from OPD. However, upon conclusion of

the mediation program on July 16, 2018, the requester had not received responsive documents to PRR No. 14437. This request remains open in NextRequest with relevant records still unproduced by OPD, even though this public records request was made on March 10, 2016. Commission Staff attempted to resolve this matter through mediation for two years with some success. However, the parties have reached an impasse regarding PRR No. 14437. For those reasons, Commission Staff recommends that the Commission close this matter. (See Action Items)

6. *In the Matter of City of Oakland Public Works (Maintenance and Facilities) (Complaint No. 20-02).* The Commission received a complaint on December 24, 2019, alleging that an Oakland City employee with the Public Works Department (maintenance and groundskeeping) violated the Oakland Government Ethics Act by engaging in harassing, profane and racially incendiary conduct against the Complainant. The Complainant had filed the same report with identical allegations in Case No. 19-21 and 20-01. The allegations in Case No. 19-21 were dismissed and presented for information at the January 6, 2020, PEC meeting. Case No. 20-01 was dismissed at the February 2020 meeting. Likewise, Staff dismissed this complaint due to lack of PEC enforcement jurisdiction. (See Attachment)

ATTACHMENT 9



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

February 18, 2020

Oakland Police Commissioner Ginale Harris
GHarris@oaklandcommission.org

Re: PEC Complaint (Informal/Pro-Active); Notice of Dismissed Complaint

Commissioner Harris:

On or about November 15, 2019, the City of Oakland Public Ethics Commission (PEC) received an informal complaint alleging you violated the Government Ethics Act. We have reviewed the allegations and the law and write to inform you that the Complaint has been dismissed because the allegations, even if true, do not constitute a violation of the Government Ethics Act and is not within the jurisdiction of the Commission's enforcement jurisdiction.

The PEC received a report from the Oakland Police Department of an anonymous call that was placed with the Oakland Police Department that reported that you, a Commissioner on the Oakland Police Commission, were involved with a dispute at your son's private school in San Francisco and may have used your Police Commissioner badge/identification to induce or coerce staff at the school for your private benefit or advantage.

PEC Staff opened a preliminary investigation and, among other things, obtained a copy of the anonymous call that was taped by the Oakland Police Department, a copy of the video tape that was recorded by the San Francisco Police Department (SFPD), and a copy of the SFPD police report, in addition to interviewing the Director of the school.

PEC Staff found no evidence of the use of your Commissioner badge for the purpose of inducing or coercing staff at the school to allow you to enter the school. In fact, the Director of the school, when interviewed, confirmed that no Police Commissioner badge was presented during your interaction with school personnel. Therefore, we are dismissing this complaint.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on March 2, 2020, at 6:30PM in Hearing Room 1 of Oakland City Hall (1 Frank

ATTACHMENT 9

PEC Complaint (Pro-Active); Notice of Dismissed Complaint
Page 2

Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish.

If you have any questions, you can reach me at (510) 238-4976 or kjohnson3@oaklandca.gov.

Sincerely,

Kellie Johnson
Enforcement Chief,
City of Oakland Public Ethics Commission



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

February 18, 2020

Sara Carroll
[REDACTED]
[REDACTED]

Re: PEC Complaint No. 19-20; Notice of Dismissed Complaint

Dear Ms. Carroll:

On November 12, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#19-20) alleging that the Mayor violated the Oakland City Charter, Sunshine Ordinance, and the California Brown Act when she failed to deliver a general address on the State of the City at the first meeting of the City Council in October 2019. Further, the complaint alleged the Mayor did not have the authority to move the address and require the public to register to attend the State of the City Address. This letter is a follow-up to our January 22, 2020, telephone conversation. We have concluded our preliminary review of your allegations and, after close review of the facts and the law, we are dismissing your complaint because there is no allegation of a violation within the PEC's enforcement jurisdiction.

Mayor Libby Schaff did not present a State of the City Address at the first October meeting of the City Council in 2020. Instead, on November 5, 2019, at a City Council meeting, she informed the Council and the citizens in attendance that she will present the State of the City Address on February 7, 2020, at the Oakland Museum of California. The Mayor informed the body that attendance would be limited due to space size and that an "Event bright," an online registration computer application, would be set up for citizens to sign up to attend the event.

You (and others) attended the meeting and presented public comment regarding your objection to the Mayor's failure to present the State of the City Address.

The Oakland City Charter Article III section 305 provides that the Mayor "shall" provide a State of the City Address at the first City Council meeting in October. Unfortunately, neither the City Charter, the Sunshine Ordinance nor the Brown Act provide a penalty provision enforceable by the PEC for the Mayor's failure to comply with this provision.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting as part of our regular monthly update on Enforcement actions. That meeting will take place on March 2, 2020, at 6:30 p.m. in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission

ATTACHMENT 9

PEC Complaint No. 19-20; Dismissal Letter
Page 2

regarding this matter, which is now closed. However, you are welcome to attend that meeting and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Thank you for bringing this matter to our attention. If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-5239
FAX (510) 238-3315
TDD (510) 238-3254

February 18, 2020

Libby Schaaf
Mayor
City Hall
1 Frank H Ogawa Plaza
3rd Floor
Oakland, CA 94612

Re: PEC Complaint No. 19-20; Dismissal Letter

Dear Mayor Schaaf:

On November 12, 2019, the City of Oakland Public Ethics Commission (PEC) received a complaint alleging that, among other things, you violated the Oakland City Charter, Sunshine Ordinance, and the California Brown Act when you failed to deliver a general address on the State of the City at the first meeting of the City Council in October 2019. Further, the complaint alleged that you did not have the authority to move the address and require the public to register to attend the State of the City Address.

We have reviewed the complaint, the Oakland City Charter¹ and the law. The allegations raised by the complainant do not provide sufficient facts to establish a violation of the Brown Act or the Sunshine Ordinance within the PEC's jurisdiction. Furthermore, the PEC does not enforce violations of the City Charter without a supplemental statute granting such authority to the Commission. Therefore, we are dismissing this complaint against you.

A copy of the dismissal letter to the complainant is attached. If you have any questions regarding this matter, please feel free to contact me at (510) 238-4976 or Kjohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Chief of Enforcement

¹ The Oakland City Charter Article III section 305 provides that the Mayor "shall" provide a State of the City Address at the first City Council meeting in October.

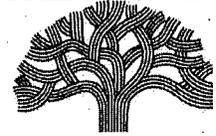
ATTACHMENT 9

PEC Complaint No. 19-20; Dismissal Letter

Page 2

City of Oakland Public Ethics Commission

Enclosure



CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

February 10, 2020

Raven Bays
2811 Adeline St.
Oakland, CA 94621

Re: PEC Complaint No. 20-02; Dismissal Letter

Dear Ms. Bays:

On January 24, 2019, the City of Oakland Public Ethics Commission (PEC) received your complaint (#20-02) asserting the same allegations from complaint (#19-21 and 20-01) that an Oakland City employee with Public Works Department (maintenance/grounds keeping) violated the Oakland Government Ethics Act by engaging in harassing, profane, sexist and racially incendiary conduct against you. Complaints (#19-21, 20-01) were dismissed because the allegations, if true, do not constitute a violation of law within the Commission's enforcement jurisdiction. As with your previous complaints, the alleged conduct does not fall within the PEC's enforcement jurisdiction, and we are therefore dismissing your complaint.

I have called and left messages on your phone to explain to you directly the PEC's lack of jurisdiction. I have even invited you to drop by my office at your convenience to discuss the matter. Unfortunately, you have not returned my calls, nor have you visited my office. If you have additional questions, I encourage you to contact me directly by telephone or email, both of which are contained in this letter.

I must inform you of the Public Ethics Commission Complaints Policy. Any person who has submitted (4) four complaints with the Commission within a twelve (12) month period and has had each complaint determined adversely to the person, shall be deemed a "repetitive unmeritorious complaint." Any subsequent complaint submitted by a repetitive unmeritorious complainant during the (12) twelve-month period must be reviewed by the Commission Chair, and, if deemed unmeritorious on its face, the complaint shall not be processed or reviewed. Thus far, you have made (3) three such complaints that have been dismissed. Before filing the same complaint again, I strongly encourage you to contact me.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on March 2, 2020, at 6:30 p.m. in Hearing Room 1 of Oakland City Hall (1 Frank Ogawa Plaza). The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend

ATTACHMENT 10



James E.T. Jackson, Chair
Nayeli Maxson Velázquez, Vice-Chair
Jill M. Butler
Michael B. MacDonald
Janani Ramachandran
Joe Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Whitney Barazoto, Executive Director
DATE: February 20, 2020
RE: Executive Director's Report

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities completed or in progress since the Commission's last regular meeting that are not otherwise covered by other staff program reports. The attached overview of Commission Programs and Priorities includes the ongoing goals and activities for 2019-20 for each program area.

Upcoming Matters

Over the next few months, Commission staff will be focused on the following administration-related activities:

1. **New Commissioner Orientation** – Staff will provide a 3-hour orientation to our two newest commissioners (Michael MacDonald and Janani Ramachandran), along with two commissioners (Jerett Yan and Joe Tuman) who were appointed in late 2019.
2. **PEC Ordinance to City Council** – Staff is preparing the materials for the introduction of the PEC's proposed amendments to the PEC enabling ordinance (OMC Chapter 2.24) for City Council consideration and approval.
3. **Midcycle Budget Proposals** – The City Administration is proposing reductions as part of the midcycle budget review process. Staff will prepare its response to requested budget reductions by March 5, 2020.
4. **Annual Report** – PEC staff is in the process of drafting the Commission's annual report for 2020, for review and potential approval at the Commission's annual retreat in April.
5. **Staff Performance Reviews** – Staff annual performance reviews are set to be conducted in April-May and will incorporate a review of individual performance objectives for the past year as well as any new individual objectives stemming from overall PEC goals identified as part of the PEC's strategic planning process at its upcoming annual retreat.

Attachment: Commission Programs and Priorities

ATTACHMENT 10

ATTACHMENT 10

PUBLIC ETHICS COMMISSION Programs and Priorities 2019-20

Program	Goal	Desired Outcome	Key Projects for 2019-20
Lead/ Collaborate (Policy, Systems, Culture)	PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity and innovation.	Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies	<ol style="list-style-type: none"> 1. Adoption of PEC-drafted City Ticket Distribution policy and process changes 2. Campaign Finance/Public Financing Act Project to expand participation in the campaign process 3. Government Integrity Data partnership
Educate/ Advise	Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.	The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.	<ol style="list-style-type: none"> 1. Online ethics training for Form 700 filers – ensure training delivered to a) elected officials, b) City employees (1000), b) board/commission members, and c) consultants 2. Board/Commission member/liaison support/guidance; Sunshine/Meeting agenda posting Compliance Review v 3. Ongoing: advice calls, in-person trainings, ethics orientation for new employees (12), supervisor academy (3-4), and PEC newsletter (2) 4. Sunshine and Lobbyist education materials
Outreach/ Engage	Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.	The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.	<ol style="list-style-type: none"> 1. Outreach to client groups: -City staff/officials -people doing business with the City 2. Sustain/enhance general PEC social media outreach 3. PEC Roadshow – focus on CF project outreach (Commissioners) 4. Engage Boards/Commissions regarding Sunshine requirements (ensure/review agenda postings online)
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ol style="list-style-type: none"> 1. Lobbyist Registration – pilot new e-filing system, create online open data format for public accessibility 2. Form 803 Behested Payments – implement e-filing process, create online open data format for public accessibility 3. Initiate/develop project plan to establish contractor database 4. Open Disclosure 2020 – campaign data visualization project 5. Government Integrity Data Project planning and development
Detect/ Deter	PEC staff proactively detects potential violations and efficiently investigates complaints of non-	Public servants, candidates, lobbyists, and City contractors are motivated to comply with	<ol style="list-style-type: none"> 1. Focus on ethics violations, proactive investigations 2. Conduct complaint intakes within 2 weeks 3. Collaborate with other government law enforcement agencies

ATTACHMENT 10

	compliance with laws within the PEC's jurisdiction.	the laws within the PEC's jurisdiction.	4. Conduct audits to identify common, across-the-board compliance issues
Prosecute	Enforcement is swift, fair, consistent, and effective.	Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.	<ol style="list-style-type: none"> 1. Conduct hearings as needed 2. Complete City ticket cases 3. Expedite Sunshine Mediations ✓ 4. Amend Complaint Procedures ✓ 5. Resolve all 2014 and 2015 cases ✓ 6. Streamline and expand enforcement systems to incorporate broader tools
Administration/ Management	PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.	PEC staff model a culture of accountability, transparency, innovation, and performance management.	<ol style="list-style-type: none"> 1. Revise PEC Enabling Ordinance 2. Publish performance goals and data on PEC website – dashboards 3. Review data to adjust activities throughout the year 4. Ongoing: professional development and staff reviews ✓