

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE CITY OF OAKLAND PUBLIC ETHICS COMMISSION
HEARING OFFICER JODIE SMITH

In the Matter of:

THOMAS ESPINOSA, et al.,

Respondent.

Case No. 16-14

**FINDINGS OF FACT AND
CONCLUSIONS**

1. Hearing Officer Jodie Smith heard this case on April 27, 2021 over internet video conferencing equipment. Kellie Johnson, Enforcement Chief, represented the Public Ethics Commission (PEC) Enforcement Unit (“Petitioner”). Respondent Thomas Espinosa (“Respondent”) did not appear.

2. The record was closed, and the case submitted on April 27, 2021. Petitioner’s brief is attached as Exhibit A to these Findings and Conclusions. The declaration of PEC Investigator Simon Russell is attached as Exhibit B to these Findings and Conclusions. The Evidence Exhibit List of attachments to the declaration of Simon Russell, with a link to access the attachments, is attached as Exhibit C to these Findings and Conclusions.

I. PRELIMINARY MATTERS

3. Respondent did not attend the hearing on April 27, 2021. The PEC’s hearing notices

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 indicate that, after contact from the Respondent and his family member Paul Reyes, the PEC first
2 rescheduled the hearing to occur in person to accommodate the Respondent's preferences.
3 However, the PEC later returned to a Zoom format for the hearing, as reflected in the last updated
4 notice to Respondent stating that "on Monday, April 19, you and Mr. Reyes met with Enforcement
5 Chief Kellie Johnson successfully using the Zoom technology" and including information for how
6 the Respondent could access the hearing by Zoom. The hearing notices met the requirements of
7 PEC Mediation & Complaint Procedures, section VII.B.

8 4. Though the Respondent did not attend the hearing, Reyes participated by Zoom. He
9 stated that he is Respondent's brother-in-law and that he had tried to secure Respondent's
10 attendance at the hearing. Reyes clarified that he was not participating in the hearing as the
11 Respondent's representative and that the Respondent did not ask him to attend the hearing on his
12 behalf. Rather, Reyes stated that his mother-in-law asked him to help Respondent.

13 5. "If the respondent fails to appear at a properly noticed hearing, Commission staff
14 may proceed with presenting the Commission's case or may request to submit a written summary in
15 lieu of a verbal presentation. The hearing officer may proceed with issuing findings and
16 recommendations based solely on the information received from Commission staff."¹ Accordingly,
17 Petitioner agreed that the hearing officer would proceed with issuing findings and recommendations
18 based solely on information received from Commission staff. The majority of that information is
19 contained in Petitioner's hearing brief, Declaration of Simon Russell, and attached evidentiary
20 documents. In response to the hearing officer's questions at the hearing, Petitioner supplemented
21 the documents they had provided prior to the hearing with several documents that had been
22 inadvertently omitted, along with live testimony from Simon Russell about the origin and context of
23 the additional documents.

24 6. The hearing officer proceeded to issue this report of findings of fact and conclusions
25 based solely on the information provided by Commission staff prior to and at the hearing, in
26 _____

¹ PEC Mediation & Complaint Procedures, section VII.F.8.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 accordance with PEC Mediation & Complaint Procedures, section. VII.F.8. The record was closed,
2 and the case submitted on April 27, 2021.

3 **II. EVIDENTIARY STANDARD**

4 7. The standard of proof applied in this hearing is the preponderance of evidence.² The
5 burden of proof is on the petitioner.³ This means that the petitioner must demonstrate that the
6 weight of the evidence shows that it was more likely than not—a 50% or greater likelihood—that
7 respondent violated the law. To withstand a request for re-hearing, the proposed Findings of Fact
8 may not contain a material error of fact that necessarily affects one or more conclusions and the
9 conclusions must be supported by substantial evidence.⁴

10 **III. VIOLATIONS**

11 8. Respondent Thomas Espinosa was a Specialty Combination Inspector, commonly
12 referred to as a “building inspector” in the City of Oakland’s Department of Planning & Building
13 from 2005 to 2016.⁵ The preponderance of the evidence shows that during this employment in 2015
14 and 2016, he committed 43 violations of City of Oakland ethics laws. He violated laws prohibiting
15 bribery, misuse of City authority, conflicts of interest, and misuse of public resources, and he failed
16 to make mandatory disclosures of financial interests. The law, facts, and violations are detailed in
17 the following paragraphs.

18 **A. Bribery—Soliciting Money in Exchange for Performance of an Official Act**

19 9. Law: A City employee may not solicit or accept anything of value in exchange for
20 the performance of any official act.⁶

21 10. Findings of Fact: **Williams**: Respondent extracted payments from Elizabeth
22 Williams—a landlord who owns several rental properties in Oakland and who has been sued by the
23 City of Oakland multiple times for failing to adequately maintain her properties⁷—in exchange for

24 ² Cal. Evid. Code §115; PEC Complaint Procedures § VII.I.4.

25 ³ Cal. Evid. Code §500.

25 ⁴ PEC Complaint Procedures §VII.I.1.a.

26 ⁵ Declaration of PEC Investigator Simon Russell (“Russell Decl.”) ¶4.

26 ⁶ Oakland Municipal Code (O.M.C.) § 2.25.070.

⁷ Russell Decl. ¶17.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 inspections, issuing green tags, and City building permits (plumbing, electrical and mechanical) that
2 were either conducted by himself or City Building Inspector co-worker Anthony Harbaugh.⁸ The
3 proper process is for a property owner to request permits and inspections at the Building
4 Department counter and pay fees to the City, not to the inspectors who come out to the property on
5 the City's behalf.⁹ Respondent solicited and received the following payments from Williams:

- 6 a. In November, 2015, the Respondent solicited \$300 for 2735 Market Street permits;¹⁰
- 7 b. In January 2016, the Respondent solicited \$300 for 859 Mead Street inspection and
8 permit pass;¹¹
- 9 c. In March, 2016 the Respondent solicited \$300 for 877 27th Street permits and rough
10 inspections;¹² and
- 11 d. In March, 2016, the Respondent solicited \$300 for 877 27th Street permits and final
12 inspections.¹³

13 11. **Charman:** In February 2016, Respondent instructed real estate broker Bill Charman
14 to pay him \$1,500 to finish the building permit inspection process that was impeding Charman's
15 client's ability to finish renovations on Charman's clients' home at 4163 Rifle Lane.¹⁴ Once
16 Charman paid the money, the Respondent expanded the scope of work permitted under the permits
17 and cleared the building violations as abated without going through the normal process of
18 additional inspections and permits.¹⁵

19 12. **Conclusions:** Respondent violated Section 2.25.070(A) of the Oakland Government
20 Ethics Act by:

- 21 a. soliciting \$300 from Williams in exchange for her permits for 2735 Market Street
22

23 ⁸ Anthony Harbaugh was adjudicated by the Public Ethics Commission in November 2020. In the Matter of Anthony
Harbaugh, Case No. 18-14. (Petitioner's Brief, p. 1:25-28).

24 ⁹ Russell Decl. ¶¶4-9 and referenced attachments.

25 ¹⁰ Russell Decl. ¶¶47-64 and referenced attachments.

26 ¹¹ Russell Decl. ¶¶28-46 and referenced attachments.

¹² Russell Decl. ¶¶65-75 and referenced attachments.

¹³ Russell Decl. ¶¶65-75 and referenced attachments.

¹⁴ Russell Decl. ¶¶83-94 and referenced attachments.

¹⁵ Russell Decl. ¶¶83-94 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 passing inspections. (Count 11).

2 b. soliciting \$300 from Williams in exchange for the Building Department passing
3 her permit inspections, and issuing Green Tags, for 857 Mead Avenue. (Count 4).

4 c. soliciting \$300 from Williams in exchange for building, mechanical, electrical, and
5 plumbing permits for 877/879 27th Street passing rough inspections. (Count 16).

6 d. soliciting \$300 from Williams in exchange for building, mechanical, electrical, and
7 plumbing permits for 877/879 27th Street passing final inspections. (Count 17).

8 e. soliciting \$1,500 from Charman in exchange for resolving outstanding permit issues
9 for 4163 Rifle Lane. (Count 21).

10 **B. Misuse of City Authority: Using City Authority to Induce or Coerce a Person to**
11 **Provide an Economic Gain**

12 13. Law: A City employee may not use his or her position, or the power or authority of
13 his or her position, in any manner intended to induce or coerce any person to provide any private
14 advantage, benefit, or economic gain to the City employee or any other person.¹⁶

15 14. Findings of Fact: On March 31 2016, the Respondent, while in his official capacity
16 as a Building Inspector, intentionally issued a “work-stop order” on property improvements
17 occurring at 6220 Valley View to force or pressure property owner Alex Machado into making
18 payments to him.¹⁷ Respondent directly requested or demanded money from Machado to ensure
19 that the work at the job site would pass City inspection and that he would not manipulate the
20 property data in the City’s computer system against Machado.¹⁸ Initially in March 2016, Machado
21 gave Respondent \$200 in cash.¹⁹

22 15. Later in response to a demand from Respondent for \$4,500, Maryline Pavlic—
23 Machado’s bookkeeper and spouse—obtained a cashier’s check on April 13, 2016, for \$4,500
24

25 ¹⁶ O.M.C. § 2.25.060 (A)(2).

¹⁷ Russell Decl. ¶¶132-137 and referenced attachments.

26 ¹⁸ Russell Decl. ¶¶135, 137, 148, 150 and referenced attachments.

¹⁹ Russell Decl. ¶141 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 payable to Respondent on behalf of Machado. Espinosa deposited the check into his personal bank
2 account that same day.²⁰

3 16. Respondent demanded an additional \$5,000 from Machado.²¹ On April 27, 2016,
4 Pavlic obtained another cashier's check payable to Respondent for \$5,000.²² Espinosa deposited
5 this check into his personal account that same day.²³ Respondent's demands stemmed from his
6 underlying threat that he could use his City position to adversely affect Machado's interests in the
7 property.²⁴

8 17. Conclusion: In March 2016, Respondent issued a "work-stop order" on 6220 Valley
9 View for the purpose of inducing or coercing Machado into providing Respondent with payments.
10 By using his authority as a City official to induce or coerce Machado to provide him with economic
11 gain, Respondent violated Section 2.25.060(A)(2) of the Oakland Government Ethics Act. (Count
12 28.)

13 C. Conflict of Interest—Making a Governmental Decision Involving a 14 Source of Income

15 18. Law: A City employee may not make, participate in making, or seek to influence
16 decisions of the City in which the City employee has a disqualifying financial interest.²⁵ A City
17 employee has a disqualifying financial interest in a governmental decision if the decision will have
18 a reasonably foreseeable material financial effect on any of his or her qualifying financial
19 interests.²⁶ A City employee makes a governmental decision if he or she authorizes, directs,
20 obligates, or commits his or her agency to any course of action.²⁷ A City employee has a
21 disqualifying financial interest in any individual or business entity from whom he or she has been
22 provided or promised income aggregating \$500 or more within 12-months prior to the time when

23 ²⁰ Russell Decl. ¶¶146-148 and referenced attachments.

24 ²¹ Russell Decl. ¶¶149, 150 and referenced attachments.

25 ²² Russell Decl. ¶149 and referenced attachments.

26 ²³ Russell Decl. ¶149 and referenced attachments.

27 ²⁴ Russell Decl. ¶¶132-50 and referenced attachments.

²⁵ O.M.C. § 2.25.040 (A); California Government Code (GC) § 87100.

²⁶ Fair Political Practices Commission (FPPC) Regulation 18700 (a).

²⁷ FPPC Regulation 18704(a).

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 the relevant government decision is made.²⁸ The financial effect of a decision on a disqualifying
 2 financial interest is presumed to be reasonably foreseeable if the disqualifying financial interest is a
 3 named party in, or the subject of, the decision before the City employee or the City employee's
 4 agency.²⁹ For income received by the official, the reasonably foreseeable financial effect of the
 5 decision on the City employee's disqualifying financial interest is material if the source of the
 6 income is a claimant, applicant, respondent, contracting party, or is otherwise identified as the
 7 subject of the proceeding.³⁰

8 19. Findings of Fact: **Williams**: On multiple occasions between October 1, 2015 and
 9 March 14, 2016, the Respondent, while in his official capacity as a City Building Inspector,
 10 received payments from Williams for private contract work, consultation, and inspection work on
 11 her multiple properties.³¹ Respondent received the following checks from Williams:³²

<i>Date of Deposit</i>	<i>Date on Check</i>	<i>Amount</i>	<i>Attachment in Simon Russell declaration</i>
06/26/2015	06/26/2015	\$30,000.00	Attachment 1
08/26/2015	08/26/2015	\$40,000.00	Attachment 2
09/08/2015	09/04/2015	\$25,000.00	Attachment 3
09/18/2015	09/18/2015	\$5,000.00	Attachment 4
09/24/015	09/24/2015	\$12,000.00	Attachment 5
10/16/2015	10/16/2015	\$11,570.00	Attachment 6
11/06/2015	11/06/2015	\$6,108.00	Attachment 7
11/13/2015	11/13/2015	\$6,000.00	Attachment 8
11/20/2015	11/20/2015	\$5,763.00	Attachment 9
11/27/2015	11/27/2015	\$7,840.00	Attachment 10
12/04/2015	12/04/2015	\$6,365.00	Attachment 11
12/10/2015	12/10/2015	\$6,264.00	Attachment 12
12/18/2015	12/18/2015	\$6,404.00	Attachment 13
12/28/2015	12/28/2015	\$7,865.00	Attachment 14
03/03/2016	03/03/2016	\$850.00	Attachment 15
Total = \$177,029.00			

22 20. On September 22, 2015, Respondent filled out and signed a "CE Routing Slip",
 23 which was submitted along with a building permit for Williams' 2735 Market Street property,
 24

25 ²⁸ G.C. § 87103(c).

²⁹ FPPC Regulation 18701.

³⁰ FPPC Regulation 18702.3 (a)(1).

26 ³¹ Russell Decl. ¶¶18-26 and referenced attachments.

³² Russell Decl. ¶18 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 despite the fact that Respondent was not the code enforcement inspector assigned to the case that
2 this permit was meant to resolve.³³ Respondent certified on the form that Williams' permit
3 application accurately reflected the scope of work being conducted at the property.³⁴ He also
4 appears to have initially waived any penalty fees or the need for a field check, but those entries
5 have been crossed out and revised.³⁵ Standard practice is for the inspector assigned to that property
6 to execute the routing slip.³⁶ As the table above shows, Respondent had received \$100,000 from
7 Williams in the twelve months prior to September 22, 2015.³⁷ Instead of recusing himself from the
8 official City inspections and permit considerations of Williams' properties for which he had
9 received payments, the Respondent participated in decisions to schedule inspections and grant
10 permits to those properties.³⁸

11 21. On October 27, 2015, Respondent represented himself as the agent acting for
12 Williams in her permit application and obtained new building, plumbing and electrical permits on
13 the 2735 Market Street property.³⁹

14 22. Additionally, Williams owned 915 24th Street.⁴⁰ In September 2013, a City building
15 inspector verified building code violations at 915 24th Street and, in response, opened a code
16 enforcement case against Ms. Williams.⁴¹ The code case remained outstanding until October 1,
17 2015, when Respondent closed the code enforcement case.⁴² Between June 26 and September 24,
18 2015, Respondent received payments totaling \$112,000 from Williams.⁴³

19 23. **Charman:** In February 2016, the Respondent, while in his official capacity as a City
20 Building Inspector, received payments from Bill Charman for private inspections and permit
21

22 ³³ Russell Decl. ¶55 and referenced attachments.

23 ³⁴ *Ibid.*

24 ³⁵ *Ibid.*

25 ³⁶ Russell Decl. ¶55 and referenced attachments.

26 ³⁷ Russell Decl. ¶18 and referenced attachments.

³⁸ Russell Decl. ¶¶29-80 and referenced attachments.

³⁹ Russell Decl. ¶58 and referenced attachments.

⁴⁰ Russell Decl. ¶76 and referenced attachments.

⁴¹ Russell Decl. ¶¶77-78 and referenced attachments.

⁴² Russell Decl. ¶¶78 & 80 and referenced attachments.

⁴³ Russell Decl. ¶¶18 & 79 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 considerations on his clients' Rifle Lane property and instead of recusing himself from the official
2 City inspections and permit consideration of the Rifle Lane property, the Respondent participated in
3 decisions to schedule inspections and grant permits to the Rifle Lane property.⁴⁴

4 24. Charman paid Respondent \$1,500 with a check.⁴⁵ Respondent deposited the
5 payment in his personal bank account on that same day.⁴⁶

6 25. **Machado**: On or about March 31, 2016, the Respondent, issued a stop work order
7 on the 6220 Valley View property owned by Alex Machado, rather than recuse himself from
8 official City decisions regarding the property.⁴⁷ In the previous 12 months, Machado had given
9 Respondent \$500 on January 16, 2016, \$1,700 on February 27, 2016, and \$200 on March 13, 2016,
10 for a total of \$2,400.⁴⁸ During that time, Machado had a business relationship in the sense that
11 Espinosa indicated that he had investors and wanted to acquire Machado's property.⁴⁹

12 26. **Tang**: In January 2015, the Respondent, while in his official capacity as a City
13 Building Inspector conducted construction/contract work on the property of Vivian Tang at 8925
14 Lawlor St.⁵⁰

15 27. On January 29, 2015, Tang wrote Espinosa a check for \$10,000.00. The memo line
16 reads: "Total of \$21,500 Paid \$10,000 8925 Lawlor Oakland basement." The check was deposited
17 the same day into Respondent's Chase bank account.⁵¹

18 28. On February 6, 2015, Tang wrote Respondent a check for \$11,500.00. The memo
19 line reads: "For: 8925 Lawlor St Basement Conversion [*sic*]". The check was deposited the same
20 day into the same bank account as the previous check.⁵²

21 29. On June 12, 2015, Tang wrote Respondent a check for \$3,100.00 to pay an invoice
22

23 ⁴⁴ Russell Decl. ¶¶81-94 and referenced attachments.

⁴⁵ Russell Decl. ¶91 and referenced attachments.

⁴⁶ *Ibid.*

⁴⁷ Russell Decl. ¶¶144-146 and referenced attachments.

⁴⁸ Russell Decl. ¶¶138-141, 143 and referenced attachments.

⁴⁹ Russell Decl. ¶¶135-136 and referenced attachments.

⁵⁰ Russell Decl. ¶¶102-106 & 112 and referenced attachments.

⁵¹ Russell Decl. ¶102 and referenced attachments.

⁵² Russell Decl. ¶103 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 from Respondent. The memo line reads: “for 8925 Lawlor St Oakland CA”. The check was
2 deposited the same day into the same bank account as the previous two checks from Tang to
3 Respondent.⁵³

4 30. Instead of recusing himself form the official City inspections and permit
5 considerations of the Lawlor St. property because he had received \$24,600 from Tang, Respondent
6 participated in decisions to schedule inspections and grant permits to Tang on the property:

7 31. On February 19, 2015, Respondent passed an inspection for Tang’s building
8 permit.⁵⁴

9 32. On February 19, 2015, Respondent passed an inspection for Tang’s electrical
10 permit.⁵⁵

11 33. On February 19, 2015, Respondent passed an inspection for Tang’s plumbing
12 permit.⁵⁶

13 34. On February 19, 2015, Respondent passed an inspection for Tang’s mechanical
14 permit.⁵⁷

15 35. Conclusions: On October 1, 2015, Respondent had a disqualifying financial interest
16 in any governmental decision involving Williams’ property at 915 24th Street because he had
17 received income totaling \$112,000 from Williams within the prior 12 months. On October 1, 2015,
18 Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act by closing a code
19 enforcement case against Williams for 915 24th Street. (Count 3).

20 36. On March 31, 2016, Respondent violated Section 2.25.040(A) of the Oakland
21 Government Ethics Act by issuing a “work-stop order” on 6220 Valley View, a property owned by
22 Machado, with whom Respondent had a business relationship at the time and from whom
23 Respondent had received \$2,400 in the preceding 12 months. (Count 27).

24 _____
25 ⁵³ Russell Decl. ¶¶112-113 and referenced attachments.

26 ⁵⁴ Russell Decl. ¶¶101,108 and referenced attachments.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 37. On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland
2 Government Ethics Act by passing another inspection for Tang's building permit for 8925 Lawlor
3 Street despite having received \$21,500 from her in the preceding 12 months. (Count 34).

4 38. On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland
5 Government Ethics Act by passing another inspection for Tang's electrical permit for 8925 Lawlor
6 Street despite having received \$21,500 from her in the preceding 12 months. (Count 35).

7 39. On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland
8 Government Ethics Act by passing another inspection for Tang's plumbing permit for 8925 Lawlor
9 Street despite having received \$21,500 from her in the preceding 12 months. (Count 36).

10 40. On February 19, 2015, Respondent violated Section 2.25.040(A) of the Oakland
11 Government Ethics Act by passing another inspection for Tang's mechanical permit for 8925
12 Lawlor Street despite having received \$21,500 from her in the preceding 12 months. (Count 37).

13 41. Count 7 alleges that on September 22, 2015, Respondent violated Section
14 2.25.040(A) of the Oakland Government Ethics Act by waiving the requirement that Williams
15 submit an architectural plan approved by the City's Zoning Department with her building permit
16 application for 2735 Market Street, confirming that the monetary valuation on her building permit
17 application was correct, allowing her building permit to be issued over-the-counter, and waiving the
18 requirement that she submit photos of the proposed project with her building permit application.
19 While Petitioner's evidence does not support these factual allegations, Petitioner's evidence does
20 support factual findings that comprise a violation of this statute with respect to the 2735 Market
21 Street property. As demonstrated in paragraphs 20-21 above, Respondent made an official decision
22 on Williams' code enforcement matter by certifying that the permit application accurately reflected
23 the scope of work being conducted at the property, despite his financial interest. On this factual
24 basis, the evidence supports a conclusion that Respondent violated the law alleged in Count 7 with
25 regard to the 2735 Market Street property.

26

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 42. Counts 30-33 relate to official decisions Respondent made regarding this property on
2 January 21, 2015. Respondent did not receive a first payment from Tang until January 29, 2015,
3 therefore these decisions did not violate the law in question. Petitioner presented evidence of emails
4 from Respondent to Tang on January 15 & 16, 2015 that could indicate an agreement for income as
5 of that date⁵⁸. However, because those emails did not contain any indication of the amount of
6 money Tang would pay Respondent, the date work would begin, or other indicators of a mutual
7 agreement, and because there is no evidence of a response from Tang, the evidence is not sufficient
8 to support the inference of a promise of income prior to January 21, 2015.

9 **D. Conflict of Interest—Attempting to Influence a Governmental Decision**
10 **Involving a Source of Income**

11 43. Law: A City employee may not make, participate in making, or seek to influence
12 decision of the City in which the City employee has a disqualifying financial interest.⁵⁹ A City
13 employee has a disqualifying financial interest in a governmental decision if the decision will have
14 a reasonably foreseeable material financial effect on any of his or her qualifying financial
15 interests.⁶⁰ A City employee attempts to use his or her official position to influence a decision when
16 he or she contacts or appears before any official in his or her agency for the purpose of affecting the
17 decision.⁶¹ A City employee has a disqualifying financial interest in any individual or business
18 entity from whom he or she has been provided or promised income aggregating \$500 or more
19 within 12-months prior to the time when the relevant government decision is made.⁶² The financial
20 effect of a decision on a disqualifying financial interest is presumed to be reasonably foreseeable if
21 the disqualifying financial interest is a named party in, or the subject of, the decision before the City
22 employee or the City employee's agency.⁶³ For income received by the official, the reasonably
23 foreseeable financial effect of the decision on the City employee's disqualifying financial interest is

24 ⁵⁸ Russell Decl. ¶99.

25 ⁵⁹ O.M.C. § 2.25.040 (A); GC § 87100.

26 ⁶⁰ FPPC Regulation 18700 (a).

⁶¹ FPPC Regulation 18704 (c)(1).

⁶² G.C. § 87103(c).

⁶³ FPPC Regulation 18701.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 material if the source of the income is a claimant, applicant, respondent, contracting party, or is
2 otherwise identified as the subject of the proceeding.⁶⁴

3 44. Findings of Fact: Williams: On January 12, 2016, Respondent and Williams
4 discussed Williams' concerns regarding the electrical permit that had failed inspection twice at 857
5 Mead Avenue.⁶⁵ In response, Respondent told her that he would talk to his colleague and co-worker
6 Anthony Harbaugh about it.⁶⁶ Harbaugh is and was, at all relevant times, a City building
7 inspector.⁶⁷ On January 13, 2016, Harbaugh conducted a final inspection for the electrical permit,
8 issued it a "pass," and attached Green Tags on the electrical meters at 857 Mead Ave.⁶⁸ On January
9 22, 2016, Respondent solicited \$300 from Williams for the final inspection and the issuance of the
10 Green Tags on the electrical meters at 857 Mead Avenue that took place on January 13, 2016.⁶⁹ On
11 March 1, 2016, Respondent sent Williams a handwritten note requesting \$300 for electrical
12 inspections on the property.⁷⁰ Respondent had influenced Harbaugh's issuance of passing
13 inspections.⁷¹ In the 12 months before January 13, 2016, Respondent had received over \$176,000
14 from Williams.

15 45. On October 27, 2015, Respondent was identified as Williams' agent in connection
16 with Williams' application for new building, plumbing and electrical permits—which were
17 granted—for Williams' 2735 Market Street property.⁷² In the 12 months prior, Respondent had
18 received over \$123,000 from Williams.⁷³

19 46. On November 10, 2015 Respondent, acting as an agent for Williams, applied to the
20 Building Department for a building permit, an electrical permit, a mechanical permit, and a
21

22 ⁶⁴ FPPC Regulation 18702.3 (a)(1).

23 ⁶⁵ Russell Decl. ¶¶39-40 and referenced attachments.

24 ⁶⁶ *Ibid.*

25 ⁶⁷ Russell Decl. ¶¶8, 22, 23, 39-43, 69-72 and referenced attachments.

26 ⁶⁸ Russell Decl. ¶¶39-40 and referenced attachments.

⁶⁹ Russell Decl. ¶¶44-46 and referenced attachments.

⁷⁰ Russell Decl. ¶46 and referenced attachments.

⁷¹ Russell Decl. ¶¶22-23, 32-46 and referenced attachments.

⁷² Russell Decl. ¶58 and referenced attachments.

⁷³ Russell Decl. ¶18 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 plumbing permit, for kitchen and bathroom remodels to 877 27th Street.⁷⁴ On November 23, 2015,
2 a City building inspector conducted a rough inspection for the electrical and plumbing permits that
3 Respondent applied for and did not pass either.⁷⁵ On December 11 and 16, 2015, Harbaugh, in his
4 official capacity as a City building inspector, conducted inspections for the building, mechanical,
5 electrical, and plumbing permits that Respondent applied for on behalf of Williams, and issued a
6 pass for each.⁷⁶ Respondent had influenced Harbaugh's issuance of passing inspections.⁷⁷ In the
7 twelve months prior to December 11, 2015, Respondent had received over \$161,000.⁷⁸ On March
8 1, 2016, Respondent solicited \$600 – \$300 each – from Williams for the building, mechanical,
9 electrical, and plumbing permits for 877/879 27th Street passing rough and final inspections on
10 December 11 and 16, 2015.⁷⁹

11 47. **Charman:** On February 9, 2016, Charman and Respondent met outside Oakland
12 City Hall.⁸⁰ During their meeting, Respondent told Charman that Charman would need to pay
13 \$1,500 for the inspections needed to resolve the outstanding permit issues for 4163 Rifle Lane.⁸¹
14 Charman agreed to pay the \$1,500, and Respondent directed him to make the payment to
15 Respondent personally, rather than to the City.⁸² In response, Charman issued Respondent a \$1,500
16 check, which Respondent deposited into his personal bank account on the same day.⁸³ On February
17 10, 2016, Respondent changed the code enforcement matter to “abated” and Harbaugh approved
18 the frame inspections on the building, electrical, and plumbing permits that Charman applied for
19 only the day before.⁸⁴ In response, Harbaugh scheduled himself to conduct the frame inspections on
20 the same day and the final inspections on February 16, 2016 and signed off on the frame
21

22 ⁷⁴ Russell Decl. ¶¶67 and referenced attachments.

23 ⁷⁵ Russell Decl. ¶¶68 and referenced attachments.

24 ⁷⁶ Russell Decl. ¶¶69-73 and referenced attachments.

25 ⁷⁷ Russell Decl. ¶¶22-23 & 69-75 and referenced attachments.

26 ⁷⁸ Russell Decl. ¶18 and referenced attachments.

⁷⁹ Russell Decl. ¶¶74-75 and referenced attachments.

⁸⁰ Russell Decl. ¶90 and referenced attachments.

⁸¹ *Ibid.*

⁸² Russell Decl. ¶90 and referenced attachments.

⁸³ Russell Decl. ¶91 and referenced attachments.

⁸⁴ Russell Decl. ¶¶92-94 and referenced attachments, especially Attachments 57 & 64.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 inspections.⁸⁵

2 48. Conclusions:

3 49. On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use
4 his official position to influence the Building Department's decision to issue Williams an electrical
5 permit for 2735 Market Street. (Count 8).

6 50. On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use
7 his official position to influence the Building Department's decision to issue Williams a building
8 permit for 2735 Market Street. (Count 9).

9 51. On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use
10 his official position to influence the Building Department's decision to issue Williams a plumbing
11 permit for 2735 Market Street. (Count 10).

12 52. On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland
13 Government Ethics Act by attempting to use his official position to influence the Building
14 Department's decision to issue Williams a building permit for 877/879 27th Street. (Count 12).

15 53. On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland
16 Government Ethics Act by attempting to use his official position to influence the Building
17 Department's decision to issue Williams an electrical permit for 877/879 27th Street. (Count 13).

18 54. On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland
19 Government Ethics Act by attempting to use his official position to influence the Building
20 Department's decision to issue Williams a mechanical permit for 877/879 27th Street. (Count 14).

21 55. On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland
22 Government Ethics Act by attempting to use his official position to influence the Building
23 Department's decision to issue Williams a plumbing permit for 877/879 27th Street. (Count 15).

24 56. On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland
25 Government Ethics Act by attempting to use his official position to influence the Building

26 _____

⁸⁵ *Ibid.*

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 Department's decision to issue Charman a building permit for 4163 Rifle Lane. (Count 22).

2 57. On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland
3 Government Ethics Act by attempting to use his official position to influence the Building
4 Department's decision to issue Charman an electrical permit for 4163 Rifle Lane. (Count 23).

5 58. On February 9, 2016, Respondent violated of Section 2.25.040(A) of the Oakland
6 Government Ethics Act by attempting to use his official position to influence the Building
7 Department's decision to issue Charman a plumbing permit for 4163 Rifle Lane. (Count 24).

8 59. Counts 5 & 6 allege that Respondent violated Section 2.25.040(A) of the Oakland
9 Government Ethics Act by submitting applications on Williams' behalf for electrical permits for the
10 857 Mead Avenue property. While Petitioner's evidence does not support these facts, Petitioner's
11 evidence does support factual findings that comprise two violations of this statute with respect to
12 857 Mead Avenue property. As demonstrated in the factual findings above for this property in
13 paragraph 44, Respondent influenced the inspection decisions of Harbaugh on passing the electrical
14 and plumbing permits for this property, despite Respondent's financial interest in Williams'
15 property. On this factual basis, the evidence supports a conclusion that Respondent violated the law
16 alleged in Counts 5 and 6. (Counts 5 and 6).

17 60. Counts 18, 19 and 20 allege that Respondent violated Section 2.25.040(A) of the
18 Oakland Government Ethics Act by attempting to use his official position to influence the Building
19 Department's decision to issue Williams building, electrical and plumbing permit for 877/879 27th
20 Street on March 14, 2016. While Petitioner's evidence does not support these facts, Petitioner's
21 evidence does support factual findings that comprise three violations of this statute with respect to
22 the 27th Street property. As demonstrated in the factual findings above for this property in
23 paragraph 46, Respondent influenced the inspection decision of Harbaugh on passing the electrical,
24 plumbing, building and mechanical permits, despite Respondent's financial interest in Williams'
25 property. On this factual basis, the evidence supports a conclusion that Respondent violated the law
26 alleged in Counts 18, 19, and 20. (Count 18-20).

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 E. Economic Interest Disclosure: Failing to Report a Source of Income

2 61. Law: Every City employee designated in the City's Conflict of Interest Code is
3 required to file statements of economic interests (Form 700) and disclose all required information
4 pursuant to the California Political Reform Act and the City's Conflict of Interest Code.⁸⁶

5 62. The City's Conflict of Interest Code incorporates FPPC Regulation 18730 and
6 requires every Specialty Combination Inspector in the City's Planning and Building Department
7 (Building Department) to report, on his or her statement of economic interests, investments and
8 business positions in business entities, sources of income, and interests in real property.⁸⁷ The
9 City's Conflict of Interest Code requires designated employees file their statement of economic
10 interests with the City Clerk's Office.⁸⁸

11 63. By April 1 of every year of employment, a Specialty Combination Inspector
12 (commonly referred to as a "Building Inspector") is required to report all reportable investments
13 and business positions in business entities, sources of income and interests in real property, held or
14 received during the previous calendar year.⁸⁹ They are also required to report within 30 days after
15 leaving office all reportable investments and business positions in business entities, sources of
16 income and interests in real property, received or held during the period between the closing date of
17 the last statement filed and the date their employment with the City is terminated.⁹⁰

18 64. Reportable income is any payment received by the Specialty Combination Inspector
19 and includes loans other than those received from a commercial lending institution.⁹¹ The Specialty
20 Combination Inspector is required to report the name and address of every source of income
21 aggregating \$500 or more in value during the period that discovered by the statement of economic
22 interests, the amount of income received, and a description of the consideration for which the
23

24 ⁸⁶ O.M.C. §2.25.040(B).

25 ⁸⁷ O.M.C. §3.16.010.

26 ⁸⁸ O.M.C. § 3.161.020.

⁸⁹ FPPC Regulation 18730, subds. (b)(6)(C).

⁹⁰ FPPC Regulation 18704 (b)(5)(D).

⁹¹ Government Code (G.C.) § 82030.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 income was received.⁹²

2 65. A business position must be reported when the filer is a director, officer, partner,
3 trustee, or employee of, or holds any position of management in, a business entity that has an
4 interest in real property in the jurisdiction, or does business or plans to do business in the
5 jurisdiction or has done business in the jurisdiction at any time during the two years prior to the
6 date the statement is required to be filed.⁹³

7 66. **Findings of Fact:** Respondent was a Specialty Combination Inspector in the City
8 Building and Planning Department from May 23, 2005 to August 16, 2016.⁹⁴ Respondent either
9 failed to do so outright or he failed to submit or report complete or accurate information on his
10 annual Form 700, including:

11 67. **The Williams Matter:** Respondent received multiple payments on at least four
12 separate properties in the City of Oakland owned by Williams between 2015 and 2016, and yet the
13 Respondent did not file a Form 700 for the year 2015 or upon his departure from the City in 2016.⁹⁵

14 68. **The Charman Matter:** Respondent received a \$1,500 payment on February 9, 2016
15 related to real property in the City of Oakland and failed to file a Form 700 for the year 2015 or
16 upon his departure from the City.⁹⁶

17 69. **The Machado Matter:** Respondent on five separate occasions extorted payments
18 from Machado regarding his 6220 Valley View property in Oakland.⁹⁷ On February 27, 2016, the
19 Respondent made \$1,000; On March 13, 2016 he collected \$200; on April 11, 20, 2016 he collected
20 \$1,000; on April 13, 2016 he collected \$4,500; and on April 27, 2016 the Respondent collected
21 another \$5,000 from Machado.⁹⁸ The Respondent did not report any of the income he took from
22 Machado because he failed to file a Form 700 for 2016.⁹⁹

23 _____
⁹² G.C. § 18700(a).

24 ⁹³ G.C. § 87209.

25 ⁹⁴ Russell Decl. ¶4.

26 ⁹⁵ Russell Decl. ¶¶ 17-18, 168-169 and referenced attachments.

⁹⁶ Russell Decl. ¶¶ 83-94, 168-169 and referenced attachments.

⁹⁷ Russell Decl. ¶¶ 138-141, 143, 168-169 and referenced attachments.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 70. **The Tang Matter**: On three separate occasions the Respondent extorted income
2 form Vivian Tang.¹⁰⁰ On January 29, 2015 she paid the Respondent \$10,000.¹⁰¹ On February 6,
3 2015 she paid the Respondent \$11,500.¹⁰² Finally, on May 30, 2015 Tang paid the Respondent
4 \$3,100.¹⁰³ All of the aforementioned payments were not reported because the Respondent failed to
5 file a Form 700 for 2015.¹⁰⁴

6 71. **The Ana Siu Matter**: The Respondent received a total of \$66,277 from Ana Sui and
7 failed to report the income he received from Ana Siu in 2014 and failed to file a Form 700 in
8 2015.¹⁰⁵ Siu and Respondent were in business together, focused on real property in the City of
9 Oakland.¹⁰⁶ Respondent had economic interests, investments and business positions in business
10 entities, sources of income, and interests in real property through their business relationship.¹⁰⁷

11 72. **The One Development and Investment Corporation (ODIC) Matter**: The
12 Respondent received income from the corporation he formed with Siu and ODIC related to real
13 property in the City of Oakland in the amount of \$19,770.¹⁰⁸ In 2015, Respondent was the president
14 of ODIC.¹⁰⁹ He failed to report this income or position when he failed to file a Form 700 for
15 2015.¹¹⁰

16 73. **The Pat Viswanthan Matter**: The Respondent received income from Pat
17 Viswanathan in the amount of \$1,000 in March 2015.¹¹¹ Viswanathan appears to have been trying
18 to develop a parcel of land that he owned, located at 5963 Margarido in Oakland, in 2016, with
19 Espinosa holding himself out to a vendor as a “project manager” on the project.¹¹² The Respondent
20

21 ¹⁰⁰ Russell Decl. ¶¶ 95-113, 168-169 and referenced attachments.

22 ¹⁰¹ Russell Decl. ¶102 and referenced attachments.

23 ¹⁰² Russell Decl. ¶103 and referenced attachments

24 ¹⁰³ Russell Decl. ¶112 and referenced attachments.

25 ¹⁰⁴ Russell Decl. ¶¶168-169 and referenced attachments.

26 ¹⁰⁵ Russell Decl. ¶¶114-131, 168-169 and referenced attachments.

¹⁰⁶ Russell Decl. ¶¶114-131 and referenced attachments.

¹⁰⁷ *Ibid.*

¹⁰⁸ 114-131, 168-169 and referenced attachments.

¹⁰⁹ Russell Decl. ¶¶120-125 and referenced attachments.

¹¹⁰ Russell Decl. ¶¶168-169 and referenced attachments.

¹¹¹ Russell Decl. ¶160 and referenced attachments.

¹¹² *Ibid.*

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 did not file a Form 700 for 2015.¹¹³

2 74. **The Apex Construction Matter:** Apex Construction paid \$3,000 in consulting fees
3 to the Respondent in 2015 but the Respondent failed to file a Form 700 for the year 2015.¹¹⁴
4 Respondent was working with Apex—an Oakland-based corporation established by Stephen Tong
5 and Bosco Lai—throughout late 2015 and early 2016 in their efforts to develop properties located at
6 3600 Macarthur and 5325 San Pablo.¹¹⁵

7 75. **The Zati Uysal Matter:** Again in 2016, the Respondent failed to report the \$3,000
8 he received from Zati Uysal when he failed to file a Form 700.¹¹⁶ Uysal’s address is in Oakland at
9 the location of a business called “Delightfully Turkish” that is run by Uysal.¹¹⁷

10 76. **The Jerry Tran Matter:** Finally, in August 2016, the Respondent was paid \$3,500
11 by Jerry Tran and the Respondent failed to report this income when he failed to file a Form 700 for
12 the year 2016.¹¹⁸ Tran was a real estate broker and CEO with NextHome Generations, which has a
13 business address in Oakland, and operates in Oakland.¹¹⁹ Tran paid Respondent to open two
14 corporations for operating a marijuana-related business.¹²⁰

15 77. **Conclusions:**

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

19 79. On March 3, 2016, Respondent received income totaling \$850 from Williams.
20 Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to
21 report Williams as a source of income by September 15, 2016. (Count 2).

22 80. On February 9, 2016, Respondent received income totaling \$1,500 from Charman

23 ¹¹³ Russell Decl. ¶¶168-169 and referenced attachments.

24 ¹¹⁴ Russell Decl. ¶¶153-155, 168-169 and referenced attachments.

25 ¹¹⁵ Russell Decl. ¶¶153-155.

26 ¹¹⁶ Russell Decl. ¶¶161-162; 168-169 and referenced attachments.

¹¹⁷ Russell Decl. ¶162.

¹¹⁸ Russell Decl. ¶¶156-159, 168-169 and referenced attachments.

¹¹⁹ Russell Decl. ¶¶156-157 and referenced attachments.

¹²⁰ Russell Decl. ¶¶158-159 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 and therefore was required to report him as a source of income by September 15, 2016. Respondent
2 violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Charman
3 as a source of income by September 15, 2016. (Count 25).

4 81. Between February 27 and May 20, 2016, Respondent received income totaling
5 \$12,850 from Machado, who was doing business in Oakland. Respondent violated Section
6 2.25.040(B) of the Oakland Government Ethics Act by failing to report Machado as a source of
7 income by September 15, 2016. (Count 26.)

8 82. Between January 29 and May 20, 2015, Respondent received income totaling
9 \$24,600 from Vivian Tang, a person doing business in Oakland. Respondent violated Section
10 2.25.040(B) of the Oakland Government Ethics Act by failing to report Tang as a source of income
11 by April 1, 2016. (Count 29).

12 83. In 2015, Respondent received income totaling \$66,277 from Siu, a person doing
13 business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics
14 Act by failing to report Siu as a source of income by April 1, 2016. (Count 38).

15 84. In 2015, Respondent received income totaling \$19,770 from ODIC, a business entity
16 doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government
17 Ethics Act by failing to report ODIC as a source of income by April 1, 2016. (Count 39).

18 85. In 2015, Respondent was the president of ODIC, a business entity doing business in
19 Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by
20 failing to report his business position with ODIC by April 1, 2016. (Count 40).

21 86. On August 15, 2016, Respondent received income totaling \$3,500 from Jerry Tran, a
22 person doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland
23 Government Ethics Act by failing to report Tran as a source of income by September 15, 2016.
24 (Count 41).

25 87. On March 15, 2015, Respondent received income totaling \$1,000 from Pat
26 Viswanathan, a person doing business in Oakland. Respondent violated Section 2.25.040(B) of the

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 Oakland Government Ethics Act by failing to report Viswanathan as a source of income by
2 September 15, 2016. (Count 42).

3 88. On April 8, 2015, Respondent received income totaling \$3,000 from Zati Uysal, a
4 person doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland
5 Government Ethics Act by failing to report Uysal as a source of income by April 1, 2016. (Count
6 43).

7 89. On April 3, 2015, Respondent received income totaling \$3,000 from Apex
8 Construction, a business entity doing business in Oakland. Respondent violated Section
9 2.25.040(B) of the Oakland Government Ethics Act by failing to report Apex Construction as a
10 source of income by April 1, 2016. (Count 44).

11 **F. Misuse of Public Resources Violation: Using City Resources for Personal** 12 **Matters**

13 90. Law: A City employee may not use public resources for personal purposes.¹²¹
14 Personal purposes means activities for personal enjoyment, private gain or advantage, or an outside
15 endeavor not related to City business.¹²² Public resources means any property or asset owned by the
16 City, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones,
17 computers, vehicles, travel, and City compensated time.¹²³ Use means a use of public resources
18 which is substantial enough to result in a gain or advantage to the user or a loss to the City for
19 which a monetary value may be estimated.¹²⁴

20 91. Findings of Fact: Respondent repeatedly used City printers and computers to
21 produce his personal non-work-related emails, agreements, diagrams and itineraries.¹²⁵ These uses
22 were substantial enough to result in his own personal gain or advantage. The City suffered a loss for
23 the cost of the Respondent printing at least 114 pages of personal documents, and the Respondent
24

25 ¹²¹ O.M.C. § 2.25.060 (A)(1).

¹²² O.M.C. § 2.25.060 (A)(i) (a)(i).

26 ¹²³ O.M.C. § 2.25.060 (A) (1)(a)(iii).

¹²⁴ O.M.C. § 2.25.060 (A)(1)(a)(iv).

¹²⁵ Russell Decl. ¶¶165-167 and referenced attachments.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 was reprimanded for his conduct.¹²⁶

2 92. Respondent also misused his City-issued cell phone. The Respondent made 587 calls
3 within a single month – October 2015 – on a City owned cellular phone while Respondent was on
4 vacation.¹²⁷ He had more than five times the allowable minutes of phone usage for at least three
5 consecutive months in 2015.¹²⁸ Respondent was being disciplined for this use, which was excessive
6 and a misuse of public resources, not a minimal or incidental use.¹²⁹

7 93. Additionally, the Respondent used a City vehicle to monitor his personal project
8 management at a property site in the City of Orinda.¹³⁰ This use was not authorized and was a
9 misuse of City resources for Respondent's personal advantage.¹³¹

10 94. Conclusions:

11 95. In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government
12 Ethics Act by using a City-owned vehicle for personal matters unrelated to any City business.
13 (Count 45).

14 96. In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government
15 Ethics Act by using a City-owned computer and printer for personal matters unrelated to any City
16 business. (Count 46).

17 97. In 2015, Respondent violated Section 2.25.060(A)(1) of the Oakland Government
18 Ethics Act by using a City-owned cell phone for personal matters unrelated to any City business.
19 (Count 47).

20 **IV. PENALTIES**

21 98. Any person who violates any provision of the Oakland Government Ethics Act is
22 liable in an administrative proceeding before the Commission held pursuant to the Commission's
23 Complaint Procedures. The Commission may impose administrative penalties in an amount up to

24 ¹²⁶ Russell Decl. ¶¶165-167 and referenced attachments.

25 ¹²⁷ Russell Decl. Attachments 154-157 and testimony of Simon Russell.

26 ¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ Russell Decl. ¶¶163-164 and referenced attachments.

¹³¹ *Ibid.*

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 five thousand dollars (\$5,000) per violation, or up to three (3) times the amount not properly
2 reported or received, whichever is greater, per violation of the Oakland Government Ethics Act.¹³²

3 99. The PEC considers several factors to determine the appropriate penalty, including,
4 but not limited to, the following factors:¹³³

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

17 100. For serious violations, such as bribery and violations that do not qualify for a
18 warning letter or the streamlined stipulation program, the PEC will start a penalty amount with a
19 "base-level" amount and then adjust the penalty amount based on mitigating and aggravating
20 factors of the enforcement action.¹³⁴

21 101. The following are evidence of aggravating factors, including:

- 22 a. At the time of Respondent's conduct, he had worked for the Oakland Planning and
23 Building Department ten years. As a seasoned public servant, he would have been
24

25 _____
26 ¹³² O.M.C. § 2.25.080 (C)(2).

¹³³ Enforcement Penalty Guidelines, p. 2.

¹³⁴ Enforcement Penalty Guidelines, pp. 4-5.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

- 1 well versed in the Department's policies against receiving personal payments in
2 connection with official City work.
- 3 b. Respondent's abuse of his public decision-making authority concerning Planning
4 and Building Department requirements could have made the residential properties in
5 this report and their inhabitants less safe.
- 6 c. By engaging in bribery and misuse of public authority, Respondent undermined the
7 public's ability to trust the integrity of the City of Oakland's Planning and Building
8 Department's decision-making..
- 9 d. Respondent deliberately prioritized his private gain over the public good.
- 10 e. Respondent's conduct was a pattern that went on for over a year.
- 11 f. Respondent failed to take any steps to cure any of the violations.
- 12 g. Respondent corrupted other City employees by enlisting a co-worker into his
13 payment for inspection/permit scheme.
- 14 102. In mitigation, Respondent has no previous history of violations in the City of
15 Oakland.
- 16 103. In weighing the aggravating and mitigating factors, it is recommended that
17 Respondent be ordered to pay the maximum of \$5,000.00 on each of the 43 counts¹³⁵ for a total of
18 \$215,000.
- 19 ///
- 20 ///
- 21 ///
- 22 ///
- 23 ///
- 24 ///
- 25 ///
- 26 _____

¹³⁵ The evidence submitted did not support a conclusion that Respondent violated the law as alleged in Counts 30-33.

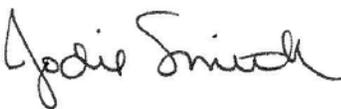
Item #6b - Hearing Officers Recommendation and Exhibits A-C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

V. **ORDER**

104. Based on the foregoing, it is recommended that Respondent Thomas Espinosa be ordered to pay a total administrative penalty of \$215,000 for 43 violations of the City of Oakland Government Ethics Act.

Dated: May 10, 2021

By: 

Hearing Officer Jodie Smith

EXHIBIT A

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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 Petitioner/Complainant

5 BEFORE THE CITY OF OAKLAND

6 PUBLIC ETHICS COMMISSION

8 ENFORCEMENT UNIT OF THE CITY OF OAKLAND)

Case No.: 16-14

9 PUBLIC ETHICS COMMISSION,
10)

Hearing Date: April 27-29, 2021

11 Complainant,

) **COMPLAINANT’S HEARING BRIEF**

12 v.

13 THOMAS ESPINOSA)

14 Respondent.
15 _____

16 Complainant, THE ENFORCEMENT UNIT OF THE CITY OF OAKLAND PUBLIC ETHICS
17 COMMISSION (“Complainant”), hereby submits its hearing brief containing written argument ahead of
the hearing scheduled for April 27-29, 2021.

18 **I. INTRODUCTION**

19
20 Respondent, Thomas Espinosa was a City employee from May 23, 2005, until August 16, 2016. At
21 all relevant times, Respondent used his position as a Specialty Combination Inspector in the Building
22 Department’s Code Enforcement Division, to arrange under the table deals, “quid pro quos,” with various
23 property owners. The Respondent would either be assigned to inspect a certain property or respond to a
24 complaint regarding a property and would persuade property owners to pay the Respondent a cash fee to
25 secure a pass on building inspections or permits. On other occasions the Respondent convinced property
26 and business owners to hire and pay him as an independent consultant or building contractor on their
27 building projects, despite the conflicts with his position with the City. To conduct some of these dirty
28 deals he enlisted the assistance of a Building Inspector co-worker, Anthony Harbaugh, to assist with the
inspections and permit approvals.¹

¹ Anthony Harbaugh was adjudicated by the Public Ethics Commission in November 2020. In the Matter of Anthony Harbaugh, Case No. 18-14.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 The Respondent's pay to play/quid pro quo scheme involved six different property owners and
2 multiple properties. The property owners that the Respondent extorted direct payments from were
Elizabeth Williams, Bill Charman, Alexandre Machado, Vivian Tang, and Ana Siu.

3 The Respondent also convinced four separate property owners, Pat Viswanathan, Apex Construction,
4 Zati Uysal and Jerry Tran to hire and pay him as a personal consultant to assist with odd assignments like
5 locating properties or warehouses for the use of marijuana facilities in the City of Oakland.

6 The Respondent, while a Building Inspector assigned to inspect the property owner's building project,
7 also entered into a business agreement with the property owner, Ana Siu, and formed a corporation, One
8 Development and Investment Corporation. The property owner paid the Respondent to file articles of
9 incorporation for the business and additional sums of money for contractor work on properties.

10 The Respondent, pursuant to both State law and City policy was required to report all income he
11 received in any given year. The Respondent filed Annual Statements of Economic Interests (Form 700)
12 with the City Clerk's Office for 2010, 2011, 2012, 2013, and 2014. To date, Respondent has not filed an
13 Annual Statement of Economic Interests including the income he extorted from property owners or his
14 payments as an independent consultant for 2015, nor did he file upon leaving the City his final Statement
15 of Economic Interests for the January 1 through August 16, 2016, period.

16 The Respondent also engaged in unlawful activity during City work time and utilized City
17 resources/property to facilitate his schemes. The Respondent used a City Vehicle to conduct his personal
18 contractor work in the City of Orinda. He also used City computers, printers, and telephones to send and
19 receive his personal invoices, contracts, terms of agreements, travel itineraries, project plans and emails.
20 His careless use of City resources resulted in a Building Department Supervisor referring the
21 Respondent's conduct to the Public Ethics Commission.

22 On October 15, 2018, Complainant filed its accusations in a Case Summary of Probable Cause before
23 the Public Ethics Commission. The Public Ethics Commission, pursuant to its Complaint Procedures
24 scheduled an evidentiary hearing in this matter to begin on April 27, 2021.

25 The Complainant recommends that at the conclusion of all the evidence, the Hearing Officer find the
26 Respondent in violation of all 47 violations of the Oakland Government Ethics Act alleged within this
27 memorandum, including the following: soliciting and receiving bribes; making, and seeking to use his
28 official position to influence, governmental decisions in which he had a disqualifying financial interest;
misusing City resources for personal financial gain; misusing his City position to induce/coerce others to
provide him with economic gain, and; failing to report significant loans and income from individuals with
matters before him as a City building inspector and impose a penalty of \$ 200,000.

II. BURDEN OF PROOF/EVIDENTIARY STANDARD

The Complainant has the burden of establishing Respondent's misconduct in this proceeding by
preponderance of the evidence. McCoy v. Board of Retirement, 183 Cal.App.3d 1044 (1986). To prove
something by a "preponderance of the evidence" means to prove that it is more probably true than not. A
preponderance of the evidence is the lowest burden of proof, used in civil actions for damages in
connection with claims not involving deliberate wrongdoing or breach of fiduciary duty and not seeking

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 punitive damages. In such cases, the finder of fact must be persuaded that there is more evidence in favor
2 of a given claim or assertion than there is against it. “The greater weight of the evidence... that has the
3 most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly
4 from all reasonable doubt, is still sufficient to free incline a fair and impartial mind to one side of the
5 issue rather than the other.” (Black’s Law Dictionary 11th Edition, 2019)

6 The California Code of Evidence (CCE) or strict rules of evidence which obtained in the courts are
7 not enforced in administrative proceedings and by extension does not apply to Public Ethic’s Commission
8 enforcement proceedings, which are also administrative. *McCoy v. Board of Retirement*, 183 Cal.App.3d
9 1044 (1986) [Citing *Jenner v. City Council*, (1958) 164 Cal App. 2d 490, 331 P.2d 176.]. Evidence that
10 may not be admissible under the CCE (hearsay, for example) may be admitted in this case if it has
11 probative value. Thus, a Hearing Officer may admit and give effect to evidence which possesses
12 probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

10 III. CREDIBILITY ASSESSMENTS

11 Complainant requests that, if this matter proceeds with live testimony, the Hearing Officer include
12 express credibility assessments in their findings memorandum which are based on subjective and
13 objective factors, such as the witness’s demeanor and manner of testifying. The Hearing Officer will aid
14 the Public Ethics Commission greatly in these contested cases if they explicitly identify the basis for their
15 witness credibility assessments. Upon review, the Commission can consider, but not defer to, a Hearing
16 Officer’s credibility assessments that include objective factors involving the intrinsic believability of
17 competing inferences or evidence, such as the inherent improbability of certain testimony or the existence
18 of corroboration. In circumstances in which the Hearing Officer’s credibility assessment is based upon a
19 combination of subjective and objective factors, the Hearing Officer should identify the role that both
20 types of factors play so that the Commission can determine how much weight to give to the Hearing
21 Officer’s findings.

22 On some issues, the Hearing Officer will be asked to assess the credibility of witnesses, including
23 Respondent. The Complainant requests that the Hearing Officer explicitly identify the basis for any
24 credibility assessments it may make.

22 IV. SUMMARY OF FACTS

23 The Pay to Play or Quid Pro Quo Schemes

24 Income from Elizabeth Williams

25 Elizabeth Williams owned approximately 15 residential rental properties in Oakland. In 2009, the
26 City and Ms. Williams entered into a stipulated final judgment and permanent injunction that prohibited
27 Ms. Williams and her agents from maintaining any of her properties in substandard, dangerous,
28 uninhabitable, unhealthy, or unsanitary condition, and failing to correct code violations in a timely

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 manner when directed to make repairs by City code compliance inspectors. Respondent, in his official
2 capacity, was assigned to inspect Ms. Williams' residential properties in Oakland and determine whether
3 they were in compliance with the stipulated final judgement and permanent injunction. By 2015,
4 Respondent was no longer assigned to the stipulated final judgment and permanent injunction between the
5 City and Ms. Williams.

6 Between June 26 and September 18, 2015, Respondent received checks totaling \$100,000 from Ms.
7 Williams and deposited each check into his personal bank account. According to Ms. Williams, the
8 \$100,000 was a loan to Respondent and she and Respondent agreed that Respondent would repay the loan
9 to Ms. Williams and pay her \$30,000 as consideration for the loan. To date, Respondent has not repaid
10 any part of the loan or the agreed upon consideration.

11 In 2015, Respondent offered and was hired to perform contract work on multiple Williams properties.
12 In exchange for his services, the Respondent received payments from Ms. Williams totaling \$76,179 for
13 contracting work and consulting he performed for her in his personal capacity, as follows:

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

14 On March 3, 2016, Respondent received a payment of \$850 from Ms. Williams for contracting work
15 and/or consulting he performed for her in his personal capacity. Respondent has not, to date, reported
16 receiving any income from Ms. Williams in 2015 or 2016.²

17 **Elizabeth Williams and 915 24th Street**

18 A property that the Respondent performed contract services for and arranged permits and inspections
19 on was the 915 24th Street property. At all relevant times, 915 24th St. was part of a four-plex that
20 included 907, 909, and 911 24th Street, located in the Oakland and owned by Ms. Williams. On
21 September 20, 2013, a City building inspector verified building code violations at 915 24th Street and in
22 response opened a code enforcement case against Ms. Williams.

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

26
27
28

²² As alleged in Counts 1 and 2.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 Between June 26 and September 24, 2015, Respondent received payments totaling \$112,000 from
2 Ms. Williams, as described above. On October 1, 2015, after receiving payments from Ms. Williams, the
3 Respondent, in his official capacity as a City building inspector, despite her failure to obtain appropriate
4 permits for her property, closed the code enforcement case against Ms. Williams for 915 24th Street.³

4 **Elizabeth Williams and 857 Mead Avenue**

5 The Respondent entered an agreement to assist Ms. Williams with obtaining permits at her 857 Mead
6 Ave. property. At all relevant times, 857 Mead Ave. was a duplex in Oakland and owned by Ms.
7 Williams. On December 9, 2014, Respondent inspected the property and issued a “stop-work order” for
8 unapproved remodeling throughout the house on the property. He noted in City records that Ms. Williams
9 needed to also supply records and permits for a second building in the back of 857 Mead Ave.

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

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

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

20 Between June 26 and December 28, 2015, Respondent received payment from Ms. Williams totaling
21 \$176,179, as described above. During that entire period Respondent was still assigned, in his official
22 capacity as a City building inspector, to the code enforcement case against Ms. Williams that he initiated
23 on December 12, 2014. On September 21, 2015, Respondent met, on behalf of Ms. Williams, with a
24 PG&E Engineering Estimator at 857 Mead Ave. to discuss electric and gas service installation at 857
25 Mead Ave.

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

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

³ As alleged in Count 3.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

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

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

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

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

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

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

19 On January 12, 2016, Ms. Williams again discussed with Respondent her concerns regarding the
20 electrical permit that had failed inspection twice. In response, Respondent told her that he would talk to
21 Anthony Harbaugh about it. Mr. Harbaugh is and was, at all relevant times, a City building inspector. On
22 January 13, 2016, Mr. Harbaugh conducted a final inspection for the electrical permit, issued it a “pass,”
23 and attached Green Tags on the electrical meters at 857 Mead Ave.²⁸

24 On January 22, 2016, Respondent solicited \$300 from Ms. Williams for the final inspection and the
25 issuance of the Green Tags on the electrical meters at 857 Mead Ave. that took place on January 13,
26 2016.⁴

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

⁴ As alleged in Count 4.

⁵ As alleged in Count 5.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 Department for a plumbing permit for 857 Mead Ave. on behalf Ms. Williams.⁶ This application
2 eventually expired without the permit being finalized.

3 **Elizabeth Williams and 2735 Market Street**

4 The Respondent also entered into an agreement with Ms. Williams to obtain permits and conduct
5 contractor work on her 2735 Market Street property. At all relevant times, 2735 Market St. was a complex
6 of residential buildings in Oakland and owned by Ms. Williams.

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

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

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

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

22 Between June 26 and September 18, 2015, Respondent received \$100,000 from Ms. Williams, as
23 described above. On September 22, 2015, Ms. Williams applied for a building permit to remodel 2735
24 Market Street. On the same day, Respondent completed, signed, and submitted a Code Enforcement
25 Routing Slip for Ms. Williams’ application that waived the requirement that Ms. Williams submit an
26 architectural plan approved by the City’s Zoning Department, confirmed that the monetary valuation on
27 Ms. William’s application was correct, allowed Ms. Williams’ permit to be issued over-the-counter, and
28 waived the requirement that Ms. Williams submit photos of the proposed project with her application.⁷

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

⁶ As alleged in Count 6.

⁷ As alleged in Count 7.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

3 On October 27, 2015, Respondent submitted a Letter of Agency for Property Owners form to the
4 Building Department that gave him the authority to function as Ms. Williams' agent in regard to any
5 permits for 2735 Market Street. On the same day, Building Department issued Ms. Williams the
6 electrical, building, and plumbing permits for 2735 Market Street.⁸

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

9 On November 5, 2015, Respondent solicited \$300 from Ms. Williams for passing the three
10 inspections at 2735 Market Street.⁹

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

13 **Elizabeth Williams and 877/879 27th Street**

14 Finally, the Respondent also entered into an agreement with Ms. Williams to obtain permits at her
15 877/879 27th Street property. At all relevant times, 877/879 27th St. was a duplex in Oakland and owned
16 by Ms. Williams. Between June 26 and September 18, 2015, Respondent received \$100,000 from Ms.
17 Williams, as described above.

18 On November 10, 2015, Respondent, acting as an agent for Ms. Williams, applied to the Building
19 Department for a building permit, an electrical permit, a mechanical permit, and a plumbing permit, for
20 kitchen and bathroom remodels to 877 27th Street.¹⁰

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

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

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

On March 1, 2016, Respondent solicited \$300 from Ms. Williams for the building, mechanical,
electrical, and plumbing permits for 877/879 27th Street passing rough inspection on December 11, 2015.¹¹

⁸ As alleged in Counts 8, 9, and 10.

⁹ As alleged in Count 11.

¹⁰ As alleged in Counts 12, 13, 14, and 15.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 Also, on March 1, 2016, Respondent solicited \$300 from Ms. Williams for the building, mechanical,
2 electrical, and plumbing permits passing final inspection on December 16, 2015.¹²

3 On March 14, 2016, Respondent, on behalf of Ms. Williams, submitted applications for a building
4 permit, electrical permit, and plumbing permit, to remodel the kitchen and bathroom of 879 27th Street.¹³

5 **Income from Bill Charman and 4163 Rifle Lane**

6 4163 Rifle Lane was, at all relevant times, a single-family home in Oakland. On November 14, 2013, On
7 January 21, 2014, Respondent conducted an inspection of 4163 Rifle Lane, verified building code
8 violations at 4163 Rifle Lane, and opened an enforcement case for building code violations at 4163 Rifle
9 Lane.

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

18 On February 8 and 9, 2016, Bill Charman, in his capacity as a broker at Gimme Shelter, Inc.,
19 representing the owner of 4163 Rifle Lane, and Respondent discussed the outstanding building code
20 violations at 4163 Rifle Lane over the phone and via email. Mr. Charman, at Respondents' request,
21 agreed to meet Respondent outside Oakland City Hall to further discuss the outstanding code violations at
22 4163 Rifle Lane.

23 On February 9, 2016, Mr. Charman and Respondent met outside Oakland City Hall. During their
24 meeting, Respondent told Mr. Charman that Mr. Charman would need to pay \$1,500 for the inspections
25 needed to resolve the outstanding permit issues for 4163 Rifle Lane. Mr. Charman agreed to pay the
26 \$1,500, and Respondent directed him to make the payment to Respondent personally, rather than to the
27 City. In response, Mr. Charman issued Respondent a \$1,500 check, which Respondent deposited into his
28 personal bank account on the same day.¹⁴

After the meeting with the Respondent and on the same day, Mr. Charman applied, on behalf of the
owner of 4163 Rifle Lane, for building, electrical, and plumbing permits for 4163 Rifle Lane. Respondent
completed, signed, and submitted a Code Enforcement Routing Slip for Mr. Charman's application that
waived the building code violation fees, verified that the unpermitted work had not commenced, waived

¹¹ As alleged in Count 16.

¹² As alleged in Count 17.

¹³ As alleged in Counts 18, 19 and 20.

¹⁴ As alleged in Count 21.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 the requirement that a field check be conducted, and allowed the permit to be approved over-the-counter.
2 The Building Department issued Mr. Charman the permits without submission of architectural plans for
3 the projects, without conducting a field check, and without collecting fees for the outstanding building
4 code violations, due to Respondent's decision to waive each of those requirements.

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

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

13 Also, on February 10, 2016, Respondent asked Mr. Harbaugh to finalize the building, electrical, and
14 plumbing permits that Mr. Charman applied for the day before.¹⁵

15 In response, Mr. Harbaugh scheduled himself to conduct the frame inspections on the same day and
16 the final inspections on February 16, 2016 and signed off on the frame inspections.

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

19 Respondent has not, to date, reported receiving \$1,500 from Mr. Charman.¹⁶

20 **Income from Alexandre Machado and 6220 Valley View**

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

23 On November 12, 2015, Mr. Machado applied for, and was issued, a building permit for rot repair at
24 6220 Valley View Road. On January 20, 2016, a City building inspector found that the work being done
25 at 6220 Valley View Road was outside the scope of the building permit issued to Mr. Machado and
26 opened an enforcement case against him.

27 The Respondent contacted Mr. Machado regarding the enforcement case opened at 6220 Valley View
28 Road. The Respondent told Machado that he would need to pay him \$1,700 to resolve the permit issues.

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

¹⁵ As alleged in Counts 22, 23 and 24.

¹⁶ As alleged in Count 25.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

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

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

6 On March 31, 2016, Respondent posted an official "stop-work order" from the Building Department
7 on 6220 Valley View Road that stated that Mr. Machado was required to stop all work being done to
8 6220 Valley View Road until the work was approved by Respondent.¹⁷

9 Respondent did not follow any of the policies and procedures of the Building Department in issuing
10 the "stop-work order," and never recorded issuing the "stop-work order" into the Building Department's
11 records. Respondent used the "stop-work order" to coerce Mr. Machado into providing Respondent with
12 more payments.¹⁸

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

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

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

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

21 Respondent has not, to date, reported receiving \$12,850 from Mr. Machado.¹⁹

22 **Income from Vivian Tang and 8925 Lawlor Street**

23 8925 Lawlor Street was, at all relevant times, owned by Vivian Tang and located in Oakland. On
24 February 14, 2014, Respondent verified building code violations at 8925 Lawlor Street, issued a "stop-
25 work order" for unpermitted conversions of the basement and the attic, and opened an enforcement case
26 against Ms. Tang.

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

¹⁷ As alleged in Count 27.

¹⁸ As alleged in Count 28.

¹⁹ As alleged in Count 26.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 applications and waived the required approval from the Zoning Department and the required field check
2 to issue the permits.

3 On January 15, 2015, Ms. Tang entered into an agreement with the Respondent to assist with her
4 inspections and hired him as a contractor to convert the attic and basement of 8925 Lawlor Street for
5 \$21,500.

6 On January 21, 2015, Respondent passed inspections for Ms. Tang's building, electrical, and
7 plumbing permits, and closed the enforcement case against her.²⁰

8 On January 22, 2015, Ms. Tang applied for four (4) separate permits for building, mechanical,
9 electrical, and plumbing permits to convert the basement of 8925 Lawlor Street.

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

13 On February 19, 2015, Respondent passed inspections for Ms. Tang's building, mechanical,
14 electrical, and plumbing permits.²¹

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

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

19 Respondent has not, to date, reported receiving \$24,600 from Ms. Tang.²²

20 **Income from Ana Siu and 5135 Manila Avenue**

21 5135 Manila Ave. was, at all relevant times, a single-family home in Oakland. On August 13, 2013,
22 Ana Siu bought 5135 Manila Ave.

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

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

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

27 _____
28 ²⁰ As alleged in Counts 30, 31, 32, and 33.

²¹ As alleged in Counts 34, 35, 36 and 37.

²² As alleged in Count 29.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 On May 1, 2014, Ms. Siu applied for five (5) permits; a building permit, mechanical permit, electrical
2 permit, plumbing permit, and obstruction permit, to convert and remodel 5135 Manila Ave.

3 On May 16, 2014, May 24, 2014, January 16, 2015, and January 26, 2015, Respondent inspected
4 5135 Manila Ave. for the enforcement case against Ms. Siu and Ms. Siu's permits.

5 Between February 12 and April 30, 2015, Respondent entered into an agreement with Ms. Siu in
6 which she agreed to pay the Respondent \$66,277 for real estate services and general contracting work at
7 5135 Manila Ave. and another separate property Ms. Siu owned.

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

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

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

13 Respondent has not, to date, reported receiving \$66,277 from Ms. Siu.²³

14 **Income from and Business Venture with One Development and Investment Corporation**

15 During the same time that Ms. Siu's Manila St. property was tangled in building permit challenges,
16 the Respondent and Ms. Siu entered into an agreement to start a small corporation together. The
17 Respondent filed articles of incorporation with the State of California for One Development Corporation
18 (ODIC). ODIC was, at all relevant times, a corporation conducting real estate business in Oakland. Ms.
19 Siu was listed as its owner, and Respondent, was listed as the president.

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

22 Respondent has not, to date, reported receiving \$19,770 from ODIC or that he was its president in
23 2015.²⁴

24 **Other Reportable Sources of Income**

25 The Respondent entered into an agreement with Pat Viswanathan to act as a project manager and
26 consultant on a development parcel at 5963 Margarido St. in Oakland. On March 15, 2015, Respondent
27 received \$1,000 from Pat Viswanathan, a person doing business in Oakland, for consulting services.
28 Respondent has not, to date, reported Mr. Viswanathan as a source of income.²⁵

²³ As alleged in Count 38.

²⁴ As alleged in Counts 39 and 40.

²⁵ As alleged in Count 41.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 The Respondent entered into an agreement with Apex Construction to do consulting on an 18-unit
2 mixed use development at 5325 San Pablo Ave in Oakland. On April 3, 2015, Respondent received
3 \$3,000 from Apex Construction, a business entity doing business in Oakland, for consulting services.
Respondent has not, to date, reported Apex Construction as a source of income.²⁶

4 On April 8, 2015, Respondent received \$3,000 from Zati Uysal, a person doing business in Oakland,
5 for consulting services. Respondent has not, to date, reported Mr. Uysal as a source of income.²⁷

6 The Respondent entered into an agreement with Jerry Tran to locate warehouses for marijuana
7 dispensaries in the City of Oakland. On August 15, 2016, Respondent received \$3,500 from Jerry Tran, a
8 person doing business in Oakland, for consulting services. Respondent has not, to date, reported Mr. Tran
as a source of income.²⁸

9 **Misuse of Public Resources**

10 On several occasions in June and July of 2015, Respondent drove a City-owned vehicle to Orinda to
11 conduct personal business.²⁹ The County of Contra Costa alerted the City of Oakland from citizen tips
12 that the Respondent was seen multiple times at an Orinda construction job site at 6 Linda Vista in the City
13 of Orinda. A witness Susan Lucier reported not only did she see the Respondent, the introduced himself
14 to her as a Building Inspector with the City of Oakland and gave her his City business card. The
Respondent told her he was also a general contractor working for Ana Siu.

15 In July and August 2015, Respondent used a City-owned computer and a City-owned printer to print
16 hundreds of pages of personal materials.^{30 31} A Supervisor with the Building and Planning Department
17 reported that the Respondent was initially issued an email warning regarding his use of emails and City
18 printers to conduct his personal pursuits. On multiple occasions the Respondent would leave his print jobs
19 of his personal business on the printer machine. On one occasion, he had printed over 47 pages of non-
work-related emails. Further, the Respondent's non-work-related printing impeded a co-worker from
20 finishing a work permit project. The Department turned over to the Public Ethics Commission a total of
114 printed pages of non-work-related printing that belonged to the Respondent.

21 In October 2015, Respondent, while on vacation, used a City-owned cell phone to make personal
22 phone calls totaling 587 minutes.

23 **V. APPLICABLE LAW AND ARGUMENT**

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

26 ²⁶ As alleged in Count 42.

27 ²⁷ As alleged in Count 43.

28 ²⁸ As alleged in Count 44.

29 ²⁹ As alleged in Count 45,

30 ³⁰ As alleged in Count 46.

31 ³¹ As alleged in Count 47.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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.³²

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.³³ The City's Conflict of Interest Code requires designated employees file their statement of economic interests with the City Clerk's Office.³⁴

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.³⁵ 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.³⁶

Reportable income is any payment received by the Specialty Combination Inspector and includes loans other than those received from a commercial lending institution.³⁷ 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.³⁸

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.³⁹

Argument:

To establish that the Respondent violated the Economic Interest Disclosure Requirement, the Complainant need only demonstrate by preponderance of the evidence that the Respondent was a City

³² O.M.C. §2.25.040(B).

³³ O.M.C. §3.16.010.

³⁴ O.M.C. § 3.161.020.

³⁵ FPPC Regulation 18730, subds. (b)(6)(C).

³⁶ FPPC Regulation 18704 (b)(5)(D).

³⁷ Government Code (G.C.) § 82030.

³⁸ G.C. § 18700(a).

³⁹ G.C. § 87209.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 employee that was required to submit an annual Form 700 and that he failed to do so or that he failed to
2 submit/report complete or accurate information on the annual Form 700.

3 In this case, at all relevant times alleged, the Respondent was a Specialty Combination Inspector in
4 the City Building and Planning Department. Specialty Combination Inspectors are required to submit
5 annual Statement of Economic Interests (Form 700) each year that they are employed with the City and
6 upon leaving their position with the City.

7 **The Williams Matter:** In this case, Respondent received multiple payments on at least four separate
8 properties owned by Ms. Williams between 2015 and 2016, and yet the Respondent did not file a Form
9 700 for the year 2015 or upon his departure from the City in 2016.

10 **The Bill Charman Matter:** In this case, the Respondent received a \$1,500 payment on February 9,
11 2016 and failed to file a Form 700 for the year 2015 or upon his departure from the City.

12 **The Alexandre Machado Matter:** Respondent on five separate occasions extorted payments from
13 Alexandre Machado regarding his 6220 Valley View property. On February 27, 2016, the Respondent
14 made \$1,000; On March 13, 2016 collected \$200; on April 11, 20, 2016 collected \$1,000; on April 13,
15 2016 collected \$4,500; and on April 27, 2016 the Respondent collected another \$5,000 from Machado.
16 The Respondent did not report any of the income he took from Machado because he failed to file a Form
17 700 for 2016.

18 **The Vivian Tang Matter:** On three separate occasions the Respondent extorted income form Vivian
19 Tang. On January 29, 2015 she paid the Respondent \$10,000. On February 6, 2015 she paid the
20 Respondent \$11,500. Finally, on May 20, 2015 Tang paid the Respondent \$3,100. All of the
21 aforementioned payments were not reported to the state of California because the Respondent failed to
22 file a Form 700 for 2015.

23 **The Ana Siu Matter:** The Respondent received a total of \$66,277 from Ana Sui and failed to report
24 the income he received from Ana Siu in 2014 and failed to file a Form 700 in 2015.

25 **The ODIC Matter:** The Respondent made income from the corporation he formed with Siu, ODIC in
26 the amount of \$19,770. He failed to report this income when he failed to file a Form 700 for 2015.

27 **The Pat Viswanathan Matter:** The Respondent received income from Pat Viswanathan in the amount
28 of \$1,000 in March 2015. The Respondent did not file a Form 700 for 2015.

The Apex Construction Matter: Apex Construction paid \$3,000 in consulting fees to the
Respondent in 2015 but the Respondent failed to file a Form 700 for the year 2015.

The Gysal Matter: Again in 2016, the Respondent failed to report the \$3,000 he received from Gysal
when he failed to file a Form 700.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 **The Jerry Tran Matter:** Finally, in August 2016, the Respondent was paid \$3,500 by Jerry Tran to
2 identify a warehouse for his marijuana business and the Respondent failed to report this income when he
3 failed to file a Form 700 for the year 2016.

4 **B. Conflict of Interest**

5 A City employee may not make, participate in making, or seek to influence decision of the City in
6 which the City employee has a disqualifying financial interest.⁴⁰ A City employee has a disqualifying
7 financial interest in a governmental decision if the decision will have a reasonably foreseeable material
8 financial effect on any of his or her qualifying financial interests.⁴¹ A City employee makes a
9 governmental decision if he or she authorizes, directs, obligates, or commits his or her agency to any
10 course of action.⁴²

11 A City employee attempts to use his or her official position to influence a decision when he or she
12 contacts or appears before any official in his or her agency for the purpose of affecting the decision.⁴³ A
13 City employee has a disqualifying financial interest in any individual or business entity from whom he or
14 she has been provided or promised income aggregating \$500 or more within 12-months prior to the time
15 when the relevant government decision is made.⁴⁴

16 The financial effect of a decision on a disqualifying financial interest is presumed to be reasonably
17 foreseeable if the disqualifying financial interest is a named party in, or the subject of, the decision before
18 the City employee or the City employee's agency.⁴⁵ For income received by the official, the reasonably
19 foreseeable financial effect of the decision on the City employee's disqualifying financial interest is
20 material if the source of the income is a claimant, applicant, respondent, contracting party, or is otherwise
21 identified as the subject of the proceeding.⁴⁶

22 **ARGUMENT:**

23 The facts establish that the Respondent, in his official position as a Building Inspector with the City
24 Building and Planning Department, had a conflict of interest in the following matters:

25 **The Williams Matter:** On multiple occasions between October 1, 2015 and March 14, 2016 the
26 Respondent, while in his official capacity as a City Building Inspector, had received payments from
27 Elisabeth Williams for private contract work on her multiple properties, consultation and inspection work
28 and instead of recusing himself from the official City inspections and permit considerations of those same
properties, the Respondent participated in decisions to schedule inspections and grant permits to those
properties.

⁴⁰ O.M.C. § 2.25.040 (A); GC 87100.

⁴¹ FPP Regulation 18700 (a).

⁴² FPPC Regulation 18704(a).

⁴³ FPPC Regulation 18704 (c)(1).

⁴⁴ G.C. § 87103(c).

⁴⁵ FPPC Regulation 18701.

⁴⁶ FPPC Regulation 18702.3 (a)(1).

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 **The Charman Matter:** In the month of February 2016, the Respondent, while in his official capacity
2 as a City Building Inspector, received payments from Bill Charman for private inspections and permit
3 considerations on his Rifle Lane property and instead of recusing himself from the official City
4 inspections and permit consideration of the Rifle Lane property, the Respondent participated in decisions
5 to schedule inspections and grant permits to the Rifle Lane property.

6 **The Machado Matter:** On or about March 31, 2016, the Respondent, while in his official capacity as
7 a City Building Inspector received a payment from Mr. Machado for private inspections on his Valley
8 View property and instead of recusing himself from the official City inspections and permit
9 considerations of the Valley View property, the Respondent participated in decisions to grant work
10 permits and schedule inspections on the Valley View property.

11 **The Tang Matter:** In January 2015, the Respondent, while in his official capacity as a City Building
12 Inspector entered into a private agreement with Ms. Tang to conduct construction/contract work on her
13 property on Lawler St. and instead of recusing himself form the official City inspections and permit
14 considerations of the Lawler St. property, the Respondent participated in decisions to schedule
15 inspections and grant permits to the Lawler St, property

12 C. Bribery

13 A City employee may not solicit or accept anything of value in exchange for the performance of any
14 official act.⁴⁷

15 **Argument:**

16 The Respondent, between 2013 and 2016, solicited or accepted a thing of value (money payments) in
17 exchange for the performance of an official act, conducting inspections and issuing building permits.

18 **The Williams Matter:** in five separate matters, the Respondent extracted personal payments from
19 Ms. Williams in exchange for inspections, issuing green tags, and City building permits (plumbing,
20 electrical and mechanical) that were either conducted by himself or Harbaugh. On the following dates, the
21 Respondent solicited payments from Ms. Williams: On January 22, 2016, the Respondent solicited \$300
22 for Mead St. inspection and permit pass; on March 1, 2016 the Respondent solicited \$300 for permits and
23 rough inspections; on March 6, 2016, the Respondent solicited \$300 for 27th St. permits and final
24 inspections; on March 14, 2016 the Respondent solicited \$300 for 27th St. electrical permits; and on
25 November 5, 2015, the Respondent solicited \$300 for Market Street permits;

26 **The Charman Matter:** The Respondent instructed Charman to pay him \$1,500 to finish the building
27 permit inspection process that was impeding Charman's client's ability to finish the renovations on the
28 property. Once Charman paid the money, the Respondent waived the associated fees for permits, waived
the requirement for field checks and cleared the building violations as abated.

⁴⁷ O.M.C. § 2.25.070.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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.⁴⁸

Argument:

Machado Matter: In March 2016, the Respondent, while in his official capacity as a Building Inspector, intentionally issued a "work-stop order" on property improvements occurring at 6220 Valley View to force or pressure Mr. Machado into making a cash payment to the Respondent.

E. Misuse of Public Resources

A City employee may not use public resources for personal purposes.⁴⁹ Personal purposes means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business.⁵⁰ 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.⁵¹ 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.⁵²

Argument:

Respondent's repeated use of City printers and computers to produce his personal non-work-related emails, agreements, diagrams and itineraries were substantial enough to result in his own personal gain or advantage. The City suffered a loss for the cost of the Respondent printing at least 114 pages of personal documents. The Respondents 587 minutes of personal phone calls on a City owned cellular phone was excessive and a misuse of public resources. Moreover, the Respondents unauthorized use of a City vehicle to monitor his personal project management at a property site in the City of Orinda was a misuse of City resources resulting in a personal gain or advantage to the Respondent.

VI. VIOLATIONS

Based on the facts, law and argument stated above, there is sufficient evidence to find the Respondent violated the following violations of the Government Ethics Act.

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

⁴⁸ O.M.C. § 2.25.060 (A)(2).

⁴⁹ O.M.C. § 2.25.060 (A)(1).

⁵⁰ O.M.C. § 2.25.060 (A)(i) (a)(i).

⁵¹ O.M.C. § 2.25.060 (A) (1)(a)(iii).

⁵² O.M.C. § 2.25.060(A)(1)(a)(iv).

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

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

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

9 Respondent was a Specialty Combination Inspector in the Building Department until August 16,
10 2016, and as such was required to report all sources from whom he received income totaling \$500 or
11 more during the January 1 through August 16, 2016, period, by September 15, 2016.

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

15 **Count 3: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 16 Income**

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

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

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

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

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

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

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

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

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

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

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

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

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

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

23 On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official
24 position to influence the Building Department's decision to issue Ms. Williams an electrical permit for
25 2735 Market Street.

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

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

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

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 On October 27, 2015, Respondent violated Section 2.25.040(A) by attempting to use his official
2 position to influence the Building Department's decision to issue Ms. Williams a plumbing permit for
3 2735 Market Street.

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

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

8 **Count 12: Conflict of Interest Violation: Attempting to Influence a Governmental Decision 9 Involving a Source of Income**

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

13 **Count 13: Conflict of Interest Violation: Attempting to Influence a Governmental Decision 14 Involving a Source of Income**

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

18 **Count 14: Conflict of Interest Violation: Attempting to Influence a Governmental Decision 19 Involving a Source of Income**

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

23 **Count 15: Conflict of Interest Violation: Attempting to Influence a Governmental Decision 24 Involving a Source of Income**

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

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

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

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

2
3 On March 1, 2016, Respondent violated Section 2.25.070(A) of the Oakland Government Ethics by
4 solicited \$300 from Ms. Williams in exchange for building, mechanical, electrical, and plumbing permits
for 877/879 27th Street passing final inspections.

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

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

9
10 **Count 19: Conflict of Interest Violation: Attempting to Influence a Governmental Decision**
11 **Involving a Source of Income**

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

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

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

18
19 **Count 21: Bribery Violation: Soliciting Money in Exchange for Performance of an Official Act**

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

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

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

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

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

4 **Count 24: Conflict of Interest Violation: Attempting to Influence a Governmental Decision 5 Involving a Source of Income**

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

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

10 On February 9, 2016, Respondent received income totaling \$1,500 from Mr. Charman and was
11 therefore was required to report him as a source of income by September 15, 2016. Respondent violated
12 Section 2.25.040(B) of the Oakland Government Ethics Act by failing to report Mr. Charman as a source
13 of income by September 15, 2016.

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

15 Between February 27 and May 20, 2016, Respondent received income totaling \$12,850 from Alex
16 Machado, who was doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland
17 Government Ethics Act by failing to report Mr. Machado as a source of income by September 15, 2016.

18 **Count 27: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 19 Income**

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

23 **Count 28: Misuse of City Authority: Using One's City Authority to Induce or Coerce a Person to 24 Provide an Economic Gain**

25 On March 31, 2016, Respondent issued a "work-stop order" on 6220 Valley View, a property owned
26 and being remodeled by Mr. Machado, for the purpose of inducing or coercing Mr. Machado into
27 providing Respondent with payments. By attempting to use his authority as a City official to induce or
28 coerce a person to provide him with an economic gain, Respondent violated Section 2.25.060(A)(2) of the
Oakland Government Ethics Act.

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

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 Between January 29 and May 20, 2015, Respondent received income totaling \$24,600 from Vivian
2 Tang, a person doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland
3 Government Ethics Act by failing to report Ms. Tang as a source of income by April 1, 2016.

4 **Count 30: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 5 Income**

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

8 **Count 31: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 9 Income**

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

12 **Count 32: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 13 Income**

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

16 **Count 33: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 17 Income**

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

20 **Count 34: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 21 Income**

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

24 **Count 35: Conflict of Interest Violation: Making a Governmental Decision Involving a Source of 25 Income**

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

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

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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

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

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

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

8 In 2015, Respondent received income totaling \$66,277 from Ana Siu, a person doing business in
9 Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by failing to
10 report Ms. Siu as a source of income by April 1, 2016.

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

12 In 2015, Respondent received income totaling \$19,770 from One Development and Investment
13 Corporation, a business entity doing business in Oakland. Respondent violated Section 2.25.040(B) of the
14 Oakland Government Ethics Act by failing to report One Development and Investment Corporation as a
15 source of income by April 1, 2016.

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

17 In 2015, Respondent was the president of One Development and Investment Corporation, a business
18 entity doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government
19 Ethics Act by failing to report his business position with One Development and Investment Corporation
20 by April 1, 2016.

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

22 On August 15, 2016, Respondent received income totaling \$3,500 from Jerry Tran, a person doing
23 business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by
24 failing to report Mr. Tran as a source of income by September 15, 2016.

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

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

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

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 On April 8, 2015, Respondent received income totaling \$3,000 from Zati Uysal, a person doing
2 business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government Ethics Act by
3 failing to report Mr. Uysal as a source of income by April 1, 2016.

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

5 On April 3, 2015, Respondent received income totaling \$3,000 from Apex Construction, a business
6 entity doing business in Oakland. Respondent violated Section 2.25.040(B) of the Oakland Government
7 Ethics Act by failing to report Apex Construction as a source of income by April 1, 2016.

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

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

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

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

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

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

17 **VII. MONETARY PENALTIES**

18 Pursuant to the GEA, penalties for ethics violations are as follows:

19
20 Administrative penalties. Any person who violates any provision of this Act shall be liable in an
21 administrative proceeding before the Commission held pursuant to the Commission's Complaint
22 Procedures. The Commission may impose administrative penalties in an amount up to five thousand
23 dollars (\$5,000) per violation, or up to three (3) times the amount not properly reported or received
(whichever is greater), per violation of the Oakland Government Ethics Act.

24 The PEC considers several factors to determine the appropriate penalty, including, but not limited to,
25 the following factors:

- 26 1. The relative experience of the Respondent;
- 27 2. The seriousness of the violation, including, but not limited to, the extent of the public impact or
28 harm;
3. The presence or absence of any intention to conceal, deceive, or mislead;
4. Whether the violation was deliberate, negligent, or inadvertent;
5. Whether the violation was isolated or part of a pattern ;

Item #6b - Hearing Officers Recommendation and Exhibits A-C

- 1 6. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule
or requirement at issue;
- 2 7. 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); and
- 3 8. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely
manner.

4
5 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
6 adjust the penalty amount based on mitigating and aggravating factors of the enforcement action.

7 **Aggravating Factor(s)**

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

- 10 1. The Respondent was a public servant in a high-level decision-making position that abused his
11 position of trust and authority. His willful abuse of a trusted position of authority designed to
12 protect the public and the safety of their homes posed great harm to the Oakland Community;
- 13 2. Espinosa engaged in several instances of deception to cover up the inspections of which he was
14 getting paid under the table, including making arrangements with other City employees to cover
15 up the payments he received for inspections, permits and private contract work;
- 16 3. Espinosa's conduct was deliberate, including multiple instances where he misused City resources
17 for his own private gain;
- 18 4. His conduct was part of a pattern of conduct that went on for multiple months;
- 19 5. Espinosa has failed to take any steps to cure any of the enumerated violations.; and
- 20 6. At the time of the Respondent's conduct he had worked for the Oakland Planning and Building
Department for more than ten years, Espinosa was a seasoned public servant, well versed in the
department's policies against receiving personal payments under the table. He chose to ignore
them for his own personal gain.
- 21 7. Espinosa corrupted other City employees by enlisting a co-worker into his payment for
inspection/permit scheme.

22 **Mitigating Factor(s)**

- 23 1. Espinosa has no previous history of violations in the City of Oakland.

24 The Public Ethics Commission has an independent obligation to determine the penalty merited by
the Respondent's multiple violation of the Government Ethics Act. And, although the Commission has
25 often concluded that the guideline penalty or less is sufficient to vindicate the Commission's interests in
regulating public servant compliance with the Government Ethics Act, the Commission is free to
26 impose a different sanction if that is appropriate. In this case, Staff requests that the Hearing officer find
that the Respondent violated each enumerated violation and recommend the imposition of the following
27 penalties:
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

- 1 1. On violation counts one (1); three (3); four (4); five (5); eight (8); eleven (11); thirteen (13); and
2 counts fifteen (15) through forty-seven (47), impose a fine of \$5,000 per count as a penalty for
3 a total of \$200,000.
- 4 2. On violation counts two (2); six (6); seven (7); nine (9); ten (10); twelve (12); and fourteen (14),
5 decline to impose a penalty pursuant to the Concurrent Sentence theory, wherein out of
6 discretion, plea bargain or compassion, the sentencing authority allows a Respondent serve one
7 penalty (concurrent to/together) or sanction for multiple violations.

8 **VIII. CONCLUSION**

9 Even though the events of this complaint occurred between 2015 and 2016 and the Respondent is no
10 longer an employee of the City, he should be held accountable for his corruption and bribing of Oakland
11 residents. The Respondent, when he was a public servant, did more than violate a City ordinance, he
12 violated his duties of trust and honesty as a public servant, he caused financial harm to property owners,
13 and in the wake of his corruption scheme, many Oakland residents are left to suffer the anguish,
14 uncertainty, anxiety, and aggravation that there are properties within the City that may or may not be
15 livable and safe because of the unlawfully issued permits and inspection passes the Respondent
16 orchestrated because of his greed.

17 His willful abuse of a trusted position of authority designed to protect the public and the safety of
18 their homes and properties posed great harm to the Oakland community. At the time of the Respondent's
19 conduct he had worked for the Oakland Planning and Building Department for more than ten years, The
20 Respondent was a seasoned public servant, well versed in the Planning and Building department's
21 policies against receiving monetary payments under the table. He chose to ignore them for his own
22 personal gain and failed to disclose the payments he received as required by the Statement of Economic
23 Interest Form 700. Disclosure of economic interest is important to providing transparency and preventing
24 conflicts of interest.

25 The Respondent's conduct was deliberate and flagrant. He conducted most of his unlawful activity
26 while he was either using City resources or working on City time. His conduct was part of a pattern of
27 conduct that went on for several months and to this date, the Respondent has failed to take any steps to
28 cure any of the enumerated violations.

In sum, the facts and evidence in this matter establish that Respondent committed forty-seven
separate, serious violations of the Government Ethics Act. Accordingly, Respondent should be ordered
to pay a monetary penalty of \$200,000.

Dated:04/20/2021

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

EXHIBIT B

Item #6b - Hearing Officers Recommendation and Exhibits A-C

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/Complainant

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION

8
9 ENFORCEMENT UNIT OF THE CITY OF OAKLAND)

Case No.: 16-14

10 PUBLIC ETHICS COMMISSION,

) Hearing Date: April 27, 2021

11 Complainant,

12 v.

) DECLARATION OF PUBLIC ETHICS

) INVESTIGATOR SIMON RUSSELL

13 Respondent.

14
15 Complainant, THE ENFORCEMENT UNIT OF THE CITY OF OAKLAND PUBLIC ETHICS
16 COMMISSION (“Complainant”), hereby submits this Declaration OF Public Ethics Commission
Investigator, Simon Russell.

17 I, the undersigned, do hereby submit the following statement in support of my
18 testimony. This declaration is supported by Attachments 1-151 as set forth in the attached
19 documents incorporated herein.
20

21 I, Simon Russell, declare:

22 1. I am an investigator for the City of Oakland Public Ethics Commission (PEC). I was
23 the investigator on the PEC’s investigation of Thomas Espinosa (case #16-14).

24 2. This declaration is organized into the following sections:

25 I. Background

26 A. Building Department Procedures

27 B. Evidence Gathered
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 II. Particular Violations

2 A. Income Received From Elizabeth Williams

3 B. 859 Mead Avenue

4 C. 2735 Market Street

5 D. 877 27th Street

6 E. 915 24th Street

7 F. 4163 Rifle Lane

8 G. 8925 Lawlor Street

9 H. Income Received From One Development & Investment Corporation /

10 Ana Siu

11 I. Income Received From Alex Machado

12 J. Income Received From Apex Construction, Jerry Tran, Pat

13 Viswanathan, and Zati Uysal

14 K. Use of City Car

15 L. Use of City Paper, Scanner, Printer, and Toner

16 M. Failure To File Form 700

17 **I. BACKGROUND**

18 *A. Building Department Procedures*

19 3. The following description of Building Department procedures is based upon my
20 interviews and conversations with Building Department supervisors, particularly supervisor
21 David Miles, whom I interviewed on July 7 and July 14, 2017. It is also based upon my
22 familiarity with the records in this case, as described throughout this declaration.

23 4. Espinosa was a Specialty Combination Inspector (normally referred to as a “building
24 inspector”) in the Department of Planning & Building.¹ That Department is essentially divided
25 into two halves: the Planning department reviews real estate development plans to ensure that
26 they comply with the City’s zoning code, while the Building department ensures that those plans
27

28 _____
¹ His dates of employment were from May 23, 2005, until August 16, 2016.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 comply with the City's building safety code. Building inspectors work for the Building
2 department.

3 5. Normally, when someone wants to do a real estate development in Oakland (either
4 constructing a new building or substantially remodeling an old one), they must first apply for a
5 building permit from the Building Department. (They sometimes also need sign-off from the
6 Planning Department on zoning issues, but that is not an issue in this case). They submit that
7 application at the Building Department's front counter. A "building tech" reviews the application
8 and determines three things that are relevant in this case:

- 9 1. Whether the project site has any outstanding code violation cases on it (more on
10 this below).
- 11 2. Whether the person applying for a building permit also needs a "trade" permit
12 (mechanical, building, and/or plumbing, where applicable). These are issued at
13 the same time as the building permit.
- 14 3. Whether the estimated cost of the project seems accurate, based on the plans
15 submitted with the application. (This is important because the estimated cost of
16 the project is used to calculate the applicable fees that the permit applicant must
17 pay to the City).

18 6. Once the building and trade permits are issued, permit inspectors conduct the
19 following types of inspections over the course of the course of the project:

- 20 1. A field check, to ensure that the on-the-ground construction matches the plans
21 submitted with the permit application (i.e., to prevent fraud).
- 22 2. "Frame" or "rough" inspections, which are conducted before the walls are
23 covered up. This is important because once the walls go up, the frame inspection
24 can only be repeated by pulling the walls down, at great expense to the permittee.
- 25 3. A final inspection.

26 7. Those inspection results are to be noted on a physical "job card" which is kept in the
27 permittee's possession. (This is the permittee's proof that an inspection has been passed). Once the
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 project passes final inspection, the permit is “finaled” and the Building Department has no
2 further involvement.

3 8. Espinosa was not a permit inspector, though some of the inspectors in this case were
4 (notably Anthony Harbaugh). Espinosa was a code enforcement inspector. Their job is to follow
5 up on complaints from the public regarding alleged violations of the building code. They also
6 have the authority to pro-actively cite property owners if they happen to spot building code
7 violations while out in the field (even just driving by). When a code inspector issues a citation, it
8 is called a “notice of violation.” Code inspectors may also issue a “stop-work order” if they catch
9 unpermitted building activity being conducted.

10 9. Code inspectors have an additional duty: if someone is applying for a building permit
11 on a site that has been cited for a code violation, the code inspector who issued that citation must
12 review the building permit application to ensure that the plans will correct the violation. They
13 must also determine whether penalty fees should be applied. They do this by filling out and
14 signing a document called a “CE Routing Slip” that is then included with the permit application.

15 10. Both permit inspectors and code inspectors must enter all of their inspection results
16 onto the Building Department’s computer tracking system, called Accela. Each inspector has a
17 unique user ID on Accela, which appears next to every entry they make on the system.

18 11. The Accela record on a particular property is divided into two logs: an “inspection
19 log” which notes inspection results (including inspections that resulted in a “not pass” or
20 “partial” result), and a “comment log” which contains comments by any Building Department
21 official (not just inspectors, though inspectors can comment on it too). Despite its name, the
22 “inspection log” can also contain comments, usually the inspector’s explanation of a “not pass”
23 or “partial” result.

24 *B. Evidence Gathered*

25 12. Except where otherwise noted elsewhere in this declaration, I gathered the following
26 documentary evidence in this investigation.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 13. On June 7, 2016, I obtained all of Thomas Espinosa's e-mails sent to or from his City
2 of Oakland e-mail account on or after January 1, 2015. The e-mails were given to me by the City
3 of Oakland Information Technology Department pursuant to my request.

4 14. On January 25, 2018, I received Thomas Espinosa's bank account records via
5 subpoena from UNIFY Financial Credit Union.

6 15. On January 29, 2018, I received Thomas Espinosa's bank account records via
7 subpoena from JPMorgan Chase Bank.

8 16. On May 17 and May 19, 2017, I obtained text messages via subpoena from Elizabeth
9 Williams.

10 II. PARTICULAR VIOLATIONS

11 A. Income From Elizabeth Williams

12 17. Elizabeth Williams is a landlord who owns several rental properties in Oakland. The
13 City of Oakland has sued her multiple times for failing to adequately maintain her properties.

14 18. In the course of this investigation, I obtained (via subpoena) bank records regarding
15 various accounts belonging to Espinosa. The records covered the dates January 1, 2015, through
16 October 21, 2016. During that time, Espinosa received the following payments from Williams,
17 in the form of checks:

<i>Date of Deposit</i>	<i>Date on Check</i>	<i>Amount</i>	<i>Deposited into Account...</i>	<i>Attachment # in this declaration</i>
06/26/2015	06/26/2015	\$30,000.00	Chase -6308	Attachment 1
08/26/2015	08/26/2015	\$40,000.00	Chase -7816	Attachment 2
09/08/2015	09/04/2015	\$25,000.00	Chase -7675	Attachment 3
09/18/2015	09/18/2015	\$5,000.00	Chase -7675	Attachment 4
09/24/015	09/24/2015	\$12,000.00	Chase -7675	Attachment 5
10/16/2015	10/16/2015	\$11,570.00	UNIFY FCU Checking Account #2	Attachment 6
11/06/2015	11/06/2015	\$6,108.00	Chase -7675	Attachment 7

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1	11/13/2015	11/13/2015	\$6,000.00	Chase -7675	Attachment 8
2	11/20/2015	11/20/2015	\$5,763.00	Chase -7816	Attachment 9
3	11/27/2015	11/27/2015	\$7,840.00	Chase -7675	Attachment 10
4	12/04/2015	12/04/2015	\$6,365.00	Chase -7675	Attachment 11
5	12/10/2015	12/10/2015	\$6,264.00	UNIFY FCU Saving Account #1	Attachment 12
6					
7	12/18/2015	12/18/2015	\$6,404.00	Chase -7675	Attachment 13
8	12/28/2015	12/28/2015	\$7,865.00	Chase -7675	Attachment 14
9	03/03/2016	03/03/2016	\$850.00	Chase -7675	Attachment 15
10	Total = \$177,029.00				

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

19. I interviewed Elizabeth Williams on April 24 and June 8, 2017.

20. In her interviews with me, Williams stated that she had a business relationship with Espinosa beginning around June of 2014. She characterized her payments to Espinosa as falling into two categories: (1) payments for private contracting work that Espinosa performed on some of her properties; and (2) loans for purposes of investing in real estate with Espinosa (which were never paid back).

21. In her interviews with me, Williams stated that she hired Espinosa and a work crew he operated, to do remodeling work on some of her properties in or around 2014-2016. Specifically, she said that Espinosa worked on her properties located at 857 & 859 Mead Avenue, 2735 Market Street, and 877 27th Street, all of which are in Oakland.²

22. Williams also stated in her interviews with me that she paid Espinosa fees (at Espinosa's request) after other City inspectors – specifically Anthony Harbaugh – gave a passing result on inspections at her properties where Espinosa was performing contract work for her.

² A Building Department supervisor informed me that they had also seen Espinosa directing traffic on behalf of a work crew outside of 1608 San Pablo (across the street from the Building Department), but in my search of Alameda County Assessor records this did not appear to be a property owned or affiliated with Williams. **(Attachment 150)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 23. Williams stated in an interview with me that she once spoke to Harbaugh on the
2 phone about a discrepancy in the City’s records of inspections that one of her properties had
3 passed, and said that Harbaugh told her directly that he had not signed off on a final inspection
4 on one of her properties because he had not been paid yet. According to Williams, this was not a
5 reference to Harbaugh’s salary, but to a payment from Williams.

6 24. I also interviewed Derrick Cañada on July 1, 2019. Cañada stated that he worked for
7 six years as a property manager for Williams, including during the period 2014-2016. Cañada
8 confirmed that Espinosa performed contracting work at Williams’ properties located at Mead
9 Avenue, Market Street, and 27th Street. He said that he had witnessed Espinosa performing this
10 work firsthand. According to Cañada, the remodeling work performed by Espinosa was of self-
11 evidently poor quality. For example, when Cañada observed Espinosa’s work at the Market
12 Street property, he noticed that waterproof boards had been installed upside-down. Cañada told
13 me that when he pointed this out to Espinosa, Espinosa replied “well, it passed” (in reference to
14 inspections).

15 25. In an interview with me, Williams stated that she had an agreement with Espinosa
16 that she would loan him \$100,000.00 and receive \$130,000.00 in return. According to Williams,
17 the purpose of the loan was to invest in real estate. She also provided me with a copy of a
18 handwritten note that she says is her only record of a memorialized loan agreement with
19 Espinosa. (**Attachment 19**) Williams did not specify what particular real estate projects the loan
20 was meant to finance, but as described below both Williams and Espinosa’s communication
21 records verify that they were pursuing multiple such opportunities.

22 26. By way of corroboration, Williams provided me with text message records that seem
23 to indicate that Espinosa was performing contract work (apparently remodeling) on at least one
24 property belonging to her. (**Attachment 16**) She also provided e-mail records (**Attachment 17**)
25 and text message records (**Attachment 18**) that seem to indicate that she and Espinosa (along
26 with Espinosa’s business partner, Ana Siu) were involved in some real estate investment
27 investments together.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 27. Espinosa’s own email records also evidence that he and Williams were pursuing real
2 estate investment opportunities in Oakland, sometimes in apparent partnership with other
3 developers or investors. For example, in late 2015, Espinosa was corresponding with other
4 parties (Ignacio de la Fuente and Mohsin Sharif) about a potential development at 1501 34th
5 Street in Oakland; he eventually shared those plans with Williams. **(Attachment 146)** Similarly,
6 Espinosa shared with Williams his plans for a potential development at 3600 Macarthur in
7 Oakland that he appeared to be pursuing with other developers or investors (Bosco Lai, Stephen
8 Tong, and Sophie Han). **(Attachments 130, 146)**

B. 859 Mead Avenue

9
10 28. According to County Assessor records, Williams has owned parcel # 3-13-19 (a
11 property with the address of 859 Mead Avenue in Oakland – a single building which also
12 includes 857 Mead) in her own name since 1998. **(Attachment 20)**

13 29. According to Accela records, on December 4, 2014, the Department opened a code
14 case (no. 1404187) at 857 Mead alleging “work without permits.” **(Attachment 21)** Espinosa
15 performed an inspection pursuant to that case on December 9, 2014, verified the complaint, and
16 issued a stop-work order. He noted on Accela that a remodel of the unit was occurring, and that
17 the owner would need to obtain permits. There was no further activity on that case, and it was
18 still open on Accela as of 2018 when I was investigating this matter. **(Attachment 21)**

19 30. On June 26, 2015, Espinosa began receiving income from Williams, as described in
20 earlier in my declaration.

21 31. On June 24, 2015, Williams applied for (among other things) an electrical permit
22 (RE1502087) for 857 Mead. **(Attachment 23)**

23 32. Over the next several months, different inspectors from the Building Department (not
24 including Espinosa) conducted inspections on that electrical permit and issued “Not Pass” or
25 “Partial” results. **(Attachment 21)**

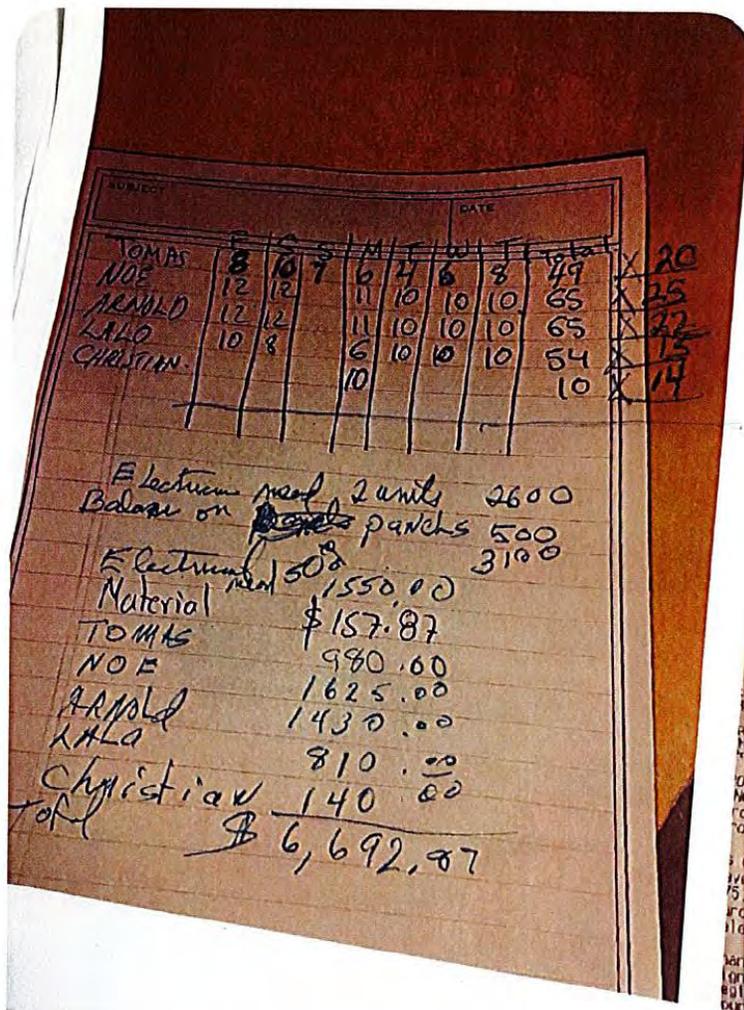
26 33. On October 22, 2015, Williams applied (via her agent, Ivonne Gomez) for an
27 electrical permit (no. RE1503461) at 859 Mead, the other unit in the duplex. **(Attachments 25-**
28 **26)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

34. The next day, October 30, 2015, inspector Steve Johnson performed an inspection on the new electrical permit and gave a “Not Pass” result. **(Attachment 26)**

35. On November 25, 2015, Espinosa sent Williams the following text:

Nov 25, 2015, 2:21 PM



(Attachment 27) Part of this documents reads “Electrician Mead 2 Units 2600.... Electrical Mead 50% 1550.00.” In an interview with me, Williams confirmed that Espinosa was performing contractor work at the Mead property and that this document referred to expenses he had incurred on her behalf at that site, including an electrician’s payment.

36. On December 8, 2015, Williams sent Espinosa a text message stating “Please call me when you can. I need update on Mead electrical....” **(Attachment 28)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 37. On December 10, 2015, another city inspector (Joanneke Verschuur) again performed
2 an electrical inspection for permit no. RE1503461, and gave a “Not Pass” result. (**Attachment**
3 **26**)

4 38. On December 14, 2015, Williams sent Espinosa a text message that read “Please give
5 me a call when you can. Need to know about Mead electricity....” (**Attachment 29**)

6 39. On December 23, 2015, Williams again sent Espinosa a text message and asked
7 “What is up with the electric on Mead?” (**Attachment 30**) Espinosa then texted Williams
8 several pictures of what appear to be electrical boxes and outdoor wiring with the number “859”
9 on them (presumably located at 859 Mead), including the following one:



10
11
12
13
14
15
16
17
18
19
20
21
22 (**Attachment 30**) From January 12-13, 2016, Espinosa and Williams had the following text
23 conversation:

Item #6b - Hearing Officers Recommendation and Exhibits A-C

Jan 12, 2016, 9:56 AM

Please call me about Mead

Please call me back when you will talk with me rather than talk over me.

I also expect the green tags for Mead to be there today. You stated it was already done.

Hello Elizabeth most important thing I want you to understand is I love you I love everything you've done for me I think you're great person I talk to all the people there Garichin everybody and they say yeah they don't know why I should have to be sanded down over do... >

As I stated many times we will discuss this in person. But I still need the Mead stickers. You told me this was already handled. This is one of the reasons why the electricity is STILL not on at Mead.

Hi Elizabeth I gave Gary the sticker when I left so I will have to talk to hardball to go put another one on tomorrow OK bye bye hon

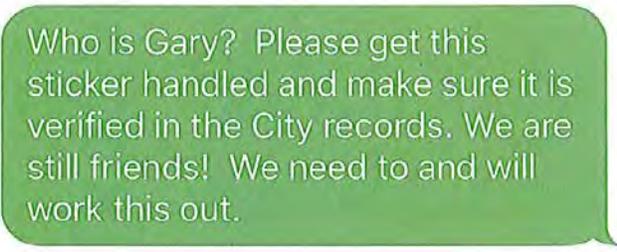
Hi Elizabeth I gave Gary the sticker when I left so I will have to talk to hardball to go put another one on tomorrow OK bye bye hon

(Attachment 31) In an interview with the PEC, Williams confirmed that the reference in the text above to a “green tag” and “sticker” refers to green stickers that the Department attaches to an electrical box once a final electrical inspection has been passed, letting PG&E know that it is safe to turn on the electricity at a property. In separate interviews with the PEC, both Williams

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 and inspector Harbaugh (who I interviewed on September 21, 2017) stated that the word
2 “hardball” in the last text above is probably an autocorrect for “Harbaugh.”

3 40. The text conversation continues:

4
5  Who is Gary? Please get this
6 sticker handled and make sure it is
7 verified in the City records. We are
8 still friends! We need to and will
9 work this out.

10 Jan 12, 2016, 11:39 AM

11 That's a good thing I know that and
12 I was just shocked by this I always
13 put my best foot forward and I just
14 feel hurt that you didn't please you
15 and make sure that's on the
16 morning bye

17 Jan 13, 2016, 10:21 AM

18 Say sogood morning a call Derek
19 and I called you no answer's
20 inspectors going over there I need
21 the paperwork he needs the
22 paperwork they gave

23  I don't have paperwork you were
24 handling this

Item #6b - Hearing Officers Recommendation and Exhibits A-C

Jan 13, 2016, 12:52 PM



So there it is and I'm paying right now the 300 call me



Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 **(Attachment 31)** According to Accela, on January 13, 2016 (the same day as the text
2 conversation above), Harbaugh inspected the property and gave a “Pass” result on the frame
3 inspection, writing “green tag issued for meter release.” **(Attachment 21)**

4 41. On August 12, 2019, I downloaded from Accela a log detailing when this particular
5 inspection was scheduled on the system and assigned to Harbaugh. **(Attachment 32)** The log
6 shows that this inspection was scheduled by Maurice Early (one of the Department’s schedulers)
7 on January 14, 2016 – the day after the actual inspection took place. The log also shows that at
8 8:59 AM on January 14, 2016 (three minutes after Early supposedly scheduled the inspection
9 and assigned it to Harbaugh), Harbaugh entered his inspection result onto Accela. In his entry,
10 Harbaugh wrote that he conducted the inspection at 12:30 PM on January 13, 2016 (the previous
11 day).

12 42. In an interview with me on August 27, 2019, Early said it was not his practice to
13 schedule inspections for a prior date. He did not recall scheduling this inspection. He stated that
14 his computer is sometimes left unattended while he is logged onto Accela.

15 43. According to David Miles, who was Harbaugh’s supervisor at the Planning &
16 Building Department and with whom I spoke about this matter, Harbaugh was scheduled to
17 conduct inspections in East Oakland on January 13, 2016, and would not have had reason to
18 conduct an inspection in West Oakland where the Mead property is located.

19 44. Espinosa sent a text message to Williams on January 22, 2016, which states in part,
20 “do you think I have the \$300 coming that I paid for the inspector on your electrical if so could
21 you deposit that for me.” **(Attachment 33)**

22 45. In an interview with me on June 8, 2017, Williams acknowledged that Espinosa had
23 informed her via text message on January 22, 2016, that she owed him \$300 for paying the
24 inspector who handled the electrical inspection. Williams told me that she believes she likely
25 reimbursed Espinosa for the \$300, as she regularly did with his other expenses, but doesn’t
26 specifically remember.

27 46. On March 1, 2016, Espinosa e-mailed Williams a scanned document containing a
28 handwritten note that reads “\$300 for previous electrical final 857-859 Mead.” **(Attachment 34)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 In an interview with me on April 24, 2017, Williams acknowledged receiving Espinosa's e-mail
2 of March 1, 2016, and confirmed that the words "300 for previous electrical final 857-859
3 Mead" refers to an electrical inspection at the Mead property.

C. 2735 Market Street

4
5 47. 2735 Market Street refers to a unit within a complex of apartments. In the records of
6 the Planning & Building Department, this complex is also sometimes referred to as 917 28th
7 Street. According to Alameda County Assessor records, Ms. Williams has owned the
8 Market/28th complex since 2014. **(Attachment 35)**

9 48. On March 27 and April 20, 2017, I obtained the Accela inspection logs for 2735
10 Market Street and 917 28th Street from the Planning and Building Department. The logs indicate
11 that unpermitted renovation work was occurring at 2735 Market Street in 2014. City inspector
12 Bill Bergstrom cited Ms. Williams for the unpermitted work. The matter was assigned code case
13 number 1402577. **(Attachments 36-37)**

14 49. On July 16, 2014, Elizabeth Williams applied for a building permit (no. B1400890) to
15 "remodel kitchen in unit addressed as 2735 [to abate complaint no.] 1402577." **(Attachment 37)**
16 Inspector Bergstrom performed a field check on that permit and found a potential life-safety
17 issue with the heating system on the property. He instructed Williams to open the walls and floor
18 for inspection before permits would be issued. **(Attachments 36-37)**

19 50. In an interview with me conducted on April 24, 2017, Williams stated that she had
20 refused to follow Bergstrom's instruction to open up the walls because she felt Bergstrom was
21 "just horrid." She also stated that after a year of back and forth with the City over safety issues,
22 she hired Espinosa to do the renovations. She stated to me that she had informed Espinosa she
23 was having problems with Bergstrom. She also admitted to me that she would sometimes cancel
24 City inspections if an inspector she did not like was scheduled to perform the inspection.

25 51. On June 26, 2015, Espinosa began receiving income from Williams, as described in
26 earlier in my declaration. In an interview with the PEC, Williams stated that she paid Espinosa
27 for contracting work on her properties that he personally performed, including work at 2735
28 Market Street.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 52. Meanwhile, several inspections then took place on the code case (no.1402577) over
2 the next twelve months, mostly without progress, as reflected on the Accela comment log.

3 **(Attachment 38)**

4 53. According to the Accela inspection log for 2735 Market Street, on two occasions
5 Espinosa attempted to assign himself to the inspections on this code case, but City inspector
6 Greg Clarke cancelled them. Those incidents are undated on the Accela record. Inspector Clarke
7 made notes into the Accela database that only he or Inspector Bergstrom should conduct
8 inspections at this property. **(Attachment 36)**

9 54. On September 22, 2015, Elizabeth Williams applied (via her agent, Ivonne Gomez)
10 for a building permit (no. B1504047) for “Unit #2735 Work without permits: bathroom, kitchen,
11 laundry room... [to abate code enforcement case no.] 1402577.”³ **(Attachments 36-37)** Williams
12 paid an inspection fee of \$613.00 and a field check fee of \$202.00. **(Attachment 39)**

13 55. Also included with the application was a “CE Routing Slip” filled out and signed by
14 Espinosa, despite the fact that he had never officially worked on the code case that this permit
15 was meant to resolve. Espinosa certified on the form that Williams’ permit application accurately
16 reflected the scope of work being conducted at the property. He also appears to have initially
17 waived any penalty fees or the need for a field check, but those entries have been crossed out and
18 revised.⁴ **(Attachment 40)** According to supervisor David Miles and inspector Clarke (in
19 separate interviews given with the PEC), Espinosa should not have been the one filling out this
20 CE Routing Slip – only the assigned code inspector is supposed to fill it out.

21 56. According to the Accela inspection log for 2735 Market Street, on October 16, 2015,
22 Inspector Bergstrom conducted a field check for building permit application #B1504047 and
23 noted several issues that needed correcting. He did not approve a permit and restated that the
24

25 _____
26 ³ The building permit originally listed the address as 917 28th Street. This was crossed out by someone and changed
27 to 2735 Market Street. **(Attachment 39)**

28 ⁴ In an interview with me, Williams said that her signature on this document appears to be forged. But she also said
that she would have signed it if she had been given the chance.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 walls and floor needed to be opened up and inspected before a field check would be complete.

2 **(Attachment 36)**

3 57. According to the Accela comment log for 2735 Market Street, on October 16, 2015,
4 Building Supervisor Tim Low allowed building permit #B1504047 to be issued, contingent on
5 the sheet rock being exposed prior to an inspection and the cost of the job evaluation increased.
6 The Accela log also has a note that Inspector Bergstrom was to perform the building inspections
7 since he was aware of the history of the building. **(Attachment 38)**

8 58. On October 27, 2015, Espinosa REPPED HIMSELF OF BEING THE AGENT FOR
9 THE PROPERTY OWNER personally submitted the application and obtained new building,
10 plumbing and electrical permits on the 2735 Market Street property. **(Attachment 41)**

11 59. According to the Accela inspection log for 2735 Market Street, on November 5, 2015
12 (a little over a week after Espinosa obtained the new permits for the property) inspector Anthony
13 Harbaugh performed frame inspections of the new building, electrical and plumbing permits and
14 gave a "Pass" result to each. **(Attachment 36)**

15 60. On August 12, 2019, I downloaded from Accela logs detailing when these particular
16 inspections were scheduled on the system and assigned to Harbaugh. **(Attachments 43-45)** The
17 logs show that the plumbing inspection was originally assigned to Harbaugh on November 4 at
18 10:30 AM, by Harbaugh himself. However, he did not schedule a date or time for it; instead he
19 left the status as "pending". The following day, Adoracion Silva Rodriguez scheduled the
20 plumbing, building and electrical inspections for the previous day (November 4). The following
21 day (November 5), at or around 9:13 AM, the building, electrical and plumbing inspections were
22 scheduled by Adoracion Silva-Rodriguez; she assigned them to Harbaugh and scheduled them
23 for the previous day (November 4). Harbaugh entered his inspection results onto Accela about
24 ten to fifteen minutes later.

25 61. According to Harbaugh's phone records, Harbaugh and Espinosa contacted one
26 another at Harbaugh's personal cell phone number during work hours on November 4 (at 12:49
27 PM) November 5 (at 2:40 PM) and November 6, 2015 (at 9:44 AM, 9:54 AM, 11:47 AM, 11:57
28 AM, and 12:51 PM). Harbaugh was at the number 925-628-9051 and Espinosa was at the

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 number 510-882-3181. Analysis of their phone records shows that Harbaugh and Espinosa did
2 not normally call one another. **(Attachment 42)**

3 62. According to text messages I received via subpoena from Williams, on November 5,
4 2015 (the day after Harbaugh's inspection had occurred, according to Accela), Espinosa texted
5 Williams a photograph of a handwritten bill to Williams that included a \$300 amount for
6 "inspection rough 2735 Market." The total amount on the bill is \$6,108. **(Attachment 46)**

7 63. Williams said in an interview with me that it was reasonable to assume that the
8 "inspection rough 2735 Market 300" on this document referred to the inspections at 2735 Market
9 that Harbaugh had supposedly performed the previous day.

10 64. According to Espinosa's bank records, on November 6, 2015, Espinosa deposited a
11 check from Ms. Williams for \$6,108 into his personal bank account at Chase Bank.

12 **(Attachments 47-48)**

D. 877 27th Street

13
14 65. Williams has owned parcel # 3-5-23 (a property with the address of 877 27th Street in
15 Oakland) in her own name since 1999. **(Attachment 49)**

16 66. On June 26, 2015, Espinosa began receiving income from Williams, as described in
17 earlier in my declaration. In an interview with the PEC, Williams stated that she paid Espinosa
18 for contracting work on her properties that he personally performed, including work at 877 27th
19 Street.

20 67. On March 16, 2017, I obtained the Accela inspection log for 877 27th Street from the
21 Building Department. **(Attachment 50)** On April 21, 2017, I obtained copies of permit
22 applications for this property from the Building Department. **(Attachment 51)** The records show
23 that on November 10, 2015, Espinosa applied at the Building Department for four permits
24 (building, electrical, mechanical, and plumbing) for 877 27th Street on Ms. Williams' behalf.

25 68. The Accela inspection log shows that on November 23, 2015, City of Oakland
26 Building Inspector Joanneke Verchuur conducted the frame inspections for the permits Espinosa
27 had obtained on the 27th St. property and gave a "Partial" result to the electrical permit and
28 noted in the City Planning and Building Department database that additional work needed to be

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 done. She gave a “Not Pass” result to the plumbing permit noting several existing issues with the
2 plumbing. **(Attachment 50)**

3 69. The Accela inspection log shows that on December 11, 2015, Harbaugh performed
4 frame inspections at 877 27th Street on those same electrical and plumbing permits, as well as
5 the other two permits (building and mechanical) for which Espinosa applied on November 10,
6 2015, on behalf of Williams. Harbaugh gave a “Pass” result to each. **(Attachment 50)**

7 70. On August 12, 2019, I downloaded from Accela logs detailing when these particular
8 inspections were scheduled on the system and assigned to Harbaugh. **(Attachments 52-55)** The
9 logs show that Maurice Early (one of the Building Department’s schedulers) assigned them on
10 December 8, 2015, to Harbaugh; Principal Inspections Supervisor David Miles re-assigned them
11 to other inspectors at 7:15 and 7:35 AM on December 11, 2015; and then Harbaugh finally re-
12 assigned them to himself at 8 AM that same morning (the day of the inspection).

13 71. In an interview with me on August 27, 2019, Early said it was not his practice to
14 schedule inspections for a prior date. He did not recall scheduling these inspections. He stated
15 that his computer is sometimes left unattended while he is logged onto Accela

16 72. The Accela inspection log shows that on December 16, 2015, Harbaugh returned to
17 perform a frame inspection at 877 27th Street. He gave a “Pass” result. **(Attachment 50)**

18 73. On August 13, 2019, I downloaded from Accela a log detailing when this particular
19 inspection was scheduled on the system and assigned to Harbaugh. **(Attachment 56)** The log
20 shows that on December 17, 2015 (the day after the inspection was conducted), Harbaugh
21 scheduled the inspection to himself and inputted his “Pass” result one minute later.

22 74. On March 1, 2016, Espinosa scanned and emailed several documents to Williams
23 including a note that had a list of costs. The list included a notation for 877 27th Street and an
24 amount of \$300 written next to it. Attached to the note was an Accela printout regarding permits
25 at 877 27th Street that included handwritten notes. Written on the note, among other things, was
26 the amount of “\$300 rough” and “\$300 final.” **(Attachment 34)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 75. In an interview with me on April 24, 2017, Williams acknowledged that she received
2 these documents with the amounts on them from Espinosa, and that the amounts were likely “his
3 fees” for the rough and final inspections.

E. 915 24th Street

4
5 76. 915 24th Street was, at all relevant times, part of a four-plex that included 907, 909,
6 and 911 24th Street, located in the Oakland and owned by Ms. Williams. **(Attachment 150)**

7 77. According to the Accela inspection and comment logs for this property (which I
8 obtained from the Building Department on March 16, 2017), on September 20, 2013, a City
9 building inspector verified building code violations at 915 24th Street and in response opened a
10 code enforcement case against Ms. Williams. **(Attachments 142-143)**

11 78. According to the Accela inspection and comment logs for this property, in 2014, a
12 City building inspector met several times with Ms. Williams’ agents regarding her attempts to
13 bring 915 24th Street into compliance with the building code, and found that Ms. Williams
14 needed to apply for the appropriate permits for the work she was doing at 915 24th Street. The
15 code case remained outstanding. **(Attachments 142-143)**

16 79. Between June 26 and September 24, 2015, Espinosa received payments totaling
17 \$112,000 from Ms. Williams, as described earlier in my declaration.

18 80. According to the Accela inspection and comment logs for this property, on October 1,
19 2015, Espinosa logged on to Accela and closed the code enforcement case against Williams for
20 915 24th Street. **(Attachments 142-143)**

E. 4163 Rifle Lane

21
22 81. 4163 Rifle Lane is a single-family house in Oakland.

23 82. On April 19, 2017, I received from the Building Department copies of the Accela
24 inspection and comment logs for 4163 Rifle Lane. **(Attachments 57-58)**

25 83. The Accela inspection log for 4163 Rifle Lane shows that on or around November 14,
26 2013, the Building Department received a complaint alleging that the property owners at 4163
27 Rifle Lane were building a unit in the backyard without permits. The log also shows that on the
28 same day, Espinosa conducted an inspection there and confirmed the allegations. Thereafter,

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 there was no further Building Department activity entered into Accela regarding that complaint,
2 and the case remained unresolved for two years. **(Attachment 57)**

3 84. At that time, the owners of 4163 Rifle Lane were Melinda Garay and Esther Lucero,
4 according to Alameda County Assessor Records. **(Attachment 59)**

5 In an interview with me on October 31, 2017, Ms. Lucero told me that in 2015 she and Ms.
6 Garay decided to move out of the Rifle Lane property and sell it. The owners hired Gimme
7 Shelter -- a real estate company owned by Bill Charman -- as their broker. According to Lucero,
8 multiple buyers were interested in the property but the unresolved permit problem on the
9 property hindered the sale.

10 85. Eventually, potential buyers named Jorge Iriso and Aimee Cole entered into a
11 contract to buy the property. I interviewed Jorge Iriso on October 25, 2017. Iriso told me that he
12 and Cole had wanted a guarantee from the City that the permit issues with the house would be
13 fixable and an estimate of the cost before they would close the contract. He also said that he and
14 his realtor requested that someone from the City visit the property with them to assess the
15 situation.

16 86. The realtor for the sellers was Megan Micco (acting under the supervision of
17 Charman). I interviewed Micco on June 30, 2017. Micco told me that Espinosa visited the Rifle
18 Lane property in February 2016, to meet with her and the potential buyers. She said that at that
19 meeting, Espinosa warned of a significant fine being levied against the property as well as the
20 possibility of major inspections that could require opening up the walls of the structure. During
21 that meeting, Micco asked Espinosa to speak on her cell phone to Charman (who was not
22 physically present at that meeting).

23 87. I interviewed Charman on May 11, 2017. Charman told me that when he spoke on the
24 phone to Espinosa during the Rifle Lane site visit, Espinosa told Charman to meet him at the
25 Building Department in a week or two and that the permit issue could be resolved.
26 The Accela inspection and comment logs for 4163 Rifle Lane have no record of Espinosa's visit
27 to the property that day. **(Attachments 57-58)**

28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 88. In his interview with me, Iriso told me that he and Cole eventually retracted their
2 offer for the property because the licensing and permitting issues remained unresolved.

3 89. In her interview with me, Micco told me that Cole and Iriso pulled out of the sales
4 contract on February 5, 2016.

5 90. According to a permit application filed with the Building Department on February 9,
6 2016, Charman applied for building, electrical and plumbing permits to “Remodel existing
7 bathroom. Remove unapproved forms for addition at the rear of the building.” **(Attachment 60)**
8 In his interview with me, Charman stated that on the same day that he applied for the above
9 permits, he was asked by Espinosa to meet him at a bench outside of City Hall. Charman further
10 stated that Espinosa told him during that meeting that in order to complete a re-inspection and
11 legalize the unpermitted building work, Charman needed to pay Espinosa \$1,500.

12 91. Charman paid Espinosa \$1,500 with a check. **(Attachment 61)** Espinosa deposited
13 the payment in his personal bank account on that same day. **(Attachment 62)**

14 92. On August 26, 2019, I downloaded a log from Accela showing all changes made to
15 the Accela record for the building permit for which Charman had applied on February 9, 2016.
16 **(Attachment 64)** The log shows that on February 10, 2016 (the day after receiving a check for
17 \$1,500 from Charman), Espinosa logged into Accela and changed the description of the work to
18 be conducted under the permits for the Rifle Lane property, expanding the scope of work from
19 what had been approved earlier in the day.

20 93. It also shows that Espinosa entered into Accela that the code complaint on the
21 property (dating from 2013) had been “abated.” The code case was then closed, as reflected on
22 the Accela inspection log for the property. **(Attachment 57)**

23 94. In my interview with Building Department supervisor David Miles on July 7, 2017, I
24 asked whether it was correct procedure for a code case to be ruled “abated” and closed before the
25 permits meant to rectify the violation had been finalled. Miles said that this was incorrect
26 procedure, that permits need to be finalled before a code case can be abated, and simply
27 obtaining the permits is not enough. According to Miles there was no “legitimate” reason for
28 Espinosa to abate the code case before the permits were finalled.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

G. 8925 Lawlor Street

1
2 95. 8925 Lawlor Street in Oakland is a single-family house. Vivian Tang acquired the
3 property in 2000 and transferred ownership to her personal trust in 2010. **(Attachment 65)**

4 On April 4, 2017, I received Accela inspection and comment logs for this property from the
5 Building Department. **(Attachments 66-67)**

6 96. According to Accela, on January 30, 2014, the City received a complaint alleging that
7 unpermitted renovation work was being conducted at 8925 Lawlor. The matter was assigned
8 code case no. 1400310. **(Attachment 66)**

9 97. According to Accela, the matter was assigned to Espinosa. He performed an
10 inspection on February 14, 2014, verified the complaint, and issued a stop-work order. He noted
11 on Accela: “the upstairs attic has been converted into a secondary unit without approvals,
12 permits or inspections. obtain needed approvals, permits and inspections, and convert unit or
13 return to original use. Also the basement is being converted into a workout area without needed
14 approvals, permits or inspections, 2xfees, required field check, zoning approval.” **(Attachments**
15 **67-68)** No further inspections of note take place after that date pursuant to this complaint.
16 **(Attachment 66)**

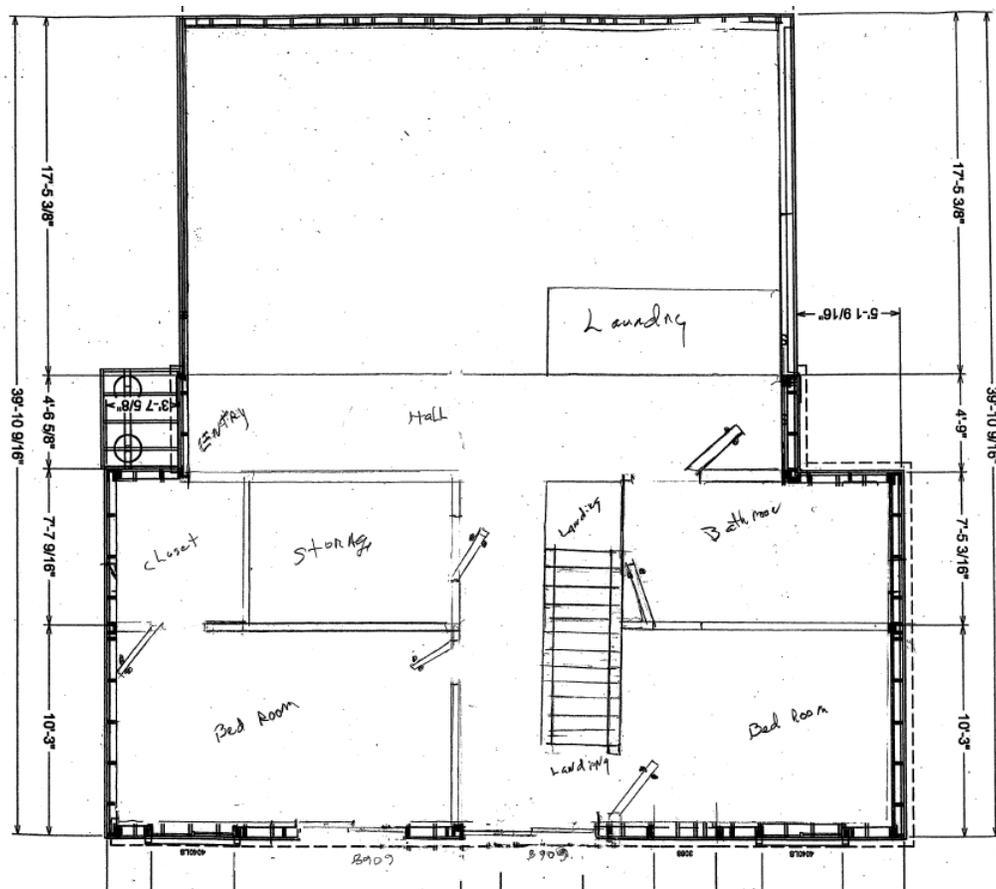
17 98. On December 10, 2014, Tang applied for building, electrical and plumbing permits to
18 remove electrical and plumbing work and “return attic to original use,” citing code case 1400310
19 (Espinosa’s case). The permit numbers were RB1403616, RE1402738, and RP1402344.
20 Espinosa completed the required “CE Routing Slip” and said the project did not require zoning
21 approval or a field check, in contradiction to his earlier comment on Accela from February 14.
22 **(Attachments 66, 69)**

23 99. On January 15, 2015, Espinosa scanned and e-mailed the following document to
24 himself, then forwarded it to Tang⁵ (the body of his e-mail was blank):
25
26

27 _____
28 ⁵ Tang’s name does not appear on the e-mail, but the following e-mail address does: vtlaus@yahoo.com.

(Attachment 70) In an interview with the me, Tang confirmed that this is her e-mail address.

Item #6b - Hearing Officers Recommendation and Exhibits A-C



(Attachment 70) The document does not indicate who made it. Espinosa re-scanned and re-sent this document to Tang on January 16, 2015, at 7:59 AM and 10:13 AM. One of those e-mails has the subject line "8925 Lawlor." The body of each of these e-mails is blank, and there is no reply from Tang. (Attachments 71-72)

100. On January 21, 2015, Espinosa performed final inspections pursuant to the three permits for which Tang had applied on December 10. He gave a "Pass" result to each. Also, code case no. 1400310 also had its status changed to "abated" that day. (Attachment 66)

101. The following day, January 22, 2015, Tang applied for new building, mechanical, electrical, and plumbing permits for 8925 Lawlor. The permit numbers were RB1500326, RM1500175, RE1500270, and RP1500208. (Attachments 67-68, 73)

102. On January 29, 2015, Tang wrote Espinosa a check for \$10,000.00. The memo line reads: "Total of \$21,500 Paid \$10,000 8925 Lawlor Oakland basement." The check was deposited the same day into Espinosa's Chase bank account, no. 3080216308. (Attachment 74)

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 103. On February 6, 2015, Tang wrote Espinosa a check for \$11,500.00. The memo line
2 reads: "For: 8925 Lawlor St Basement Conversion [*sic*]". The check was deposited the same day
3 into the same bank account as the previous check. **(Attachment 75)**

4 104. On February 9, 2015, Tang e-mailed Espinosa and said, "my number in china is
5 00186 18926175317.... thanks so much!" **(Attachment 76)**

6 105. On February 10, 2015, Espinosa e-mailed Tang and said, "The job is going great."
7 **(Attachment 77)**

8 106. On February 11, 2015, Espinosa e-mailed Tang and said, "Your house looks
9 beautiful, almost finished except for stairs." **(Attachment 78)**

10 107. On February 17, 2015, Espinosa e-mailed Tang again and said, "I will be inspecting
11 your house today and will send you photos." **(Attachment 79)**

12 108. On February 19, 2015, Espinosa performed frame inspections on all four of the
13 permits for which Tang had applied on January 22. He gave a "Pass" result to each and
14 commented on Accela, "ok to cover." **(Attachment 66)**

15 109. From February 25 to April 22, 2015, Espinosa sent Tang several emails (including
16 attached photographs) to update her on his progress in renovating the property. He also informed
17 her of his attempts to find a renter for the property. Tang replied to some of his emails to express
18 dissatisfaction with the quality of the work shown in the photographs. **(Attachments 80-90)**

19 110. On April 28, 2015, inspector David Carrillo performed final inspections on the
20 permits for which Tang had applied on January 22, and gave a "Pass" result to each.
21 **(Attachments 67-68)**

22 111. The next day, April 29, 2015, Espinosa e-mailed Tang and said, "I have the City Of
23 Oakland final your project today [*sic*]." **(Attachment 91)**

24 112. The following invoice from Espinosa (given to me under subpoena by Tang on May
25 11, 2017) is dated May 30, 2015:

Item #6b - Hearing Officers Recommendation and Exhibits A-C

137551

CUSTOMER'S ORDER NO. 137551		DATE 05-30-15				
NAME Thomas Espinosa						
ADDRESS 2 Admiral Dr						
CITY, STATE, ZIP Emeryville, Ca						
SOLD BY	CASH	C.O.D.	CHARGE	ON. ACCT.	MDSE. RETD.	PAID OUT
QUAN.	DESCRIPTION	PRICE	AMOUNT			
1	Paint interior		500.00			
2	Landscaper system		900.00			
3	Remove + install		400.00			
4	Clean interior					
5	at S. Hayes Court		300.00			
6						
7			3100.00			
8	all above work					
9	performed at 8925 Lawlor					
10	Oakland Ca					
11						
12						
13						
14						
15						
16						
17						
RECEIVED BY						

A-4705
T-46528

KEEP THIS SLIP FOR REFERENCE

01-11

(Attachment 92) Tang stated in an interview with me that this invoice was given to her by Espinosa after she returned from China, for what Espinosa claimed were overage costs on the remodeling of the house. Tang confirmed that she paid the invoice. She also stated that she no longer used Espinosa's services after this, and had to hire another contractor to redo some of the work he had performed, including what she described as deficient electrical work.

113. This is confirmed by Espinosa's bank records. They show that on June 12, 2015, Tang wrote Espinosa a check for \$3,100.00. The memo line reads: "for 8925 Lawlor St Oakland CA". The check was deposited the same day into the same bank account as the previous two checks from Tang to Espinosa. (Attachment 93)

Item #6b - Hearing Officers Recommendation and Exhibits A-C

H. Income From One Development & Investment Corporation / Ana Siu

1
2
3 114. Ana Siu is a loan officer who engages in house-flipping on the side. In 2013, she
4 acquired a single-family home located at 5135 Manila Avenue in Oakland. **(Attachment 94)**

5 115. According to Accela, on November 18-19, 2013, the City of Oakland Department of
6 Planning & Building Department received a complaint alleging that renovation work was being
7 done at the Manila property without permits. The matter was assigned to Espinosa, among other
8 inspectors. **(Attachment 95)**

9 116. In May 2014, Siu applied for several permits to create a basement unit at the Manila
10 property. Throughout the rest of the year, Espinosa and other inspectors performed inspections at
11 the site. **(Attachments 95-96)**

12 117. On January 16, 2015, Espinosa performed inspections pursuant to plumbing and
13 electrical permits (nos. RE1401014 and RP1400857) that Siu had applied for the previous year.
14 Ten days later, he performed a frame inspection as well. **(Attachment 95)**

15 118. In an interview with me, Siu confirmed that it was around this time (early 2015) that
16 she and Espinosa went into business together. She said that Espinosa initially proposed the idea
17 of going into business together while he was conducting an inspection at the Manila property on
18 behalf of the City. Siu was present for that inspection. As described by Siu, during that
19 inspection Espinosa learned that Siu was struggling to finish the renovation of the Manila
20 property. Espinosa told Siu that he had funding and resources that could help and proposed that
21 they go into business flipping houses together. Siu told me that she and Espinosa then started a
22 company together called One Development & Investment Corporation (“ODIC”).

23 119. On February 4, 2015, Siu began keeping a handwritten log of her and Espinosa’s
24 business plans together. Siu provided me with a copy of that log on November 6, 2016, pursuant
25 to a subpoena. **(Attachment 97)**

26 120. According to records I obtained from the California Secretary of State, ODIC was
27 registered as a corporation on February 6, 2015, using Siu’s home address as the company
28 address. **(Attachment 98)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 121. Siu told me that Espinosa initially proposed that he would find the funding for the
2 business, and that Siu could find the houses. Siu was the secretary of ODIC, and Espinosa was
3 the president. She said they were both signatories to the company bank account and had access to
4 its funds. According to Siu, they had a fifty-fifty profit-sharing agreement, though profits from
5 the company never materialized.

6 122. According to ODIC's bank records that I obtained under subpoena, Siu opened
7 Chase Bank account no. 715837816 in the name of ODIC on May 11, 2015. She listed her title
8 on the signature card as "Secretary." Espinosa was added to the account with the title "Signer."
9 **(Attachment 99)**

10 123. In her interview with me, Siu stated that she and Espinosa met almost every day in
11 2015 to discuss ODIC business. She said that Espinosa took over the renovations on the Manila
12 property, and asked Siu if she had any other properties. Siu told him about another property she
13 was trying to renovate and flip in the city of Orinda. Espinosa went to take a look at the
14 property, and then told Siu that he could get funding to complete it if Siu would sell it to him.
15 However, Espinosa was unable to qualify for a loan on his own. So instead, he obtained a private
16 loan under Siu's name, some of which was deposited into the ODIC account to which Espinosa
17 had access. Siu also told me that Espinosa arranged for Elizabeth Williams to loan him some
18 money for ODIC projects. Espinosa then proposed that they partner on the Orinda property –
19 instead of Siu selling the property to Espinosa, everything would be under Siu's name, but
20 Espinosa run the work.

21 124. The following table shows significant deposits made into the ODIC bank account:
22
23
24
25
26
27
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

<i>Deposit Date</i>	<i>Date on Check</i>	<i>Deposit Amount</i>	<i>Source</i>	<i>[Investigator Notes]</i>	<i>Exhibit</i>
05/11/2015	[transfer]	\$40,000.00	Savings Account - 8620	Origin unknown	-
05/22/2015	05/07/2015	\$4,912.16	City of Orinda	Check is made out to Ana Siu	Attachment 100
07/21/2015	07/20/2015	\$39,750.00	Old Republic Title Company	Check is made out to Thomas Espinosa	Attachment 101
08/26/2015	08/26/2015	\$40,000.00	Elizabeth Williams	Check is made out to Thomas Espinosa	Attachment 2
11/20/2015	11/20/2015	\$5,763.00	Elizabeth Williams	Check is made out to Thomas Espinosa	Attachment 9

125. As a signatory to the ODIC account, Espinosa had the authority to write checks and withdraw money from the company account whenever he wished. The following table lists all checks written to Espinosa from the ODIC account, or cash withdrawals from the account where the payee is listed as Espinosa, according to ODIC's bank records (**Attachment 102**):

<i>Date</i>	<i>Check no</i>	<i>Check/Withdrawal Amount</i>	<i>Notes</i>
05/27/2015	1001	\$3,800.00	Memo says "Orinda Plan"
06/05/2015	1005	\$11,100.00	Memo says "Total [illegible] \$105,1[?]89"
06/19/2015	1009	\$1,870.00	Memo says "Plan - Orinda"
06/24/2015	1010	\$2,500.00	Memo says "ADE[illegible] - contractor project"
06/24/2015	1011	\$500.00	Memo says "AD[illegible] - Final"
06/25/2015	[cash]	\$10,000.00	Direct cash withdrawal
07/09/2015	[cash]	\$8,000.00	Direct cash withdrawal
07/22/2015	[cash]	\$1,000.00	Direct cash withdrawal
07/22/2015	[cash]	\$11,414.00	Direct cash withdrawal

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1	07/24/2015	[cash]	\$5,000.00	Direct cash withdrawal
2	07/28/2015	[cash]	\$5,000.00	Direct cash withdrawal
3	07/31/2015	[cash]	\$3,000.00	Direct cash withdrawal
4	08/06/2015	[cash]	\$5,000.00	Direct cash withdrawal
5	08/14/2015	[cash]	\$4,000.00	Direct cash withdrawal
6	08/29/2015	[cash]	\$2,000.00	Direct cash withdrawal
7	09/01/2015	[cash]	\$2,500.00	Direct cash withdrawal
8	09/01/2015	[cash]	\$450.00	Direct cash withdrawal
9	09/08/2015	[cash]	\$1,000.00	Direct cash withdrawal
10	09/10/2015	[cash]	\$1,000.00	Direct cash withdrawal
11	09/14/2015	[cash]	\$400.00	Direct cash withdrawal
12	09/28/2015	[cash]	\$500.00	Direct cash withdrawal
13	11/21/2015	[cash]	\$5,000.00	Direct cash withdrawal
14	11/23/2015	[cash]	\$400.00	Direct cash withdrawal
15	11/25/2015	[cash]	\$300.00	Direct cash withdrawal

16
17
18 126. According to Siu, Espinosa did not provide her with any written accounting to verify what he was using this money for.

19 127. According to Espinosa’s personal bank records, he also received the following
20 payments directly from Siu’s personal checking account:
21
22
23
24
25
26
27
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

<i>Deposit Date</i>	<i>Date on Check</i>	<i>Deposit Amount</i>	<i>[Investigator Notes]</i>	<i>Attachment</i>
02/12/2015	02/12/2015	\$5,000.00	Memo says "Re-pay loans"	Attachment 103
03/09/2015	03/06/2015	\$3,000.00	Memo says "3/9/15 construction [?] [illegible]" Espinosa takes out \$1200 cash from this deposit	Attachment 104
03/12/2015	03/12/2015	\$2,000.00	Note there is a "deposited item returned" of \$2000 on 3/13 per bank statement	Attachment 105
03/16/2015	03/14/2015	\$3,000.00	Memo says "Material Labor"	Attachment 106
03/23/2015	03/12/2015	\$2,000.00	-	Attachment 107
03/24/2015	03/19/2015 03/24/2015	\$1,800.00	These are two checks from Ana Siu (cashed at the same time) 1) #350 for \$800 for "Orinda Plan" 2) #359 for \$1000 for "dirt"	Attachment 108
03/27/2015	03/27/2015	\$3,000.00	Memo says "Payroll" [?]	Attachment 109
04/01/2015	04/01/2015	\$1,659.23	Memo says "[illegible] Plumbing"	Attachment 110
04/01/2015	04/01/2015	\$1,800.00	Memo says "Orinda Plan"	Attachment 111
04/10/2015	04/10/2015	\$7,000.00	This check bounces	Attachment 112
04/15/2015	04/15/2015	\$7,000.00	Memo says "Replace return #368" (the bounced check)	Attachment 113
04/30/2015	04/22/2015 04/28/2015 04/28/2015	\$29,018.00	These are three checks	Attachment 114

128. Siu's logbook for ODIC records numerous meetings and financial transactions between her and Espinosa over the course of 2015, mostly relating to money needed by Espinosa for his work crews on ODIC properties. **(Attachment 97)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 129. According to Siu, she and Espinosa tried unsuccessfully to acquire a property in
2 Alamo that they would have flipped through ODIC. Her logbook (**Attachment 97**) contains
3 references to other properties that she and Espinosa tried to acquire, such as 845 Calmar in
4 Oakland.

5 130. In her interview with me, Siu stated that her business relationship with Espinosa
6 broke down over the poor quality of work that he was performing at ODIC's job sites, as well as
7 the pressure of running out of money before the properties were ready for sale. For example, she
8 said that Espinosa failed to connect a gas line at the Manila property, and built the Orinda
9 property without a foundation. Toward the end of 2015, Siu and Espinosa mutually agreed to
10 stop working together.

11 131. According to ODIC's bank records, toward the end of 2015, the balance on the
12 ODIC account was zeroed out, and the account became inactive. (**Attachment 102**)

I. Income Received From Alex Machado

14 132. 2326 Myrtle Street and 6620 Valley View are single-family homes located in
15 Oakland. At all times relevant to this case, the properties were owned or co-owned by Alex
16 Machado. (**Attachments 115-116**)

17 133. On March 13, 2017, I obtained the Accela inspection and comment logs for those
18 properties from the Building Department. (**Attachments 122-123, 144-145**)

19 134. According to the Accela inspection and comment logs for those properties, Machado
20 was engaged in renovation work at both properties in 2015-2016 and had applied for permits for
21 each site from the Building Department. Various inspectors, not including Espinosa, performed
22 inspections on those permits. (**Attachments 144-147**)

23 135. On November 8, 2016, I interviewed Maryline Pavlic, who worked for Machado as
24 his bookkeeper and is also his wife. Pavlic stated that Machado introduced her to Espinosa in
25 February 2016 as an inspector for the City of Oakland. (She did not know how Machado and
26 Espinosa first met, but she believed it was in conjunction with Machado's dealings with the City
27 when applying for building permits). During that meeting, Espinosa drove Pavlic and Machado
28 around Oakland in his City-issued vehicle, showing them properties that he claimed to own. She

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 said that Espinosa would also sometimes pull the car up to properties with ongoing construction
2 and check what they were doing. Pavlic believes Espinosa did this in order to impress upon
3 Machado the type of power that he had as a city inspector.

4 136. Pavlic told me in her interview that Espinosa and Machado initially had a business
5 relationship, in the sense that Espinosa indicated that he had investors and wanted to acquire
6 Machado's property on Valley View.

7 137. Pavlic stated in her interview with me that Machado told her that Espinosa would
8 come to Machado's job sites at Myrtle or Valley View and ask for money. Pavlic stated to me
9 that these requests for money were characterized by Espinosa as being necessary to ensure that
10 the work at the job sites would pass City inspections, either because Espinosa was conducting a
11 private pre-inspection or because he had access to the City's computer system and could
12 manipulate it. Pavlic characterized these requests for money as threats. She also said that
13 Espinosa would also come to Machado's work sites sometimes when Machado was off-site, and
14 order the workers home, "just to show that he's the boss" (Pavlic's words to me during her
15 interview).

16 138. On November 13, 2016, Pavlic provided me with cash withdrawal receipts showing
17 that Machado made the following withdrawals.

18 139. On January 16, 2016, Machado withdrew \$500 in cash. The withdrawal receipt has a
19 handwritten note that says "Tomas Espinosa Myrtle." (**Attachment 117**)

20 140. On February 27, 2016, Machado made three cash withdrawals totaling \$1,700. Each
21 withdrawal receipt has a handwritten note that says "Tomas Myrtle." (**Attachment 118**)

22 141. On March 13, 2016, Machado withdrew \$200 in cash from one of his bank
23 accounts. The withdrawal receipt has a handwritten note that says "Tomas Valley View."
24 (**Attachment 120**)

25 142. On April 11, 2016, Machado withdrew \$1000 in cash from one of his bank
26 accounts. The withdrawal receipt has a handwritten note that says "Tom Espinoza. Project:
27 Myrtle." (**Attachment 119**)

28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 143. In an interview with me on June 9, 2017, Pavlic said that she wrote the handwritten
2 notes on the above-described withdrawal slips, on instruction from Machado. She also said that
3 Machado told her that for each of these withdrawals, he paid the cash to Espinosa.

4 144. On November 13, 2016, Pavlic provided me with a copy of a City of Oakland
5 Building Services stop-work order for 6220 Valley View, signed by Espinosa. The order is dated
6 March 31, 2016. It says that the permitted work at the site does not conform with approved plans,
7 specifically: “Working beyond the description of permit. Secure site – Remove all trash and
8 [illegible] - Board and [illegible] off all hazards for safety – obtain Building permit.”

9 **(Attachment 121)**

10 145. There is no record of this stop-work order on the Accela inspection or comment logs
11 for 6220 Valley View. **(Attachments 122-123)** I obtained from the Planning & Building
12 Department a record a record of all of Espinosa’s activity on Accela in 2015-2016; there are no
13 references to Espinosa conducting any inspections at any properties on Valley View during that
14 time, nor are there any entries dated 03/31/2016. In fact, according to the records, Espinosa did
15 not perform any inspections at any address throughout that entire week.⁶

16 146. Pavlic stated in her interview with me that she was present at the Valley View site
17 when Espinosa issued this stop-work order. She said that Espinosa invited her to meet him at the
18 Valley View site. At the site, Espinosa was on the phone to Machado (who was in Brazil at the
19 time) and said that he (Espinosa) was going to acquire the Valley View property for himself.
20 Pavlic told me she got the impression that Espinosa issued the stop-work order for the purpose of
21 intimidating her and Machado. Pavlic also told me that Machado did not transfer the property to
22 Espinosa, but was nervous about what else Espinosa might do from that point on.

23 147. On April 13, 2016, Pavlic obtained a cashier’s check for \$4,500 payable to
24 Espinosa. The memo line reads “Consulting 6220 Valley View.” Espinosa deposited the check
25 into his personal bank account that same day. Pavlic provided me with a copy of this cashier’s
26 check on date pursuant to a subpoena on November 6, 2017. **(Attachment 124)**

27 _____
28 ⁶ These records are too long to print out and include as a physical attachment, but they are saved in digital form on
the PEC’s computer drive and can be produced upon request.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 148. In an interview with me, Pavlic stated that she obtained this cashier's check at the
2 request of Machado (though Machado was the one who personally gave it to Espinosa), and that
3 she chose to use a cashier's check instead of cash in order to have a paper trail. She said
4 Espinosa did not perform any consulting services, and that she just put that on the memo line in
5 order to ensure that Espinosa would accept it (instead of taking cash). She said that this check
6 was written after Espinosa demanded \$4,500 from Machado, who then asked Pavlic for the
7 money. When asked what Espinosa was requesting or threatening in exchange for the money,
8 Pavlic cited what she characterized as the constant threat that Espinosa would change something
9 on the City computers to make the development process difficult for Machado.

10 149. On April 27, 2016, Pavlic obtained another cashier's check payable to Espinosa, for
11 \$5,000. The memo line reads "6220 Valley View." Espinosa deposited this check into his
12 personal account that same day, according to his bank records. **(Attachments 124-125)** Pavlic
13 provided me with a copy of this cashier's check on date pursuant to a subpoena on November 6,
14 2017.

15 150. In an interview with the me, Pavlic stated that this \$5,000 payment was the result of
16 a separate demand for money from Espinosa, and was not part of the earlier \$4,500 payment (i.e.
17 there was not a single demand for \$9,500, but rather two separate demands for \$4,500 and
18 \$5,000 respectively). She said that it was not the result of a specific threat, but rather stemmed
19 from the underlying threat that Espinosa could use his City position to adversely affect
20 Machado's interests. She stated that Machado was the one who personally handed this and the
21 earlier \$4,500 check to Espinosa.

22 151. In her interview with me, Pavlic denied that Espinosa performed any contract work
23 on Machado's properties. However, Pavlic did provide me with a cash withdrawal receipt for
24 \$2,000 from Espinosa's credit union dated April 28, 2016. On the receipt there is a memo stating
25 that the cash was being withdrawn for the purpose of paying Ivonne Gomez for work related to
26 6220 Valley View, as well as a handwritten note stating that the money is being taken out of the
27 \$4,500 paid earlier to Espinosa. **(Exhibit 126)** Pavlic stated that Gomez is an architect who
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 works with Espinosa. She also stated that Gomez later contacted her to say that she was still
2 owed \$10,000 for her services.

3 152. Espinosa's e-mail records show that he was in contact with Gomez about the Valley
4 View property, as well as other properties not related to Machado. **(Attachment 127)**⁷

5 *J. Income Received From Apex Construction, Jerry Tran, Pat Viswanathan, and Zati Uysal*

6 153. According to Espinosa's bank records, on April 3, 2015, Espinosa received a check
7 for \$3,000.00 from "Apex Construction." The check lists the company's address as being in
8 Oakland (1110 Franklin Street, Suite 3). The memo line reads "personal." Espinosa deposited it
9 into one of his personal accounts the same day. **(Attachment 128)**

10 154. "Apex Construction" is a company that was registered as a corporation with the
11 California Secretary of State on November 4, 2014. Boswell Zheng and Stephen Tong signed as
12 incorporators, and Bosco Lai signed as the agent for service of process. It listed street addresses
13 in San Francisco and Daly City. **(Attachment 129)**

14 155. Espinosa's e-mail records show that he was working with Stephen Tong and Bosco
15 Lai throughout late 2015 and early 2016 in their efforts to develop properties located at 3600
16 Macarthur and 5325 San Pablo. Tong identifies himself in email correspondence with the City on
17 those projects as a representative of "Apex Development." **(Attachment 130)**

18 156. According to Espinosa's bank records, on August 15, 2016, Jerry Tran wrote a
19 check to Espinosa for \$3,500.00 via personal check (the address on the check was that of Realty
20 World East Bay – 1221 Embarcadero Suit 210, Oakland). Espinosa deposited it the same day.
21 **(Attachment 131)**

22
23
24
25 ⁷ The email in Attachment 127 makes reference to "Valley View", which is believed to refer to 6220 Valley View,
26 given that the email thread includes a message to Machado. The email also references two other properties that
27 Espinosa has "acquired" but these do not appear to be related to Machado; it also references "MO" which may be a
28 reference to an individual named Mohammed Mashhoon whom Espinosa was assisting with Planning & Building
issues around this time and who does not appear related to the Machado matter.

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 157. Jerry Tran was a real estate broker and CEO with NextHome Generations.
2 NextHome Generations was known as “Realty World East Bay” until December 8, 2016.
3 **(Attachment 132)** NextHome Generations has a business address in Oakland, and operates in
4 Oakland and other cities. **(Attachment 133-134)**

5 158. In an interview with me on March 3, 2017, Tran said that he had been helping
6 Espinosa to locate warehouses for marijuana businesses. In the course of that relationship, he
7 (Tran) decided to enter the marijuana business himself, and wrote this check to Espinosa in order
8 to pay for opening two corporations for that purpose. Tran claimed that Espinosa had particular
9 knowledge about how to open such corporations.

10 159. Tran’s statement that Espinosa was trying to enter the marijuana business is
11 corroborated by a statement of Gregory Minor, a City of Oakland employee who oversees the
12 City’s marijuana permit program. In an interview with me on March 29, 2016, Minor told me
13 that Espinosa had contacted him about obtaining a marijuana permit and had tried to question
14 Minor about the process in Minor’s office (a non-public area) without an appointment. Minor
15 told me he had escalated these and other concerns about Espinosa’s potentially unethical actions
16 to his supervisors and Building Department supervisors. Minor subsequently provided me with a
17 written declaration describing his interactions and observations of Espinosa, which included an
18 email message from Espinosa to Minor regarding marijuana permits. **(Attachment 152)**

19 160. According to Espinosa’s bank records, on March 15, 2016, Espinosa deposited a
20 check for \$1,000.00 from Pat Viswanathan. (The check is dated March 3, 2016). The memo line
21 reads “consulting.” **(Attachment 135)** Viswanathan appears to have been trying to develop a
22 parcel of land that he owned, located at 5963 Margarido in Oakland, in 2016, with Espinosa
23 holding himself out to a vendor as a “project manager” on the project. **(Attachments 136-139)**

24 161. According to Espinosa’s bank records, on April 8, 2015, Espinosa received and
25 deposited a check for \$3,000.00 from Zati Uysal. The memo line reads “loan.” **(Attachment**
26 **140)**

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 162. Uysal’s check states that his address is 5601 Balmoral Drive in Oakland. That is
2 also the location of a business called “Delightfully Turkish” that is run by Uysal. (**Attachment**
3 **141**)

K. Use of City Car

5 163. On July 9, 2015, the County of Contra Costa alerted the City of Oakland that it had
6 received a tip from resident who had seen “concerns about a job site at 6 Linda Vista [in Orinda]
7 regarding... a City Of Oakland Building Inspector [who] was visiting the job site in his City
8 vehicle, his name is Thomas Espinosa.” (**Attachment 148**)

9 164. In an interview with me on March 29, 2018, the resident (Susan Lucier) confirmed
10 that she had seen Espinosa multiple times at the Orinda site, probably throughout June and July
11 of 2015, and that he had often turned up in a car that said “City of Oakland” on the side. Lucier
12 had spoken to Espinosa at the time; she said he introduced himself as a City of Oakland
13 inspector and gave her his City of Oakland business card, and also said he was a general
14 contractor at the 6 Linda Vista site, working for Ana Siu.

L. Use of City Paper, Scanner, Printer, and Toner

16 165. On March 29, 2016, Building Department supervisor Rich Fielding provided me
17 with hard-copy documents that he said were apparently dropped by Espinosa while using a
18 printer at the Planning & Building Department.

19 166. Fielding also provided a copy of a Memorandum (dated August 4, 2015)
20 (**Attachment 151**) to Thomas Espinosa from Rich Fielding which states in part:
21

22 On Friday May 8, 2015, you were instructed via e-mail to refrain from printing personal
23 e-mails using City printers, which included travel arrangements, hotel reservations, and
24 personal property information.

25 On May 13, 2015 You, Ed Labayog and Marie Taylor met to discuss this issue. You
26 stated you would not continue to print personal e-mails and information using city
27 equipment.
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1 On May 18, 2015 there was an argument between you and Greg Clarke; Greg stated the
2 argument occurred because he had to wait for your personal materials to be printed before
3 he could get his information for his code case from the printer. You stated in an ensuing
4 meeting with Marie Taylor, Deborah Sandercock, and Tim Low, that you were unaware
5 of the personal photos which were downloaded from your city work camera and being
6 printed with your code case photos. In the earlier discussion we had, you were asked to
7 be aware of what you were printing.

8 On July 1, 2015 Marie Taylor went to the printer to retrieve some material she had
9 printed from her computer to find a stack of printed material she had to go through to find
10 her document. She discovered the material had been printed from your computer. She
11 retrieved sixty-two (62) e-mails printed from your computer in which fifteen (15) were
12 work related. The remaining forty-seven (47) were not. It has also been reported that you
13 were in the office on Saturday July 18, 2015 without overtime authorization and you
14 were printing material at that time.

15 You continue to print personal material using City equipment. As of July 27, 2015
16 personal items were in the printer. This is a violation of AI 140. Some of the items
17 retrieved from the printer and actions reported to Marie Taylor or me by other city
18 employees could be subject to violation of AI 596 II Policy Conflict of Interest and
19 Personnel Manual Rule 12.

20 167. In the documents given to the PEC by Fielding, I counted 114 pages that appeared to
21 be non-City related. **(Attachment 149)**

22 *M. Failure To File Form 700*

23 168. On March 30, 2016, I retrieved all Form 700s filed by Espinosa that were on file at
24 the City Clerk's office. There was no Form 700 on file from Espinosa covering 2015.

25 169. As of April 21, 2021, there is still no Form 700 on file for Espinosa on the City's
26 online Form 700 database (Netfile) covering 2015 or 2016, nor is there a leaving office Form
27 700 on file for Espinosa.
28

Item #6b - Hearing Officers Recommendation and Exhibits A-C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully, Submitted,

Dated: April 22, 2021

Simon Russell, Investigator
City of Oakland Public Ethics Commission

EXHIBIT C

Item #6b - Hearing Officers Recommendation and Exhibits A-C

IN THE MATTER OF THOMAS ESPINOSA CASE NO.# 16-14

PUBLIC ETHICS COMMISSION ENFORCEMENT UNIT, COMPLAINANT

V.

THOMAS ESPINOSA, RESPONDENT

PEC CASE NO. 16-14

Item #6b - Hearing Officers Recommendation and Exhibits A-C

IN THE MATTER OF THOMAS ESPINOSA CASE NO.# 16-14

Public Ethics Commission (PEC) Evidence Exhibit List

Exhibit No.#	Exhibit Description	Offered	Admitted
1.	Written Declaration: PEC Investigator Declaration with attachments (Attachments 1-152). Testimony regarding investigation, collection of evidence, and interview of witnesses in the Matter of Thomas Espinosa. (The Investigators attachments are Incorporated and referenced here-in as Plaintiff's Exhibits)		
1 (b.).	Chase Bank Statement Thomas Espinosa		
2.	Chase Bank Statement Thomas Espinosa		
3.	Chase Bank Statement Thomas Espinosa		
4.	Chase Bank Statement Thomas Espinosa		
5.	Chase Bank Statement Thomas Espinosa		
6.	Western Credit Union Bank Statement Thomas Espinosa		
7.	Chase Bank Statement Thomas Espinosa		
8.	Chase Bank Statement Thomas Espinosa		
9.	Chase Bank Statement Thomas Espinosa		
10.	Chase Bank Statement Thomas Espinosa		
11.	Chase Bank Statement Thomas Espinosa		
12.	Western Credit Union Bank Statement Thomas Espinosa		
13.	Chase Bank Statement Thomas Espinosa		
14.	Chase Bank Statement Thomas Espinosa		
15.	Chase Bank Statement Thomas Espinosa		
16.	Text Messages between Thomas Espinosa and Elizabeth Williams		
17.	Email between Thomas Espinosa/Anna Sui/ Elizabeth Williams		
18.	Text Messages between Thomas Espinosa and Elizabeth Williams		
19.	Email communication between Thomas Espinosa and Anna Sui		
20.	County Assessor Property Value of Elizabeth Warren Property 859 Mead		
21.	City Inspection Log		
22.	City Comment Log		
23.	Copy of City Electrical Permit		
24.	Email Communications with Thomas Espinosa regarding Mead St. property		
25.	Copy City Electrical Permit		

Item #6b - Hearing Officers Recommendation and Exhibits A-C

IN THE MATTER OF THOMAS ESPINOSA CASE NO.# 16-14

26.	Inspection Log for 859 Mead		
27.	Text Messages between Espinosa and Warren		
28.	Text Messages between Espinosa and Warren		
29.	Text Messages between Espinosa and Warren		
30.	Text Messages between Espinosa and Warren		
31.	Text Messages between Espinosa and Warren		
32.	City Accela Log 01/14/2016		
33.	Text Messages between Espinosa and Warren		
34.	Email from Espinosa to Warren regarding handwritten note		
35.	County Assessor Property Value for 28 th Street		
36.	Accela Inspection Log Market St.		
37.	Accela Inspection Log 28 th St.		
38.	Accela Inspection Log Market St.		
39.	City application for Building Permit for 917 28 th St.		
40.	Routing Slip for 917 28 th St.		
41.	Accela Report for 2735 Market St.		
42.	Cellular Phone Log from Harbaugh		
43.	Accela Log Harbaugh 11/5/2015		
44.	Accela Log Harbaugh		
45.	Accela Log Harbaugh		
46.	Text Messages between Espinosa and Warren		
47.	11/6/2015 Espinosa Check Deposit \$6108.		
48.	Chase Bank Statement for Espinosa		
49.	County Assessor Property Value for 877 27 th Street		
50.	Inspection Log for 877 27 th St.		
51.	Permit Application for 877 27 th St.		
52.	Accela Log Harbaugh 12/14/2015		
53.	Accela Log Harbaugh		
54.	Accela Log Harbaugh		
55.	Accela Log Harbaugh		
56.	Accela Log Harbaugh 12/17/2015		
57.	Accela Inspection Log 4163 Rifle Lane		
58.	Accela Comment Log 4163 Rifle Lane		
59.	County Assessor Property Value for 4163 Rifle Lane		
60.	Application for permits for Rifle Lane		
61.	Copy of Check written to Espinosa from Gimme Shelter		
62.	Western Credit Union Statement of Espinosa Account 2/29/16		
63.	Accela Log Harbaugh		
64.	City Record Log 2/9/2016		
65.	County Assessor Property Value for Lawlor St.		
66.	Inspection Log for Lawlor St.		
67.	Comment Log for Lawlor St.		

Item #6b - Hearing Officers Recommendation and Exhibits A-C

IN THE MATTER OF THOMAS ESPINOSA CASE NO.# 16-14

68	City issued Notice of Violation regarding Lawlor St.		
69	City Application for Permits for 8925 Lawlor St.		
70	Email from Thomas Espinosa regarding floor plan of building		
71	Email from Thomas Espinosa regarding floor plan of building		
72	Email from Thomas Espinosa regarding floor plan of building		
73	City Application for Permits for 8925 Lawlor St.		
74	Chase Bank Reconstructed Bank Statement for Espinosa		
75	Chase Bank Reconstructed Bank Statement for Espinosa		
76	Email from Espinosa		
77	Email from Espinosa 2/10/2015		
78	Email from Espinosa		
79	2/17/15 Email from Espinosa to investor "I dream of you"		
80	2/25/2015 Email from Espinosa to investor "Sick with diabetes"		
81	3/5/2015 Email from Espinosa to investor "Listed the property"		
82	3/17/2015 Email from Espinosa to investor "Have not rented house"		
83	3/24/2015 Email from Espinosa to investor "Lower rent amount"		
84	3/25/2015 Email from Espinosa to investor " going out to site"		
85	3/31/15 Email from Espinosa to investor " list house on other sites"		
86	4/6/2015 Email from Espinosa to investor "Lower rent"		
87	4/7/2015 Email from Espinosa to investor "pic attachments"		
88	4/14/2015 Email from Espinosa to investor " Floor not finished"		
89	4/20/2015 Email from Espinosa to investor " Floor done"		
90	4/22/2015 Email from Espinosa to investor "small portion of floor complete... no renter"		
91	4/29/2015 Email from Espinosa to investor " City finaled project"		
92	5/30/2015 Handwritten Invoice/Receipt		
93	Chase Bank Statement for Espinosa June 10, 2015- July 2015		
94	County Assessor Property Value for Manila Ave.		
95	Inspection Log Manila Ave.		
96	Comment Log Manila Ave.		
97	Log Page for One Investment Corporation		
98	Articles of Incorporation for One Investment Corporation 2/6/2015		
99	Chase Bank Account Statement for One Investment Corporation		
100	Chase Bank Deposit Check \$4912,16		

Item #6b - Hearing Officers Recommendation and Exhibits A-C

IN THE MATTER OF THOMAS ESPINOSA CASE NO.# 16-14

101	Chase Bank Deposit One Development Corporation \$39,750.00		
102	Chase Bank Statement for One Development Corporation		
103	Chase Bank Deposit Slip and Check for Espinosa \$5,000 from Ana Sui		
104	Chase Bank Deposit Slip and Check for Espinosa \$3,000 from Ana Sui		
105	Chase Bank Deposit Slip and Check for Espinosa \$2,000 from Ana Sui		
106	Chase Bank Deposit Slip and Check for Espinosa \$\$3,000 from Ana Sui		
107	Chase Bank Deposit Slip and Check for Espinosa \$2,000 from Ana Sui		
108	Western Credit Union Bank Statement for Espinosa 3/31/15		
109	Chase Bank Deposit Slip and Check for Espinosa \$3,000 from Ana Sui		
110	Chase Bank Check to Espinosa \$1,659.23 on 4/1/2015 from Ana Sui		
111	Check to Espinosa \$1800 from Ana Sui		
112	Check to Espinosa \$7,000 from Ana Sui		
113	Check to Espinosa \$7,000 from Ana Sui		
114	Checks to Espinosa totaling \$29,018.00 from Ana Sui		
115	County Assessor Property Value for Myrtle St.		
116	County Assessor Property Value for Valley View St.		
117	Espinosa Bank of America withdrawal 1/16/16 for \$2,179.54		
118	Espinosa Bank of America withdrawal 2/27/16		
119	Espinosa Bank of America withdrawal 4/11/16		
120	Espinosa Bank of America withdrawal 3/13/16		
121	Stop Work Order Issued by Espinosa on Valley View property		
122	Comment Log for Valley View property		
123	Inspection Log for Valley View property		
124	Espinosa's Western Credit Union Statement 4/30/16		
125	Bank of America Cashier's Check for Espinosa 4/27/16		
126	Western Credit Union Check to Ivonne Gomez 4/28/16		
127	Espinosa Email regarding Valley Vie 5/2/2016		
128	Check from Apex Construction to Espinosa \$3,000 4/3/15		
129	Articles of Incorporation for Apex Construction		
130	12/21/2015 Email from Lai to Espinosa		
131	Check from Jerry Tran to Espinosa for \$3,500 8/15/2016		
132	Amended Articles of Incorporation for Realty World East Bay		
133	Statement of Information for Realty World East Bay		
134	Blog and Alameda Article on Realty World		
135	Wells Fargo Check to Espinosa \$1,000 3/15/2016		

Item #6b - Hearing Officers Recommendation and Exhibits A-C

IN THE MATTER OF THOMAS ESPINOSA CASE NO.# 16-14

136	4/24/2015 Email regarding Geotechnical Report Proposal for Residential Development property		
137	4/24/2015 Email regarding Soil Report		
138	4/27/2015 Email regarding Margarido Drive Project		
139	4/27/2015 Email regarding Geotrinity estimate		
140	Chase Bank Deposit Espinosa \$3,000 from Zati Uysal		
141	Webpage write up on Delightfully Turkish		
142	Comment Log for 915 24 th Street		
143	Inspection Log for 915 24 th Street		
144	Comment Log for 2326 Myrtle Street		
145	Inspection Log for 2326 Myrtle Street		
146	Email to Espinosa from Ivonne Gomez 12/3/2015		
147	Email to Espinosa from Ivonne Gomez with attachments 3600 MacArthur Blvd.		
148	Email regarding 6 Lind Vista in the City of Orinda 7/9/2015		
149	Email from Ana Sui to Espinosa with handwritten note 8/3/2015		
150	County Assessor Property Value for Elisabeth Warren Properties		
151	Email to Thomas Espinosa written reprimand from Building and Planning Department		
152	Declaration of Greg Minor		
153	Personnel Matter Reprimand Report		
154	Verizon Overage Cell Phone Minutes		
155	Verizon Minutes Overage		
156	Verizon Minutes Overage		
157	Verizon Minutes Overage		