

CITY OF OAKLAND
Public Ethics CommissionWhitney Barazoto, Executive Director

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

BACKGROUND:

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

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

SUMMARY OF LAW:

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

A. Economic Interest Disclosure Requirement

Every City of Oakland (City) employee designated in the City's Conflict of Interest Code is required to file statements of economic interests and disclose all required information pursuant to the California Political Reform Act and the City's Conflict of Interest Code.¹

The City's Conflict of Interest Code incorporates Fair Political Practices Commission (FPPC) Regulation 18730 and requires every Specialty Combination Inspector in the City's Planning and Building Department (Building Department) to report, on his or her statement of economic interests, investments and business positions in business entities, sources of income, and interests in real property.² The City's Conflict of Interest Code requires designated employees file their statement of economic interests with the City Clerk's Office.³

¹ O.M.C. §2.25.040(B).

² O.M.C. §3.16.010.

³ O.M.C. § 3.161.020.

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A Specialty Combination Inspector (“Building Inspector”) is required to report by April 1st all reportable investments and business positions in business entities, sources of income and interests in real property, held or received during the previous calendar year.⁴ He or she is also required to report within 30 days after leaving office all reportable investments and business positions in business entities, sources of income and interests in real property, received or held during the period between the closing date of the last statement filed and the date his or her employment with the City is terminated.⁵

Reportable income is any payment received by the Specialty Combination Inspector and includes loans other than those received from a commercial lending institution.⁶ The Specialty Combination Inspector is required to report the name and address of every source of income aggregating \$500 or more in value during the period that discovered by the statement of economic interests, the amount of income received, and a description of the consideration for which the income was received.⁷

A business position must be reported when the filer is a director, officer, partner, trustee, or employee of, or hold any position of management in, a business entity that has an interest in real property in the jurisdiction, or does business or plan to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed.⁸

B. Conflict of Interest

A City employee may not make, participate in making, or seek to influence decision of the City in which the City employee has a disqualifying financial interest.⁹ A City employee has a disqualifying financial interest in a governmental decision if the decision will have a reasonably foreseeable material financial effect on any of his or her qualifying financial interests.¹⁰

A City employee makes a governmental decision if he or she authorizes, directs, obligates, or commits his or her agency to any course of action.¹¹

A City employee attempts to use his or her official position to influence a decision when he or she contacts or appears before any official in his or her agency for the purpose of affecting the decision.¹²

A City employee has a disqualifying financial interest in any individual or business entity from whom he or she has been provided or promised income aggregating \$500 or more within 12-months prior to the time when the relevant government decision is made.¹³

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

⁵ FPPC Regulation 18704 (b)(5)(D).

⁶ Government Code (G.C.) § 82030.

⁷ G.C. § 18700(a).

⁸ G.C. § 87209.

⁹ O.M.C. § 2.25.040 (A); GC 87100.

¹⁰ FPP Regulation 18700 (a).

¹¹ FPPC Regulation 18704(a).

¹² FPPC Regulation 18704 (c)(1).

¹³ G.C. § 87103(c).

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The financial effect of a decision on a disqualifying financial interest is presumed to be reasonably foreseeable if the disqualifying financial interest is a named party in, or the subject of, the decision before the City employee or the City employee's agency.¹⁴

For income received by the official, the reasonably foreseeable financial effect of the decision on the City employee's disqualifying financial interest is material if the source of the income is a claimant, applicant, respondent, contracting party, or is otherwise identified as the subject of the proceeding.¹⁵

C. Bribery

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

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

A City employee may not use his or her position, or the power or authority of his or her position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City employee or any other person.¹⁷

E. Misuse of Public Resources

A City employee may not use public resources for personal purposes.¹⁸ Personal purposes means activities for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business.¹⁹ Public resources means any property or asset owned by the City, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and City compensated time.²⁰ Use means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the City for which a monetary value may be estimated.²¹

FACTUAL SUMMARY:

Bribery Scheme Overview

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

¹⁴ FPPC Regulation 18701.

¹⁵ FPPC Regulation 18702.3 (a)(1).

¹⁶ O.M.C. § 2.25.070.

¹⁷ O.M.C. § 2.25.060 (A)(2).

¹⁸ O.M.C. § 2.25.060 (A)(1).

¹⁹ O.M.C. § 2.25.060 (A)(i) (a)(i).

²⁰ O.M.C. § 2.25.060 (A) (1)(a)(iii).

²¹ O.M.C. § 2.25.060(A)(1)(a)(iv).

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

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

Under the Table Income from Inspections:

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

i. Elizabeth Williams Properties

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

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

857-859 Mead Avenue Properties:

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

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

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

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

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

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

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

2735 Market Street Property:

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

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

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

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

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

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

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

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

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

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

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

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

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

877 27th St. Property:

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

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

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

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

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

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

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

ii. Gimme Shelter Property Owned by Bill Charman

4163 Rifle Lane Property

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

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

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

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

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

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

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

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

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

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

iii. Alex Machado Properties

2326 Myrtle Street Property

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

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

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

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

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

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

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

On March 8, 2016 the following occurs:

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

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

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

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

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

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

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

6220 Valley View

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

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

On January 20, 2016, City building inspector Benjamin Lai conducted an inspection at 6220 Valley View on January 20, 2016 and found that the work being done at 6220 Valley View Road was outside the scope of the building permit issued to Mr. Machado and opened an enforcement case against him. Inspector Lai noted in Accela the following:

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

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

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

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

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

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

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

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

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

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

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

VIOLATIONS:

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

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

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

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

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

²⁶ Likely Ivonne Gomez, an architect affiliated with Espinosa.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Count 11 : Misuse of City Resources for personal financial gain

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

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

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

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

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

PENALTIES:

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

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

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;

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3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

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

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

Aggravating Factors

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

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

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

Mitigating Factors

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

RECOMMENDATION:

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