

Investigation Summary 2020; Investigation Summary 2018



James E.T. Jackson, -Chair
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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: September 23, 2020
RE: Case No. 16-11; *In the Matter of Rich Fielding*

BACKGROUND:

In July 2016, the Public Ethics Commission (PEC) received a complaint that alleged that Rich Fielding, a Principal Inspection Supervisor at the City of Oakland's Planning and Building Department, in November 2015, sent a letter to PG&E and incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service at that address. The complainant alleged that this conduct was either a misuse of City resources or a misuse of Fielding's authority, both of which violated the Oakland Government Ethics Act (GEA).

Between July 2016 and October 2018, the PEC Staff investigated the facts alleged in the complaint, conducted several interviews and on October 26, 2018, prepared an Investigation Summary and Recommendation to the PEC for dismissal because the investigation did not find that Mr. Fielding violated GEA. Staff requested closure of the case. The matter was presented to the PEC on November 5, 2018. The complainant attended the meeting and made a request to submit additional information to the PEC to substantiate her claims. The PEC continued the matter for further review and requested that the Staff determine the following:

1. Was the City involved in a brief power cut that allegedly took place in the building in November 2015?

Staff contacted additional witnesses, including contacting employees of PG&E. After further close review of the facts, witnesses and evidence provided, Staff continues its recommendation that this matter be closed without any further action.

SUMMARY OF LAW:

For a detailed analysis of the law please see the attached Investigation Summary and Recommendation from October 26, 2018.

FINDINGS:

The underlying facts remain as provided in the October 26, 2018 Investigation Summary and Recommendation. This synopsis provides a summary of the facts discovered after the PEC continued the matter for further review.

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Staff was able to confirm that Mr. Fielding, in fact, drafted a letter to request a power disconnect at the 1919 Market Street address but that there was no evidence that the letter was sent or received by PG&E. At the time of the original complaint, the Market Street address was an artist living space that provided affordable housing for resident artists. The building's owner had been notified by the City Building and Planning Department that the Market Street property was in violation of multiple Oakland Building and Maintenance Codes and the Oakland Building Construction Code. The owner was notified that the conditions of the property remained deteriorated and proved to be a health and safety hazard. The owner attempted to renovate the property and fix the violations, but violations remained unabated. The owner of the complex was informed that the building was a public nuisance and manifestly unsafe to occupy pursuant to the Oakland Codes and that its Certificate of Occupancy was revoked. Mr. Fielding provided the notices to the owners of the Market Street property in writing and included a copy of the draft letter to PG&E.

After the PEC referred the matter for further investigation, Staff was able to confirm that Mr. Fielding did not send the termination/Shut off notice letter to PG&E. PG&E had no record of ever receiving a power shutoff letter from Mr. Fielding or anyone with the City of Oakland regarding the 1919 Market Street property. Staff independently verified PG&E's claim by inquiry and by subpoenaing all the documents related to its files on the property. Two PG&E officials, including the Planned Outage Director for the East Bay Region provided an overview of the shutoff procedures they follow which would include sending notices to all of the residents at the property (either by letter, door hanger, house visit and/or phone call), and the owner informing each person of the power shutoff, as well as, the date and time the shutoff is scheduled to take effect. PG&E had no record that any such notice was generated by their office for the 1919 Market Street address. Moreover, PG&E had no record that an employee of PG&E being dispatched to the property to turn off the power.

Staff also subpoenaed PG&E for all “[r]ecords documenting any disruption, termination, or resumption of PG&E services at 1919 Market Street in Oakland, California, 94607, in November 2015.” Records provided by PG&E did not show a significant change in power usage or billing at 1919 Market Street in November 2015 compared to other months around that time (not including January 2016 and thereafter, when the building was evacuated and power usage dropped significantly). PG&E had no record of any “Customer contact” or “field activity” relating to the property in November 2015.

The complainant contends that the owner/property manager sent someone to turn off the power, at the City's behest and that she and other residents of the complex had proof, on camera of the shutoff. To support her allegation of City involvement in an illegal power shutoff, the complainant provided Staff a transcript of a video which she alleged was taken in November 2015. She asserted that the video would show “building resident Alex Mattingly speaking to an “Unknown worker sent by property management's general contractor Marv Winegar.”

To verify the complainant's allegations Staff requested that the Building Department turn over “all communications, including verbal, sent or received by or between any manager or employee of the Department regarding services cut to 1919 Market Street in November 2015.” The Department provided e-mail records from 10 different inspectors and employees within the Department. None of the e-mails made reference to a November 2015 serves shutoff at 1919 Market Street, either ordering one, or acknowledging that one had taken place.

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Staff independently obtained Building and Planning Supervisor's Rich Fielding's and Tim Low's City e-mails between October 2015 and February 2016. There were no references in any of those e-mails to a power shutoff in November 2015.

Staff also conducted interviews of two former tenants (Alex and Mora Mattingly) who, at first glance, confirmed that a power cut did take place at the building. They both recalled that it occurred in or around November 15, 2015, lasting for a few hours over the course of several days. Both reported that the power outage occurred in conjunction with work being done at the building by a contractor or property manager who refused to identify himself. Alex Mattingly admitted he took the video of the incident. Mora Mattingly provided that video to Staff to view. Neither Alex nor Mora recalled the man they confronted in the video mentioning the Building Department.

Staff reviewed the Mattingly video and discovered that the time stamp of the video file was January 19, 2016 not November 25, 2015 and that the video depicted an exchange between Alex Mattingly and an unidentified male who was not in a City uniform, did not have on or display a City badge or other City of Oakland identification. The unidentified male told Alex that he had a permit from the City (to do the work on the property).

Accela records maintained by the City Planning and Building Department indicated that on January 6, 2016 an electrical permit was approved for the 1919 Market Street property to "correct unsafe electrical conditions; secure loose wiring, splices, etc: install light & switch for equipment room for warehouse." The timing of the electrical work is consistent with the overall context of what was going on between the owners of the building and the Building Department at the time.

CONCLUSION:

After considerable review of the facts, witness statements, and the law, staff concludes that there is no evidence to establish that PG&E or the Department were involved in a power shutoff in November 2015. Aside from the complainant's assertions, the only source of this allegation are the complainant's statements that a video allegedly taken in November 2015 shows a contractor stating that a "department of the city" authorized electrical work. To the contrary, the only video of an incident involving a power shut off was taken in January 2016 not November 2015 and the correct transcription indicates that the contractor said he had a "permit from the City" for the electrical work, which is borne out by the Accela record indicating that electrical work at the site was authorized that month in response to hazardous conditions found during an earlier code inspection.

RECOMMENDATION:

Staff recommends that the commission dismiss this complaint without further action.

CITY OF OAKLAND
Public Ethics Commission

Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E.T. Jackson
Gail Kong
Krisida Nishioka



Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Simon Russell, Investigator
DATE: October 26, 2018
RE: *In the Matter of Rich Fielding (Case No. 16-11)*; Investigation Summary and Recommendation

I. INTRODUCTION

On July 11, 2016, the Commission received a sworn complaint alleging that Rich Fielding, in the course of his duties as a Principal Inspection Supervisor at the City’s Planning and Building Department (the Department), sent a letter to PG&E which incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service there (the PG&E Letter). According to the complainant, this action violated the Oakland Government Ethics Act (GEA) provisions governing the misuse of City resources or official position.¹

Commission Staff investigated the allegation and found that Mr. Fielding drafted and sent the PG&E Letter to the building’s owners pursuant to the Department’s policy, and never sent the letter to PG&E. Furthermore, even if the existence of the PG&E Letter caused some of the residents to vacate the property, Commission Staff did not find evidence of a corrupt action or intent outside the scope of Mr. Fielding’s duties to give rise to a violation of GEA. Commission Staff therefore recommends that this matter be closed without any further action.

II. SUMMARY OF LAW

Section 2.25.060(A)(1) of GEA prohibits a City employee from using or permitting others to use public resources for personal or non-City purposes not authorized by law.

¹ Under the section headed “Type of Alleged Violation,” the complaint states “Use of City Positions & Resources OMC 2.25.060(C)”. Section 2.25.060(C) of GEA governs restrictions on gifts, and does not appear to be implicated by the facts in this matter. Commission Staff used its discretion to investigate this matter as a potential violation of Section 2.25.060(A) of GEA, which governs the misuse of City resources and official position.

In an e-mail to Commission Staff on January 8, 2018, the complainant also alleged that the Department violated Section 8.22.360.10 of the Oakland Municipal Code, which the PEC does not have jurisdiction to enforce.

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Section 2.25.060(A)(2) of GEA prohibits a City employee from using their position or the power or authority of their 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.

III. FINDINGS

On or about January 8, 2015, the City's Planning and Building Department (the Department) received an official Tenant Complaint and Request for Service from Joy Newhart, a resident of 1919 Market Street, requesting that the Department investigate "a lack of heat, gaps in the flooring, exposed electrical wiring, and common area garbage overflow" at 1919 Market Street.

On April 8, 2015, Tim Low, Deputy Director at the Department, received an email from a reporter at the *East Bay Express* stating that the building at 1919 Market Street was being used as a "live-work building" and asking whether 1919 Market had the appropriate code and zoning to be a residential property. Mr. Low responded that it did not have the proper permits to be used as a live-work building and that the Department would investigate the matter. On the same day, Mr. Low assigned the matter to a Building Inspector and informed the Department Director of the investigation into the matter.

On May 13, 2015, the Department sent a Notice of Violation to Market Holdings LLC, the owners of 1919 Market Street, informing them that 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Code. (Code Enforcement Case No. 1501220.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations before the re-inspection date of June 16, 2015.

On July 15, 2015, the Department sent another Notice of Violation to Market Holdings LLC informing them that Unit #18 of 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Codes. (Code Enforcement Case No. 1501925.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations, including the violations from Code Enforcement Case No. 1501220, before the re-inspection date of August 17, 2015.

On September 8, 2015, the Department sent another Notice of Violation to Market Holdings LLC in which it reconfirmed the violations in Code Enforcement Case No. 1501220, and instructed Market Holdings LLC to correct the listed violations before the re-inspection date of October 12, 2015.

On September 30, 2015, Mr. Fielding, in his capacity as an official of the Department, sent an email to the owners of 1919 Market, informing them that he was assigned to the pending code enforcement issues with 1919 Market Street.

On November 24, 2015, Mr. Low, in his capacity as an official of the Department, sent a packet of documents to the owners of 1919 Market Street informing them that a re-inspection of 1919

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Market Street had occurred on October 15, 2015, that the habitable conditions that were the subject of Code Enforcement Case No. 1501220 remained deteriorated, and that health and safety violations remained unabated. The letter also stated that the violations continued to endanger the residents and visitors of 1919 Market Street to the extent that the premises were determined to be a public nuisance and manifestly unsafe to occupy pursuant to the Oakland Building Maintenance Codes and the Oakland Building Construction Codes. The letter also stated that 1919 Market Street was declared substandard and a public nuisance, that its Certificate of Occupancy was revoked, and that administrative citations totaling \$5,000 were assessed against 1919 Market Street.

The November 24, 2015, letter also ordered the owners of 1919 Market Street to pay, within 14 days, relocation benefits to affected residential tenants to allow abatement work to commence, pursuant to Oakland Municipal Code section 15.60.

The November 24, 2015, letter also informed the owners of 1919 Market Street that they had the right to appeal the Substandard/Public Nuisance Declaration and Administrative Citation in writing by December 17, 2015.

In the packet of documents sent to the owners of 1919 Market Street on November 24, 2015, Mr. Low included a copy of the PG&E Letter, which was signed by Mr. Fielding, dated November 24, 2015, addressed to PG&E, and stated the following:

The subject property is unoccupied, and an attractive nuisance to children and detriment to the neighborhood. The City of Oakland has secured the building to prevent unauthorized entry but the electrical and gas service remain an extreme safety hazard that is endangering life, limb and property.

Pursuant to Oakland Municipal Code Sections 15.08.340D and E, this building is a Public Nuisance and the electric and gas service must be immediately disconnected.

The City has not received any response from the owners and is pursuing condemnation action. It is imperative that Pacific Gas and Electric take steps to immediately remove the meters, and service at the joint pole. The services should not be reconnected without notification from the City of Oakland.

Pursuant to the Department's written procedures, it was standard procedure to include a draft of such a letter addressed to PG&E in the packet sent to owners of properties that were the subject of abatement. According to the Department's records, the PG&E Letter was only sent to the owners of 1919 Market Street and never to PG&E. PG&E also independently confirmed that it never received the PG&E Letter.

On December 7, 2015, the Department received a request from the owners of 1919 Market Street to extend the deadline to vacate the building to January 31, 2016, to avoid a scramble by the tenants to find new housing during the holidays.

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On December 23, 2015, the owners of 1919 Market Street and the Department agreed to a compliance plan that required the owners, among other things, to fully vacate the building by January 31, 2016.

On January 29, 2016, the Department “red-tagged” 1919 Market Street as an uninhabitable building. The red-tag notice was posted at the property and stated that no one was to enter the building after January 31, 2016.

On February 2, 2016, the Department re-inspected the property and determined that it was now vacant.

1919 Market Street has since been partially demolished, and is currently in the process of being converted into live/work housing.

V. CONCLUSION

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(1) by misusing City resources, the evidence indicates that Mr. Fielding sent the PG&E Letter to the owners of 1919 Market Street in the course of his duties as a Principal Inspection Supervisor for the Department, after several earlier attempts to resolve the alleged code violations at the property. No evidence indicates that Mr. Fielding sent the PG&E Letter to the property owners “for personal or non-City purposes not authorized by law,” as required by GEA 2.25.060(A)(1). Therefore Mr. Fielding did not misuse City resources by sending the PG&E Letter.

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(2) by using his City position to induce or coerce someone for personal gain, there are two possible theories of liability under that ordinance, neither of which is supported by the facts. First, it might be argued that Mr. Fielding induced or coerced PG&E into shutting down services for the tenants at 1919 Market Street. However, Mr. Fielding’s letter was never actually sent to PG&E, so he could not have induced or coerced PG&E into any action.

Second, it might be argued that the mere threat of a utilities shutdown induced or coerced the tenants at that property to vacate their homes. Indeed, Mr. Low confirmed to the PEC that the Department’s intention in drafting the PG&E Letter was to convince the property owners that the City was serious about the abatement process. However, Section 2.25.060(A)(2) of GEA requires some corrupt action or intent outside the scope of one’s official duties. Here, according to Mr. Low and the Department’s written procedures, drafting such a letter was standard Department procedure. Also, the purpose of the PG&E Letter was to further the Department’s ongoing efforts to address the alleged code violations at the property and protect the health and safety of the tenants. Because the action and purpose of drafting the PG&E Letter were within the scope of Mr. Fielding’s duties with the Department, he did not violate Section 2.25.060(A)(2) of GEA.

VI. RECOMMENDATION

Because the investigation did not find that Mr. Fielding violated the Oakland Government Ethics Act, Commission Staff recommends that this matter be closed without further action.