



CITY OF OAKLAND

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Public Ethics Commission
Enforcement Unit

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July 27, 2022

Jonathan Gabel



Re: City of Oakland Planning and Building Department: Case No. 22-06

Dear Mr. Gabel:

On or between February 22, 2022, the City of Oakland Public Ethics Commission (PEC) received your complaint which alleged that the Planning and Building Department, and Tim Low failed to enforce a City ordinance O.M.C. 17.103.080 “Conversion of Existing Detached Accessory Structure” that requires, among other things, that any renovations/conversions of an accessory property must be enveloped (fit within) the height of the pre-existing structure. It is further alleged that since the adoption of OMC 17.103.080 in 2020, the City has failed to inspect buildings for or enforce a provision of this ordinance that governs renovations to Existing Detached Accessory Structures (ADU). This conduct, you assert, violated the Oakland City Ordinance O.M.C. 2.25.060 (A)(2) Misuse of Position/Authority. After careful consideration of the law, facts, supplemental information you provided, relevant department regulations and our telephone discussion, the facts alleged do not constitute a violation of law within the Commission’s jurisdiction, and we must dismiss your complaint pursuant to our Complaint Procedures.

The Oakland Municipal Code O.M.C. 2.25.060 (A)(2), provides that: No Public Servant or candidate for City Office “may use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.” To prove that the Planning Department Director, Management staff or Tim Low violated this ordinance would require facts that established that the Respondent’s used their position/power or authority to induce/persuade or coerce/force any person to provide a private advantage, benefit or economic gain for themselves or another person.

Here, the allegations are that the Planning Department has failed to enforce a statute in a manner that you believe is the best practice. The complaint asserts that the Department is not

enforcing the statute because it failed to have an inspector physically inspect a building project to ensure that the building remains within the “envelope” of the original structure. The Department Director informed you that the Department uses a different method to comply with the ordinance, by relying on the representations the builder/designer submits to the City in their project plans and scheme maps. You believe that the Department’s decision to comply with the statute by relying on a builder’s representation on the dimensions of an accessory structure rather than provide a physical inspection is a violation of the City ordinance. Even if the allegations were true, simple non-performance of official duties is not an abuse of power or official position. The O.M.C. 17.103.080 does not provide instructions or directions on how the Department is to conduct compliance with the ordinance. Without a specific requirement or instruction, the Department maintains some discretion on how to enforce or comply with the ordinance.

Assuming the allegations of the complaint are true, a violation of this ordinance requires proof of “intent.” Here, to violate Misuse of Position, the Department Director, Management staff or Tim Low must have the intent to induce or coerce a person to provide them or another person with an advantage, benefit, or economic gain. The complaint provides no facts to support the allegation that either Respondent, by making the decision to enforce O.M.C. 17.103.080 provision in a manner that you believe is below the best practice, intended to induce or coerce a private, benefit, or economic gain to themselves or any other person.

The complaint provides speculation that the decision could possibly provide a benefit or private advantage but does not identify any instance where this has occurred or is alleged to have occurred. Speculation is insufficient to establish that the Department Director, Management staff or Tim Low had the intentional state or mind to induce or coerce a private advantage, benefit, or economic gain, because you have offered no facts to establish the state of mind, we cannot establish any violation of O.M.C. 2.25.060, Misuse of Position.

Thank you for expressing your concerns about this matter. We understand and take each of the concerns you raised with earnest consideration. For your reference, the PEC Complaint Procedures can be found on our website and a copy is enclosed.

We are required to inform the Public Ethics Commission of the resolution of this matter at its next public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on August 10, 2022, at 6:30 p.m. by teleconference and will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to call-in to that meeting to listen and/or give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Item 14f - Dismissal Letter 22-06

PEC Dismissal Letter, 22-06

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

Sincerely,

A handwritten signature in blue ink that reads "Kellie Johnson". The signature is written in a cursive style with a large initial "K".

Kellie Johnson, Enforcement Chief
City of Oakland, Public Ethics Commission
KJohnson3@oaklandca.gov