

Item 6a - Staff Memorandum



Public Ethics | CITY OF
Commission | **OAKLAND**

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TO: Public Ethics Commission
FROM: Kellie Johnson, Enforcement Chief
DATE: May 14, 2021
RE: *In the Matter of Thomas Espinosa (Case No. 16-14)*; Post Hearing Recommendation for the June 7, 2021, PEC Meeting

INTRODUCTION

The Enforcement Unit of the City of Oakland Public Ethics Commission (“Complainant”) brought this action to address violations of the Government Ethics Act (“GEA”) by former Oakland Building Inspector Thomas Espinosa (“Respondent”). Complainant charged Respondent with forty seven separate violations of the Government Ethics Act: Soliciting and Receiving Bribes; Misusing City Position, Conflicts of Interest; Making or Seeking to Use His Official Position to Influence Governmental Decisions; Failing to Report Economic Interest Disclosure; and Misuse of City Resources. A hearing before Hearing Officer Jodie Smith occurred on April 27, 2021. Complainant was required to show that the violations occurred by a preponderance of the evidence.

Staff recommended a base-level penalty amount of \$5,000 per GEA violation pursuant to the PEC Penalty Guidelines and to impose a select few penalties concurrently, for a total of \$200,000.

Respondent failed to appear at the hearing. Pursuant to the Public Ethics Commission Hearing Procedures the hearing proceeded in the Respondent’s absence. The Complainant provided limited testimony on the record and concluded its presentation of the case with the submission of written statements and supporting documents into the hearing record.

Hearing Officer Smith submitted a recommendation to the Commission with findings of fact that conclude the Respondent violated forty-three (43) separate provisions of the Government Ethics Act and a recommendation of an administrative penalty in the amount of \$210,000.

Staff reviewed the Hearing Officer’s report and joins in the recommendation that the Commission adopt the findings of facts as determined by the Hearing Officer on counts 1-29 and 34-47. Staff will defer to the Commission the appropriate finding on counts 30-33. Staff recommends that the Commission impose the Hearing Officer’s proposed penalty \$210,000.

I. BRIEF PROCEDURAL HISTORY

In 2016, the Planning and Building Department referred concerns that Building Inspector Thomas Espinosa committed violations of the Government Ethics Act. Commission Staff found that there was probable cause to believe between 2015-2016, Thomas Espinosa committed multiple violations of the Oakland

Government Ethics Act including: 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.

II. PROPOSED DECISION

a. VIOLATIONS

The Hearing Officer's proposed decision finds that the Respondent, Thomas Espinosa, committed the following violations of the Government Ethics Act:

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

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

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

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

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

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

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

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.

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

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

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.

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

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.

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

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

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

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

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

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

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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 an electrical permit for 2735 Market Street.

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

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

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 plumbing permit for 2735 Market Street.

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

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

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

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act 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.

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

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act 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.

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

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

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

On November 10, 2015, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act 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.

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.

Count 17: 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 by solicited \$300 from Ms. Williams in exchange for building, mechanical, electrical, and plumbing permits for 877/879 27th Street passing final inspections.

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

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act 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.

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

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act 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.

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

On March 14, 2016, Respondent violated Section 2.25.040(A) of the Oakland Government Ethics Act 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On March 31, 2016, Respondent issued a “work-stop order” on 6220 Valley View, a property owned and being remodeled by Mr. Machado, for the purpose of inducing or coercing Mr. Machado into providing Respondent with payments. By attempting to use 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 29: Economic Interest Disclosure Violation: Failing to Report a Source of Income

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. VIOLATIONS NOT SUSTAINED BY THE HEARING OFFICER

The Hearing Officer made findings that the Respondent did not violate count 30, 31, 32 and 33.

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

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

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

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

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

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

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

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

Rejected Counts:

On page 12, item number 42 of the Hearing Officer's findings, the Hearing Officer provided the following reasons for rejecting the violations in Counts 30-33:

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

c. PENALTY

The Hearing Officer's proposed decision recommends that the Commission impose a total administrative penalty of **\$210,000** for the forty-three (43) violations of the Government Ethics Act (\$5,000 per count of GEA violations).

III. POSSIBLE ACTIONS BY THE COMMISSION

Pursuant to the Commission's Complaint Procedures, the Commission may either adopt the proposed decision in its entirety, or in the alternative, adopt the proposed decisions' actual finding, but reach additional or different conclusions consistent with the proposed decision's factual findings. (Commission's Complaint Procedures § VII(I)(2).)

If the Commission decides to adopt the proposed decision in its entirety, the proposed decision will be adopted as the Commission's decision and the Respondent will be ordered to pay an administrative penalty of \$210,000.

If the Commission decides that the proposed decision's factual findings warrant a different legal conclusion and/or a different penalty, the Commission may adopt the proposed decision's factual finding and additional or different legal conclusions and/or impose a different penalty.

Whether the Commission decides to adopt the proposed decision in its entirety or adopt different legal conclusions and/or penalties, the Commission's decision and order regarding a proposed decision will constitute the closure of the administrative process for this matter. (Commission's Complaint Procedures § VII(J).)

Aggravating Factors

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

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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.

Here, the circumstances of Espinosa’s conduct establish several aggravating factors to 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. Espinosa engaged in several instances of deception to cover up the inspections of which he was getting paid under the table, including enlisting the assistance of a co-worker Harbaugh to enter false or misleading information into the City Accela system to obscure inspections and permit approvals;
3. Espinosa’s 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. Espinosa 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
6. At the time of the Respondent’s conduct he had worked for the Oakland Planning and Building Department for more than seven years. Espinosa 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 database. He chose to ignore them for his own personal gain.

Mitigating Factors

Espinosa has no previous history of PEC violations in the City of Oakland.

IV. COMMISSION STAFF RECOMMENDATION

Staff recommends that the Commission adopt the Hearing Officer’s proposed factual conclusions and the findings as to counts 1-29 and 34-47. Staff will defer to the Commission on whether to adopt the Hearing Officer’s factual and legal findings regarding counts 30-33. Staff recommends the Commission adopt the hearing officer’s imposition of a \$210,000 penalty.