

Item 6b - Hearing Officer's Recommendation

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

In the Matter of:

ANTHONY HARBAUGH, et al.,

Respondent.

Case No. 18-11

**FINIDNGS OF FACT AND
CONCLUSIONS**

1. Hearing Officer Jodie Smith heard this case on November 18, 2020 and November 19, 2020 over internet video conferencing equipment. Kellie Johnson, Enforcement Chief, represented petitioner, the Public Ethics Commission (PEC) Enforcement Unit. Respondent Anthony Harbaugh represented himself.

2. The record was closed, and the case submitted on November 19, 2020.

A. STANDARD OF EVIDENCE AND BURDEN OF PROOF

3. The standard of proof applied to this hearing is the preponderance of evidence.¹ The burden of proof is on the petitioner.² This means that the petitioner had to demonstrate that the weight of the evidence shows that it was more likely than not—a 50% or greater likelihood—that respondent violated the law. To withstand a request for re-hearing, the proposed Findings of Fact

¹ Cal. Evid. Code §115; PEC Complaint Procedures § VII.I.4.

² Cal. Evid. Code §500.

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1 may not contain a material error of fact that necessarily affects one or more conclusions and the
2 conclusions must be supported by substantial evidence.³

3 **B. FINDINGS OF FACT**

4 4. Petitioner is the Enforcement Unit of the City of Oakland PEC.

5 5. During all relevant time frames discussed below, respondent was an employee of the
6 City of Oakland, working as a Specialty Combination Inspector ("Building Permit Inspector") in
7 the City of Oakland Planning and Building Department ("PBD").

8 6. On March 2, 2020 at its regular monthly meeting, PEC staff presented its
9 Investigation Summary and Probable Cause memorandum on respondent's case as Item No. 5 on its
10 agenda. Respondent was not present. The PEC found probable cause to set this matter for hearing
11 before a single Hearing Officer. The hearing date was set for November 18, 2020. No preliminary
12 matters were raised before the hearing commenced with testamentary and documentary evidence.
13 The PEC hearing requirements have all been followed.

14 **1. Petitioner's Case**

15 7. Five days before the hearing, petitioner submitted petitioner's Exhibit Nos. 1-28
16 listed in **Appendix A**, attached to and incorporated into these Findings and Conclusions. Petitioner
17 also submitted petitioner's 15-page Hearing Brief. Petitioner offered one witness: PEC
18 Investigator Simon Russell, who was sworn in by the hearing officer before testifying. He testified
19 under penalty of perjury. Mr. Russell has been an investigator with the PEC for just under five years.
20 Prior to that, he was a Special Investigator with the Fair Political Practices Commission ("FPPC") for
21 three and a half years. One of his duties as an investigator at both agencies is to investigate general
22 ethics allegations including bribery, extortion, misuse of government resources, conflicts, gifts, and
23 reporting economic interests. Mr. Russell was the investigator on Case 16-11 (Thomas Espinosa) and
24 Case 18-11 (Anthony Harbaugh).

25 8. Petitioner's theory of this case is that it involves a quid pro quo extortion racket

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³ PEC Complaint Procedures §VII.I.1.a.

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1 among respondent, his co-worker Building Code Inspector Thomas Espinosa and the property
2 owners or their representatives (collectively, "Owners") who were seeking passing inspections.
3 Petitioner's witness testified that the Owners paid respondent through Mr. Espinosa to pass their
4 inspections regardless of whether the work was up to code. These passed inspections potentially
5 could have resulted in serious health, life and safety issues as they dealt with inspecting and
6 certifying plumbing, electric, mechanical and foundational work.

7 9. The PBD consists of two sub-departments: the Planning half which reviews all
8 development plans to ensure compliance with city zoning codes and the Building half which
9 performs all of the inspections to ensure the plans and the actual products conform to the city's
10 various building code requirements.

11 10. Within the Building half of PBD, there are two types of inspectors: Code Inspectors
12 look for building code violations either proactively or through public complaints. They are able to
13 issue Notices of Violations (NOV) and Stop Work Orders (SWO) when violations are found. Their
14 initial inspections are typically unscheduled and unplanned, although follow-up violation
15 inspections may be scheduled. Conversely, Building Permit Inspectors review the ongoing
16 progress of development projects to ensure that the work being performed conforms to the permits
17 that were issued. Respondent was a Building Permit Inspector and Mr. Espinosa was a Building
18 Code Inspector.

19 11. Building Permit Inspectors' inspections are always scheduled in advance through
20 city scheduling software known as "Accela." Accela also allows Building Permit Inspectors to
21 enter whether a project passed its inspections on each development project. If projects do not pass,
22 then they are given the designation "Partial" or "Not Pass" and the Owners are told what work is
23 necessary before a "Pass" will be given.

24 12. PBD employs specific employees to schedule and assign inspections to Building
25 Permit Inspectors. These schedules are then given to the Building Permit Inspectors and usually are
26 grouped geographically. The only exception to this scheduling protocol is when a Building Permit

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1 Inspector has a quick follow up inspection to perform within the geographical area to which their
2 other scheduled inspections are set for the day: in these instances, the Building Permit Inspector
3 will enter the follow up inspection in Accela themselves. Each Inspector and Technician (see
4 Paragraph 14, below) have their own unique user ID in Accela which appears next to every entry
5 they make. They each also have unique log in credentials to prevent fraud. The only way to use
6 another employee's credentials to create Accela entries is to physically take and use their
7 credentials.

8 13. In addition to the city's electronic inspection records, each Owner retains a paper
9 "Job Card" at the job site that is the Owner's record of whether the development project passed its
10 inspections or needs additional work performed before it will pass. PBD does not maintain any
11 copies of the Job Cards.

12 14. Projects start when Owners submit their applications and plans to PBD at the front
13 counter where Building or Permit Technicians review them for, among others, three things relevant
14 to this matter: (1) whether the project site has any outstanding code violations on it; (2) whether the
15 project requires additional "trade" permits;⁴ and (3) whether the estimated cost of the project is
16 accurate.⁵

17 15. Once the project passes through the application stage, there are three inspections
18 which are performed: (1) a field inspection, to ensure that the work represented in the application
19 conforms to the work being done "in the field;" (2) a "rough" or "frame" inspection which takes
20 place before the walls and floors are covered over; and (3) a final inspection.

21 16. Petitioner's witness testified that he uncovered a pattern by respondent whereby
22 respondent would assign or reassign inspections to himself in Accela, usually accompanied by
23 multiple phone calls between himself and Mr. Espinosa, culminating in respondent giving an
24 Owners' project a "pass" on an inspection. Petitioner further uncovered that the Accela entries
25

26 ⁴ These could include mechanical, plumbing or building permits depending upon the specific project.

⁵ This is important because the permit fees are calculated based upon these project cost estimates.

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1 would all occur within minutes of each other (from creation to assignment to passing) or they were
2 backdated, meaning that the Accela entry was created *after* the inspection physically took place. In
3 addition, petitioner found a number of respondent's "pass" inspections that were noted on the Job
4 Cards had no corresponding Accela entries whatsoever. Finally, petitioner obtained testamentary
5 evidence showing that respondent received cash payments for passing inspections over and above
6 what the Owners paid to the Building or Permit Technicians at the counter when submitting their
7 applications and plans. Reasonable inferences drawn from petitioner's documentary evidence
8 supported petitioner's testimonial evidence on this issue.

9 17. Respondent's activities were grouped around three separate and distinct sets of
10 properties: Elizabeth Williams properties, Alex Machado properties and one property managed by
11 an organization called Gimme Shelter.

12 (a) **Elizabeth Warren Properties**

13 18. Elizabeth Williams is a landlord who owned multiple residential rental properties in
14 Oakland. These properties included: 857-859 Mead Avenue; 2735 Market Street; and 877 27th
15 Street.

16 19. Ms. Williams was granted immunity by the federal government for her testimony.
17 Her immunity grant was contingent upon her providing truthful answers to all of the PEC and FBI's
18 questions.

19 20. Ms. Williams' interview statements indicated that she hired Mr. Espinosa to
20 renovate her properties and that she paid Mr. Espinosa in order to "pass" her inspections.

21 i. **857-859 Mead Avenue Properties**

22 21. Between 2015 and 2016, Ms. Williams hired Mr. Espinosa to remodel some of her
23 properties at 857-859 Mead Avenue that were having trouble passing inspections. 859 Mead
24 Avenue is a four-unit apartment building that Ms. Williams owns in West Oakland. The property
25 also includes a house at 857 Mead. Exhibit Nos. 1-5 and 25.

26 22. On January 13, 2016, respondent personally conducted the inspection on this

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1 property. He gave her a "Pass" on the electrical inspection, despite the fact that the electrical
2 inspection had previously been failed twice by two different inspectors. Exhibit No. 2, page 9.
3 According to respondent's supervisor, respondent was scheduled to conduct inspections in East
4 Oakland on January 13, 2016, and would not have had reason to conduct an inspection in West
5 Oakland where the Mead property is located. Exhibit No. 25, para. 36.

6 23. On the day after the physical inspection took place, January 14, 2016, around 8:56
7 am, respondent logged into Accela and entered that, on the previous day, at 12:30 pm on January
8 13, 2016, he conducted the inspection and gave the property a "Pass" for a permit. Exhibit Nos. 2-5
9 and 25.

10 24. Just about a week after the electrical inspection on Mead, on January 22, 2016, Ms.
11 Williams acknowledged that she owed \$300 for the inspector (respondent) who oversaw the
12 electrical inspection. She exchanged a text message with Mr. Espinosa, wherein he referenced
13 respondent performing the electrical inspection, along with a photograph of three \$100 bills, texting
14 "I'm paying right now the 300" just below a photo of the green approval sticker on the electrical
15 meters at the property. In the text, Mr. Espinosa stated that he would get the sticker from
16 "hardball." Exhibit No. 1, pg.2. Petitioner's witness testified that Ms. Williams explained that
17 autocorrect had changed "Harbaugh" to "hardball." Mr. Espinosa also asked Ms. Williams in the
18 same text thread, "do you think I have the \$300 coming that I paid the inspector on your
19 electrical[?]" Exhibit No. 1.

20 25. Mr. Espinosa also gave Ms. Williams a handwritten bill for "\$300 for previous
21 electrical final 857-859 Mead." Exhibit No. 7.

22 26. On at least one occasion, Ms. Williams called respondent to inquire why another
23 inspection on this property had not yet been entered into Accela, even though respondent had
24 signed the on-site job card and passed the inspection. Ms. Williams told the investigators that
25 respondent told her in that phone call that he had not yet entered the inspection in the official city
26 records in Accela because he had not yet been paid. Exhibit No. 25, para. 20.

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1 27. Ms. Williams also employed a property manager named Derrick Canada (“Canada”)
2 between 2015-2016, during the relevant renovations of Ms. Williams’ properties, including Mead.
3 When interviewed, Mr. Canada stated that, on at least three occasions, Ms. Williams instructed him
4 to deliver envelopes to respondent. Mr. Canada handed envelopes to respondent two times. He did
5 not look inside the first envelope. The second time, he viewed the envelope’s contents and saw
6 “thousands of dollars.” The third time, he refused to deliver the envelope. During one of the two
7 occasions that he had handed respondent an envelope, Mr. Canada stated that respondent was
8 sitting inside a city-owned vehicle during work hours in the Oakland Hills.

9 28. Mr. Canada believed the payments were in exchange for respondent giving a number
10 of Ms. Williams’ properties a pass on inspections based on the timing of the payments and her
11 properties receiving passing inspections where they had previously failed, some experiencing
12 multiple failures. Exhibit No. 25, para. 21.

13 29. Mr. Canada contacted the PEC on his own well before the PEC opened its
14 investigations into either Mr. Espinosa or respondent; he stated that he felt uncomfortable about the
15 cash-in-an-envelope arrangement and that is why he reached out to the PEC.

16 ii. 2735 Market Street Property

17 30. The Market Street properties are a series of rental units. Ms. Williams conducted
18 unpermitted renovation work on the properties for which she received code violations. After back
19 and forth with the city over safety issues, Ms. Williams hired Mr. Espinosa to do the renovations.

20 31. On September 29th and October 13, 2015, Inspector Bill Bergstrom was scheduled
21 to perform field checks on the Market St. building permit, but the Owner canceled both of them.
22 Inspector Bergstrom made a note in Accela that only “Bill Bergstrom or Greg Clarke can do the
23 field check.” Exhibit Nos. 12, 13 and 25, and Attachment Nos. 5, 8, 9, 11, 15-19 to Exh. 25.

24 32. On October 15, 2015, Inspector Bergstrom conducted a field check of the Market
25 Street property and noted several issues in need of correcting. He did not approve a permit and
26 restated that the walls and floor needed to be uncovered and inspected before a field check would

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1 be complete. Accela also contained a note that Inspector Bergstrom was to perform the building
2 inspections since he was aware of the history of the building. *Ibid.*

3 33. On October 27, 2015, Mr. Espinosa submitted a new application and obtained new
4 permits on the Market Street property for the same issues and work that Inspector Bergstrom was
5 already involved in inspecting. Within two weeks of Mr. Espinosa obtaining the new permits,
6 respondent performed frame/rough inspections (supposedly with open walls and floors) of the
7 building electrical and plumbing permits and he gave a "Pass" result to each. *Ibid.*

8 34. On November 5, 2015, Mr. Espinosa submitted a handwritten bill to Ms. Williams
9 that included a \$300 amount for "material inspection rough 2735 Market." Frame and rough
10 inspections are the same type of inspection. Ms. Williams paid Mr. Espinosa a check for the billed
11 amount which he deposited into his personal bank account on November 6, 2015. Exhibit No. 7.

12 35. After this payment, on November 20, 2015, respondent performed the final
13 inspections on three of the permits for the Market Street property and again gave a "Pass" result to
14 each. On November 23, 2015, despite the note in Accela that only Inspectors Bergstrom or Clark
15 conduct inspections, these inspections were all reassigned to respondent – three days *after* he
16 physically conducted the inspections. Within ten minutes of the inspection assignment to
17 respondent, he entered records into Accela on the Market Street inspection. Exhibit Nos. 12 and
18 25.

19 36. On December 4, 2015, Tim Low changed respondent's final building inspection
20 from "Pass" to "Partial." Inspector Low did not include an explanation for the change, however, a
21 few days later Inspector Clarke noted in Accela that the permit pulled by Mr. Espinosa did not
22 cover the scope of work outlined in the initial report (specifically it did not cover the balcony and
23 stairs). An inspection was scheduled on the property on January 7, 2016.

24 37. On January 7, 2016, Inspector Clarke conducted an inspection on the Market St.
25 property and gave a "Partially abated" result. Again, on February 9, 2016, Inspector Clarke
26 performed another inspection and gave it a "Partially abated" result. The code case was still

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1 | outstanding as of October 2019.

2 | 38. As explained above in paragraphs 27-29 above, respondent received compensation,
3 | estimated to be “thousands of dollars”, from Ms. Williams related to her properties through Derek
4 | Canada.

5 | **iii. 877 27th Street Property**

6 | 39. In 2015, Ms. Williams hired Mr. Espinosa to renovate 877 27th Street in Oakland.
7 | On November 10, 2015, Mr. Espinosa applied for four permits: (1) a building permit to remodel
8 | the kitchen and bathroom; (2) an electrical permit for the kitchen/bathroom remodel; (3) a
9 | mechanical permit for the kitchen/bathroom remodel; and (4) a plumbing permit for the
10 | kitchen/bathroom remodel. Exhibit Nos. 5, 6, 7 and 25.

11 | 40. On November 23, 2015, Building Permit Inspector Joanneke Verchuur conducted
12 | the frame/rough inspections on the 27th Street property and gave a “Partial” result for the electrical
13 | permit and noted in Accela that additional work needed to be done. She gave a “Not Pass” result
14 | for the plumbing permit noting several existing issues with the plumbing.

15 | 41. On or around December 11, 2015, Supervisor David Miles reassigned the inspection
16 | of 877 27th Street to two other inspectors, neither of whom was the respondent. Respondent then
17 | re-assigned the inspection to himself and re-performed frame/rough inspections at 877 27th Street
18 | on those same electrical and plumbing permits. Respondent also performed inspections on the two
19 | other permits for building and mechanical and gave a “Pass” result to each one.

20 | 42. On December 16, 2015, respondent returned to perform another frame/rough
21 | inspection on 877 27th Street. On December 17, a day *after* the inspection was physically
22 | conducted, he assigned himself to the December 16th inspection and gave the property a “Pass”
23 | result in Accela.

24 | 43. On March 1, 2016, Mr. Espinosa scanned and emailed several documents to Ms.
25 | Williams, including a note that had a list of costs. Exhibit No. 7. The list included a notation for
26 | 877 27th Street and an amount of \$300 written next to it. Attached to the note was an Accela

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1 printout regarding permits at 877 27th Street that included handwritten notes. Written on the note,
2 among other things, was the amount of "\$300 rough" and "\$300 final." Exhibit No. 7. Ms.
3 Williams acknowledge that she received the documents with the amounts on them from Mr.
4 Espinosa and that the amounts were "his fees" for passing the rough and final inspections.

5 44. As explained above in paragraphs 27-29 above, respondent received compensation,
6 estimated to be "thousands of dollars", from Ms. Williams related to her properties through Derek
7 Canada.

8 (b) **Machado Properties**

9 i. **2326 Myrtle Street**

10 45. This single-family home is located in West Oakland. The PBD received a complaint
11 on November 30, 2015, alleging that unpermitted major construction was taking place on the
12 property including open trenches and the structure being lifted. On December 7, 2015 Inspector
13 Gene Martinelli inspected the property and verified the violation. He also issued a stop-work order
14 (SWO) on the property. Exhibit Nos. 8-11 and 25.

15 46. Other inspectors issued additional SWOs and conducted inspections with "Not Pass"
16 results.

17 47. On February 23, 2016, a Job Card was created for 2326 Myrtle bearing entries with
18 the initials A.H.⁶ While there is no corresponding record of this inspection in Accela, respondent
19 had a handwritten note on his schedule for February 23, 2016 – the day of the entry on the Job Card
20 – stating, "2326 Myrtle, RB OK to pour footings." Exhibit Nos. 8, 10, 11 and 25.

21 48. Four days later, on February 27, 2016, Mr. Machado made three cash withdrawals
22 totaling \$1,700 and paid the cash to Mr. Espinosa. On March 2, 2016 a member of the PBD made a
23 note in Accela that the Myrtle property "needs 2x fees, FC & valuation adjusted for Stop Work
24 orders & exceeding scope of work. Needs revised plans that address all work."
25

26 _____
⁶ During the relevant times of the listed inspections, Anthony Harbaugh was the only person in PBD with the initials AH.

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1 49. On March 3, 2016, a stop-work condition was placed on the Myrtle property
2 building permit and the permit was revoked.

3 50. Five days later, on March 8, 2016, Accela shows the following sequencing of events:
4 at 9:19 am, respondent schedules himself in place of Inspector Bernal to conduct the upcoming
5 field check⁷ set for March 10; six minutes later, respondent cancels the field check at 9:25 am; eight
6 minutes later, scheduler Sylvia Ford creates a new field check entry at 9:33 am; one minute later,
7 Ms. Ford schedules respondent to a field check at 2326 Myrtle at 9:34 am for the same day (March
8 8) rather than the original inspection date of March 10; later that afternoon, at 2:02 pm, respondent
9 enters a "Pass" in Accela for the field check, commenting, "OK to issue a permit, plans reflect
10 scope of work being done on job site. Will need to comply with title 24. Electrical, plumbing and
11 mechanical permits needed." Exhibit Nos. 8, 10 and 25.

12 51. On March 29, 2016, respondent scheduled himself to perform a frame/rough
13 inspection at the property for that same day. He entered a "Pass" on Accela, commenting: "Wall
14 frame and shear nail ok. Roof frame and plywood nail ok." The job card has no corresponding
15 entry for an inspection that day. Respondent's pre-arranged schedule for the day does not mention
16 2326 Myrtle. *Ibid.*

17 52. On April 11, 2016, Mr. Machado withdrew \$1000 in cash from one of his bank
18 accounts and paid Mr. Espinosa. Two days later, on April 13, 2016, the job card for Myrtle had an
19 entry that A.H. inspected the property. Accela had no record of respondent conducting the
20 inspection. Exhibit Nos. 8, 10, 11 and 25.

21 53. On April 15, 2016, respondent noted in Accela that he conducted another inspection
22 of the Myrtle property for electrical and plumbing. Respondent noted in Accela, "4/15/2016,
23 "Rough OK." Exhibit Nos. 8, 10 and 25.

24 54. There are no corresponding entries on the job card for this property. There are
25 _____

26 ⁷ Field checks occur to ensure that the work happening at the site corresponds with the work submitted in the Owner's application. If the work on site is different than the application, then inspectors may issue NOVs or Stop Work Orders. Increased fees can also be assessed.

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1 entries on the job card from May 3, 2016, with the initials A.H. Neither Accela, comment logs or
2 respondent's notes contain any record of these inspections being performed. On June 7, 2016, the
3 job card from the Myrtle property also reflects that respondent conducted an inspection on that date.

4 55. Respondent admitted to the petitioner's witness that he performed some inspections
5 at the 2326 Myrtle property but claimed some of the initials looked like someone else had written
6 them.

7 ii. 6220 Valley View

8 56. On November 12, 2015, Mr. Machado applied for, and was issued, a building permit
9 for rot repair at 6220 Valley View Road. On December 9, 2015, the City received a complaint from
10 an unknown person regarding 6220 Valley View: "WORKING OUTSIDE OF SCOPE OF
11 PERMIT RB1504860 ADDING ON TO HOME." On January 20, 2016, Inspector Benjamin Lai
12 conducted an inspection and found that the work being done was outside the scope of the permit
13 and opened an enforcement case against him. Exhibit Nos. 19-22 and 25.

14 57. A Notice of Violation ("NOV") was sent out on February 8, 2016. It is addressed to
15 Machado and his partner Liu. The NOV stated that a follow-up inspection was to be conducted on
16 March 10.

17 58. On February 24, 2016, Inspector Lai entered the following into Accela: "Met with
18 property owner in office with revised plans to completely remodel house and convert basement into
19 habitable space. Informed to submit for permits to increase valuation and scope of work. Repair of
20 shared garage with neighbor will be separate from current permit application. Monitor case."

21 59. On February 29, 2016, respondent scheduled himself for a final inspection. Later
22 that day, he performed a final inspection on the Valley View property according to Accela.
23 Respondent gave a "Pass" result, and the permit was closed out.

24 60. Mr. Machado applied for a new building permit for 6220 Valley View. In an
25 interview with the PEC, Inspector Lai said that the owners of the Valley View property appeared to
26 be trying to 'low-ball' the value of the project to a significant degree but that he revised their low-

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1 ball valuation.

2 61. On May 13, 2016, respondent performed a field check on the Valley View property.
3 In Accela he entered that the permit was "OK to issue," and that the job valuation should be
4 lowered to \$125,000. Despite respondent's note, the value of the job remained \$271,000 on Accela
5 until it was lowered to \$ \$207,800 on July 6, 2016, per Inspections Manager Tim Low. Respondent
6 had scheduled that field check himself that morning.

7 62. Respondent's cell phone and text records show communications between respondent
8 and Mr. Espinosa during all of the above referenced, relevant transactions. Exhibit No. 20.

9 **(c) Gimme Shelter – 4163 Rifle Lane Property**

10 63. On November 14, 2013, the PBD received a complaint alleging that the Owners at
11 4163 Rifle Lane were building an unpermitted unit in the backyard. On that same day, Mr.
12 Espinosa conducted an inspection and confirmed the allegations. Thereafter, the case stagnated for
13 two years. Exhibit Nos. 14-18 and 25.

14 64. Eventually, the Owners decided to move out of and sell the property. They hired
15 Gimme Shelter, which was a real estate company owned by Bill Charman, and worked with realtor
16 Megan Micco.

17 65. Mr. Espinosa visited the property on February 2, 2016 and spoke with the potential
18 buyers. He warned of a significant fine being levied against the property as well as major
19 inspections that may require uncovering the walls of the structure. Mr. Espinosa eventually told Mr.
20 Charman that the permit issue could be resolved.

21 66. On that same day, respondent visited the property and performed an inspection.
22 Exhibit Nos. 15, 16, and 25, para. 83. Respondent acknowledged that these exhibits contain his
23 handwriting. Respondent gave Ms. Micco a printout with his handwritten notes about repairs
24 needed for the property to pass. Exhibit No. 18. Respondent admitted that the notes are his
25 handwriting. No record exists in Accela of either Mr. Espinosa or respondent's visit to the property
26 nor of respondent's inspection. Failure to log an inspection of a property is a violation of PBD

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1 policy. Respondent, however, did make a handwritten record of this inspection on his schedule for
2 the day. Exhibit No. 16.

3 67. On February 9, 2016, Mr. Charman applied for building, electrical and plumbing
4 permits to “legalize [the] unapproved addition at the back of the house of 4163 Rifle Lane.” On
5 that same day Mr. Espinosa asked Mr. Charman to meet him at a bench outside of City Hall. Mr.
6 Espinosa told Mr. Charman that in order to complete a re-inspection and legally complete the
7 unpermitted building, he needed to pay Mr. Espinosa \$1,500. Mr. Charman paid Mr. Espinosa
8 directly. Exhibit No. 26. Mr. Espinosa deposited the payment in his personal bank account on that
9 same day. Exhibit No. 25.

10 68. Two days later, on or about February 11, 2016 respondent logged into Accela and
11 reported that he conducted frame/rough inspections pursuant to each permit on the Rifle Lane
12 property and gave a “Pass” result to each. His note stated, “rough ok.” None of respondent’s daily
13 log sheets that were scheduled per PBD policy included the inspections he conducted at the Rifle
14 Lane address.

15 69. Five days after that, on February 16, 2016, respondent, without permission,
16 reassigned inspections of the Rifle Lane property from Supervisor David Miles to himself.
17 Respondent performed the final inspections and gave each a “Pass” result.

18 2. Miscellaneous

19 70. Between 2015 and 2018, all employees designated in the City’s Conflict of Interest
20 Code were required to file a Form 700 statements of economic interests and disclose all required
21 information provided in the California Political Reform Act and the City Conflict Interest Code.
22 On April 5, 2016, and on March 16, 2017, the Respondent filed his respective Form 700s but failed
23 to report the money he received from Ms. Williams, Mr. Espinosa or any other property owner for
24 the inspections. On the relevant Form 700s, respondent marked that he had “no reportable interests”
25 in real properties, income, loans, business positions, or gifts outside of his official City
26 employment. Exhibit Nos. 23 and 24.

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1 71. Petitioner asked two follow up questions on rebuttal: (1) did respondent perform the
2 February 10, 2016 and February 16, 2016 inspections at the Rifle Lane property; and (2) did
3 respondent tell PEC Investigator Russell that he (respondent) spoke directly with Owner Elizabeth
4 Williams while he was at work? Respondent replied that the only date he recalled being at the Rifle
5 Lane property was on February 2, 2016. Regarding communications with Ms. Williams,
6 respondent could not recall speaking with Ms. Williams about anything other than older
7 outstanding code cases for her properties.

8 **3. Respondent's Case**

9 72. Respondent did not submit any documents as evidence. He was sworn in by the
10 hearing officer before offering testimony on his own behalf. He testified under penalty of perjury.

11 73. Respondent testified that he never received money from Mr. Espinosa. Respondent
12 invited scrutiny of his banking records and stated that the FBI had already reviewed them and found
13 nothing troubling. Respondent testified that, to the extent that any of his actions ended up assisting
14 Mr. Espinosa in his schemes, they were inadvertent and unknown to him. Respondent stated that he
15 left his Accela login credentials sitting on his desk, accessible to anyone within PBD. He believes
16 he has heard that other Inspectors complained about Mr. Espinosa stealing and using their
17 credentials to create and update Accela inspection entries. Additionally, respondent said it was
18 common practice for Inspectors to call each other up and ask for a "second set of eyes" on an
19 inspection, as an aid to the assigned Inspector. He has done this a few times, and believes this is
20 what happened at the Rifle Lane property, which could account for the mismatch in information
21 between the Job Card and Accela entries for that property. Further, respondent testified that some of
22 the handwritten notes on Exhibit Nos. 15, 16 and 18 do not match his handwriting. He had no
23 explanation for how or why someone would write notes purporting to be from respondent. He
24 stated that he may have notified a supervisor about one of the instances where he believed his
25 writing was forged.

26 74. Respondent knew that Mr. Espinosa, like himself, was recovering from substance

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1 abuse. Respondent thought they were recovery friends. Respondent testified that, at work, he
2 would rely on Mr. Espinosa when he needed to talk to someone else in recovery and that any calls
3 between Mr. Espinosa and respondent were related to recovery.

4 75. Respondent asked two follow up questions, through the hearing officer, on rebuttal:
5 (1) As Mr. Russell testified earlier about a Permit Tech leaving their station unattended so that
6 respondent could have created scheduling records for himself under the Permit Tech's name, is it
7 possible that *anyone* could enter records in Accela by using another person's credentials; and (2)
8 could Mr. Espinosa have physically used someone else's computer or credentials to enter Accela
9 information? Mr. Russell responded to both questions that while it was certainly *possible* for these
10 to have occurred, it was *unlikely* here given the weight of the evidence showing a pattern of Accela
11 entry manipulation in respondent's name, the phone calls linking Mr. Espinosa and respondent at or
12 around the inspection times, and the testamentary and documentary evidence linking respondent to
13 Mr. Espinosa's schemes.

14 **B. CONCLUSIONS OF LAW**

15 76. The authority to bring this action derives from the city of Oakland's Charter,
16 including sections 603(b) and (f). City of Oakland Municipal Code (OMC) Chapter 2.25 contains
17 the city's Government Ethics Act (GEA). The PEC shall not commence an administrative action
18 alleging a violation of the GEA more than four years after the date of the alleged violation.⁸ If the
19 PEC finds a violation of the GEA, it may:

- 20 (a) find mitigating circumstances and take no further action;
21 (b) issue a public statement or reprimand; or
22 (c) impose an administrative penalty of up to five thousand dollars for each violation or
23 three times the amount that was failed to be reported or was illegally received.⁹

24 77. Reasonable inferences may be drawn from the findings of fact.
25

26 ⁸ OMC §2.25.080(C)(6).

⁹ OMC §2.25.080(C)(3).

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1 78. The GEA defines “Public Servant” as, “any full-time or part-time employee of the
2 City.”¹⁰

3 79. The GEA contains a number of rules based on ethics, transparency, fairness and
4 process which all city employees, among others, are required to follow. At issue in this hearing are
5 the Conflicts of Interest provisions, Bribery and Gift provisions and the laws governing the misuse
6 of city positions, assets and resources.¹¹

7 80. The PEC has adopted Enforcement Penalty Guidelines (Guidelines) that govern this
8 proceeding. These Guidelines provide for consideration of all relevant factors in mitigation and
9 aggravation. The factors to be considered include: (1) the seriousness of the violation; (2) the
10 presence or absence of any intent to conceal, deceive or mislead; (3) whether the violation was
11 deliberate, negligent or inadvertent; (4) whether the violation was isolated or part of a pattern, and
12 whether there is a prior record of violations; (5) whether amendments were voluntarily filed to
13 provide full disclosure upon learning of the reporting violation; and (6) the degree of cooperation
14 with the PEC’s investigation, and the demonstrated willingness to remedy any violation.

15 81. The PEC has broad discretion in evaluating a violation and determining the
16 appropriate penalty based on the totality of circumstances. The list of aggravating and mitigating
17 factors in the Guidelines is not an exhaustive list, but rather a sampling of factors that could be
18 considered.¹² The Guidelines contain two separate administrative penalty schemes: Streamline and
19 Mainline.¹³ The Streamline Penalties are reserved for those cases that settle.¹⁴ The Mainline
20 Penalties are reserved for cases involving more serious violations and violations that do not qualify
21 for the Streamline penalties.¹⁵ The Streamline Penalties do not apply here.

22 82. The Guidelines’ Mainstream Penalties provide a base level per violation sum and a
23 statutory limit per violation sum for each violation as follows:

24 ¹⁰ OMC §2.25.030(D)(3).

25 ¹¹ OMC Chapter 2.25.

26 ¹² Guidelines, pg. 2.

¹³ *Id.* at pp. 3-4

¹⁴ *Ibid.*

¹⁵ *Id.* at pg. 4.

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- 1 • Bribery: Base - \$5,000 or 3x illegal gain; Limit - \$5,000 or 3x illegal gain,
2 whichever greater;
- 3 • Misuse of city position: Base - \$5,000; Limit - \$5,000 or 3x illegal gain, whichever
4 greater;
- 5 • Conflicts: Base - \$3,000; Limit - \$5,000 or 3x illegal gain, whichever greater;
- 6 • Use of official position/governmental interest: Base - \$5,000; Limit - \$5,000 or 3x
7 illegal gain, whichever greater;
- 8 • Form 700 non-filer/non-report: Base - \$1,000; Limit - \$5,000 or 3x reportable sum,
9 whichever greater;
- 10 • Misuse of city resources: Base - \$2,000; Limit - \$5,000 or 3x illegal gain, whichever
11 greater;
- 12 • Soliciting a gift: Base - \$1,000 plus unlawful amount; Limit - \$5,000 or 3x unlawful
13 amount, whichever greater;
- 14 • Gift reporting: Base - \$1,000 plus unlawful amount; Limit - \$5,000 or 3x unlawful
15 amount, whichever greater.¹⁶

16 **83. Count One: Soliciting and Receiving Bribes in Exchange for the Performance**
17 **of an Official Act.**

18 (a) A City employee may not solicit or accept anything of value in exchange for the
19 performance of any official act.¹⁷

20 (b) Findings: Between January 1, 2015 through December 31, 2016, respondent
21 demanded and/or received \$300 per inspection plus an unidentified amount of cash in two
22 envelopes delivered to him by Mr. Canada on Mr. Williams' behalf in exchange for giving Ms.
23 Williams passing inspections for her multiple properties on which Mr. Espinosa was performing
24 non-city work. Exhibit Nos. 1-7, 12, 13, 25-28.

25
26 ¹⁶ Guidelines, pp. 4-5.

¹⁷ O.M.C. §2.25.070.

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1 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
2 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
3 violations. Respondent further testified that he has no criminal record.

4 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
5 exchange for issuing passing inspections. Respondent's actions show a pattern of unauthorized
6 Accela entries around the same time as he was in phone or text contact with Mr. Espinosa and
7 conducting inspections on one of the Owners' properties. The violations with which respondent is
8 charged are serious and involve life, health and safety concerns. Direct evidence links respondent
9 to this scheme through text messages between Mr. Espinosa and Ms. Williams.

10 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
11 Count One and a fine of \$5,000.00 is recommended.

12 84. **Count Two: Misusing City position to induce/coerce others to provide economic**
13 **gain.**

14 (a) A City employee may not use his or her position, or the power or authority of his or
15 her position, in any manner intended to induce or coerce any person to provide any private
16 advantage, benefit, or economic gain to the City employee or any other person.¹⁸

17 (b) Findings: Between January 1, 2015, through December 31, 2016, respondent
18 refused to enter into Accela a record of a final inspection at the Mead Avenue property owned by
19 Ms. Williams, for the purpose of inducing or coercing Ms. Williams into providing respondent with
20 a payment for the inspection. Exhibit Nos. 1-7, 25-28.

21 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
22 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
23 violations. Respondent further testified that he has no criminal record.

24
25 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
26

¹⁸ O.M.C. §2.25.060 (A)(2).

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1 exchange for issuing passing inspections. Respondent's actions show a pattern of unauthorized
2 Accela entries around the same time as he was in phone or text contact with Mr. Espinosa and
3 conducting inspections on one of the Owners' properties. The violations with which respondent is
4 charged are serious and involve life, health and safety concerns. Direct evidence links respondent
5 to this scheme through text messages between Mr. Espinosa and Ms. Williams.

6 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
7 Count Two and a fine of \$5,000.00 is recommended.

8 **85. Count Three: Conflict of Interest Violation: Make or Participate in making a**
9 **Governmental Decision Involving a Source of Income – 867-859 Mead Avenue.**

10 (a) A city employee may not make, participate in making, or seek to influence decision
11 of the City in which the City employee has a disqualifying financial interest.¹⁹ A city employee has
12 a disqualifying financial interest in a governmental decision if the decision will have a reasonably
13 foreseeable material financial effect on any of their qualifying financial interests.²⁰ A city
14 employee makes a governmental decision if they authorize, direct, obligate, or commit their agency
15 to any course of action.²¹ A city employee attempts to use their official position to influence a
16 decision when they contact or appear before any official in their agency for the purpose of affecting
17 the decision.²² A city employee has a disqualifying financial interest in any individual or business
18 entity from whom they have been provided or promised income aggregating \$500 or more within
19 12-months prior to the time when the relevant government decision is made.²³ The financial effect
20 of a decision on a disqualifying financial interest is presumed to be reasonably foreseeable if the
21 disqualifying financial interest is a named party in, or the subject of, the decision before the city
22 employee their agency.²⁴ For income received by the official, the reasonably foreseeable financial
23 effect of the decision on the City employee's disqualifying financial interest is material if the source

24 ¹⁹ O.M.C. §2.25.040 (A); Cal. Gov. Code §87100.

25 ²⁰ FPPC Regulation 18700 (a).

25 ²¹ FPPC Regulation 18704(a).

26 ²² FPPC Regulation 18704 (c)(1).

26 ²³ Cal. Gov. Code §87103(c).

²⁴ FPPC Regulation 18701.

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1 of the income is a claimant, applicant, respondent, contracting party, or is otherwise identified as
2 the subject of the proceeding.²⁵

3 (b) Findings: Between January 2015 and December 2016, respondent issued Elizabeth
4 Williams a "Pass" result on an electrical, plumbing and frame inspection at her 867-859 Mead
5 Avenue property in Oakland, in exchange for \$300 per inspection and an unidentified amount of
6 cash in two envelopes delivered to him by Mr. Canada on Mr. Williams' behalf. Exhibit Nos. 1-7,
7 25-28.

8 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
9 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
10 violations. Respondent testified that he has no prior criminal record.

11 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
12 exchange for issuing passing inspections. Respondent's actions show a pattern of unauthorized
13 Accela entries around the same time as he was in phone or text contact with Mr. Espinosa and
14 conducting inspections on one of the Owners' properties. The violations with which respondent is
15 charged are serious and involve life, health and safety concerns. Direct evidence links respondent
16 to this scheme through text messages between Mr. Espinosa and Ms. Williams.

17 (e) Based on the foregoing facts and conclusions, while respondent is found to have
18 violated Count 3, because the same facts are relied upon in Count 1, no fine is imposed over and
19 above that already assessed in Count 1.

20 86. **Count Four: Conflict of Interest Violation: Make or Participate in making a**
21 **Governmental Decision Involving a Source of Income – 2735 Market Street.**

22 (a) The relevant legal authority is the same as for Count 3, and is incorporated herein.

23 (b) Findings: Between January 2015 and December 2016, respondent issued Elizabeth
24 Williams a "Pass" result on an electrical, plumbing and frame inspection at her 2735 Market Street
25 property in Oakland, in exchange for an unidentified amount of cash in two envelopes delivered to
26

²⁵ FPPC Regulation 18702.3 (a)(1).

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1 him by Mr. Canada on Ms. Williams' behalf. Exhibit Nos. 12, 13, 25-28.

2 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
3 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
4 violations. Respondent further testified that he has no criminal record.

5 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
6 exchange for issuing passing inspections. Respondent specifically denies receiving any envelopes
7 of cash. Respondent's actions show a pattern of unauthorized Accela entries around the same time
8 as he was in phone or text contact with Mr. Espinosa and conducting inspections on one of the
9 Owners' properties. The violations with which respondent is charged are serious and involve life,
10 health and safety concerns.

11 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
12 Count Four and a fine of \$3,000.00 is recommended.

13 87. **Count Five: Conflict of Interest Violation: Make or Participate in making a**
14 **Governmental Decision Involving a Source of Income – 877 27th Street.**

15 (a) The relevant legal authority is the same as for Counts 3-4, and is incorporated
16 herein.

17 (b) Findings: Between January 2015 and December 2016, respondent issued Elizabeth
18 Williams a "Pass" result on an electrical, plumbing and frame inspection at her 877 27th Street
19 property in Oakland, in exchange for an unidentified amount of cash in two envelopes delivered to
20 him by Mr. Canada on Ms. Williams' behalf. Exhibit Nos. 6, 7, 25-28.

21 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
22 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
23 violations. Respondent further testified that he has no criminal record.

24 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
25 exchange for issuing passing inspections. Respondent specifically denies receiving any envelopes
26 of cash. Respondent's actions show a pattern of unauthorized Accela entries around the same time

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1 as he was in phone or text contact with Mr. Espinosa and conducting inspections on the Owners'
2 properties. The violations with which respondent is charged are serious and involve life, health and
3 safety concerns.

4 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
5 Count Five and a fine of \$3,000.00 is recommended.

6 88. **Count Six: Conflict of Interest Violation: Make or Participate in making a**
7 **Governmental Decision Involving a Source of Income – 4163 Rifle Lane.**

8 (a) The relevant legal authority is the same as for Counts 3-5, and is incorporated
9 herein.

10 (b) Findings: Between January 2015 and December 2016, respondent issued a "Pass"
11 result on the frame and final inspection at his "Gimme Shelter" 4163 Rifle Lane property. Witness
12 testimony places respondent at this property. Respondent acknowledged that he has been at the
13 property and that he made the handwritten notes on multiple inspection-related documents for this
14 property, and respondent conducted the "Pass" inspections. Mr. Espinosa received a \$1,500 check
15 related to inspections on this property and deposited it into his bank account. The weight of the
16 evidence supports the conclusion that respondent likely received financial benefit for the
17 inspections he conducted at this property. Exhibit Nos. 14-18, 25-28.

18 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
19 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
20 violations. Respondent further testified that he has no criminal record.

21 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
22 exchange for issuing passing inspections. Respondent was unable to explain his repeated visits to
23 the Rifle Lane property as evidence by his initialing paperwork and making personal notes and
24 comments on paperwork he gave to the Owners. In addition, respondent was unable to account for
25 the discrepancies in documented passed inspections on the Job Card and personal notes versus the
26 city's lack of records for these passing inspections in Accela. Respondent's actions continue to

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1 follow a pattern of unauthorized Accela entries scheduling himself to conduct inspections on the
2 Owners' properties. The violations with which respondent is charged are serious and involve life,
3 health and safety concerns.

4 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
5 Count Six and a fine of \$3,000.00 is recommended.

6 89. **Count Seven: Conflict of Interest Violation: Make or Participate in making a**
7 **Governmental Decision Involving a Source of Income – 2326 Myrtle Street.**

8 (a) The relevant legal authority is the same as for Counts 3-6, and is incorporated
9 herein.

10 (b) Findings: Between January 2015 and December 2016, respondent issued a "Pass"
11 result on a building inspection for remodel construction (including electrical and frame inspection)
12 at 2326 Myrtle property in Oakland. Though the documentary and testimonial evidence showed the
13 same patterns related to this property as with other properties where respondent violated the law,
14 the weight of the evidence was insufficient to establish a direct link showing that respondent
15 received payments for providing this "Pass" inspection on this property. Exhibit Nos. 8-11, 25-28.

16 (c) Based on the foregoing facts and conclusions, respondent is found not to have
17 violated Count Seven.

18 90. **Count Eight: Conflict of Interest Violation: Make or Participate in making a**
19 **Governmental Decision Involving a Source of Income – 6220 Valley View Road.**

20 (a) The relevant legal authority is the same as for Counts 3-7, and is incorporated
21 herein.

22 (b) Findings: Between January 2015 and December 2016, respondent used his official
23 position to issue a "Pass" result 6220 Valley View. Though the documentary and testimonial
24 evidence showed the same patterns related to this property as with other properties where
25 respondent violated the law, the weight of the evidence was insufficient to establish a direct link
26 showing that respondent received payments for providing this "Pass" inspection on this property.

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1 Exhibit Nos. 19-22, 25-28.

2 (c) Based on the foregoing facts and conclusions, respondent is found not to have
3 violated Count Eight.

4 91. **Count Nine: Making or Seeking to Use An Official Position to Make**
5 **Governmental Decisions in Which The Employee Has a Disqualifying Financial Interest.**

6 (a) A City employee may not use his or her position, or the power or authority of his or
7 her position, in any manner intended to induce or coerce any person to provide any private
8 advantage, benefit, or economic gain to the City employee or any other person.²⁶

9 (b) Findings: Between January 1, 2015 through December 31, 2016, respondent used
10 his official position to issue Ms. Williams passing building permits for multiple properties in
11 exchange for \$300 per inspection and an unidentified amount of cash in two envelopes delivered to
12 him by Mr. Canada on Ms. Williams' behalf. Exhibit Nos. 1-7, 12, 13, 25-28.

13 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
14 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
15 violations. Respondent further testified that he has no criminal record

16 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
17 exchange for issuing passing inspections. Respondent specifically denies receiving envelopes of
18 cash from Ms. Williams' property manager Derek Canada. Respondent's denials persist in the face
19 of direct evidence linking him to this passing inspection scheme for cash through the text messages
20 of Mr. Espinosa and Ms. Williams. Respondent's actions further show a pattern of unauthorized
21 Accela entries around the same time as he was in phone or text contact with Mr. Espinosa and
22 conducting inspections on Ms. Williams' properties. The violations with which respondent is
23 charged are serious and involve life, health and safety concerns.

24 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
25 Count Nine but fines are not recommended because this violation is based upon the same set of

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²⁶ O.M.C. §2.25.060 (A)(2).

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1 facts as support Counts 1-5, and in which fines have already been recommended for Counts 1, 2, 4,
2 and 5.

3 92. **Count Ten: Economic Interest Disclosure: Failing to Report a Source of**
4 **Income.**

5 (a) Every city employee designated in the city's Conflict of Interest Code (CIC) is
6 required to file statements of economic interests and disclose all required information pursuant to
7 the California Political Reform Act and the CIC.²⁷ The CIC incorporates FPPC Regulation 18730
8 and requires every Specialty Combination Inspector in the PBD to report investments and business
9 positions in business entities, sources of income, and interests in real property.²⁸ The CIC requires
10 designated employees file their statement of economic interests with the City Clerk's Office.²⁹ A
11 Specialty Combination Inspector ("Building Inspector") is required to report by April 1st all
12 reportable investments and business positions in business entities, sources of income and interests
13 in real property, held or received during the previous calendar year.³⁰ They are also required to
14 report within 30 days after leaving office all reportable investments and business positions in
15 business entities, sources of income and interests in real property, received or held during the period
16 between the closing date of the last statement filed and the date his or her employment with the City
17 is terminated.³¹ Reportable income is any payment received by the Specialty Combination
18 Inspector and includes loans other than those received from a commercial lending institution.³² The
19 Specialty Combination Inspector is required to report the name and address of every source of
20 income aggregating \$500 or more in value during the period that discovered by the statement of
21 economic interests, the amount of income received, and a description of the consideration for which
22 the income was received.³³ A business position must be reported when the filer is a director,

23 _____
24 ²⁷ O.M.C. §2.25.040(B).

25 ²⁸ O.M.C. §3.16.010.

26 ²⁹ O.M.C. §3.161.020.

³⁰ FPPC Regulation 18730, subds. (b)(6)(C).

³¹ FPPC Regulation 18704 (b)(5)(D).

³² Cal. Gov. Code §82030.

³³ Cal. Gov. Code §18700(a).

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1 officer, partner, trustee, or employee of, or hold any position of management in, a business entity
2 that has an interest in real property in the jurisdiction, or does business or plan to do business in the
3 jurisdiction or has done business in the jurisdiction at any time during the two years prior to the
4 date the statement is required to be filed.³⁴

5 (b) Findings: Credible testamentary evidence shows that respondent received
6 compensations estimated to be thousands of dollars in cash payments for performing passing
7 inspections on properties owned by Ms. Williams. These payments constitute income for work
8 performed. All Building Permit Inspectors are required to report income that is separate and apart
9 from their city salary on their Form 700 statements of economic interests. Respondent failed to
10 report any of this income on his Form 700 statements of economic interest. Exhibit Nos. 1-7, 12,
11 13, 23-28.

12 (c) Mitigation: Respondent cooperated with the PEC's Investigator and participated in
13 two separate interviews. Prior to this investigation, respondent has no prior record of GEA
14 violations. Respondent further testified that he has no criminal record

15 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
16 exchange for issuing passing inspections. Respondent's actions show a pattern of unauthorized
17 Accela entries around the same time as he was in phone or text contact with Mr. Espinosa and
18 conducting inspections on one of the Owners' properties. These cash payments were never
19 reported on respondent's Form 700s for 2015 and 2016, and remain unreported to this day.

20 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
21 Count Ten and a fine of \$1,000.00 is recommended.

22 93. **Count Eleven: Misuse of City Resources for personal financial gain**

23 (a) A City employee may not use public resources for personal purposes.³⁵ Personal
24 purposes means activities for personal enjoyment, private gain or advantage, or an outside endeavor
25

26 ³⁴ Cal. Gov. Code §87209.

³⁵ O.M.C. §2.25.060 (A)(1).

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1 not related to City business.³⁶ Public resources means any property or asset owned by the City,
2 including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones,
3 computers, vehicles, travel, and City compensated time.³⁷ Use means a use of public resources
4 which is substantial enough to result in a gain or advantage to the user or a loss to the City for
5 which a monetary value may be estimated.³⁸

6 (b) Findings: Between January 1, 2015 through December 31, 2016 during work hours,
7 respondent used a city-owned vehicle for personal or non-government purposes when he accepted
8 an envelope of cash from Mr. Canada, on behalf of Ms. Williams, while sitting in a City-owned
9 vehicle. Exhibit Nos. 1-7, 12, 13, 25-28. (c)Mitigation: Respondent cooperated with the PEC's
10 Investigator and participated in two separate interviews. Prior to this investigation, respondent has
11 no prior record of GEA violations. Respondent testified that he likewise has no criminal record and
12 the federal government has gone through his bank accounts.

13 (d) Aggravation: Respondent continues to deny receiving any money whatsoever in
14 exchange for issuing passing inspections, and specifically denies receiving envelopes full of cash.
15 Respondent's actions show a pattern of unauthorized Accela entries around the same time as he was
16 in phone or text contact with Mr. Espinosa and conducting inspections on one of the Owners'
17 properties. The violations with which respondent is charged are serious and involve life, health and
18 safety concerns.

19 (e) Based on the foregoing facts and conclusions, respondent is found to have violated
20 Count Eleven and a fine of \$2,000.00 is recommended, based solely on the evidence relating to the
21 Elizabeth Williams properties.

22 94. **Count Twelve: Soliciting or Accepting Gifts in excess of the City of Oakland**
23 **Gift Limits**

24 (a) "Public Servants" may not solicit or accept gifts in excess of \$250 in a calendar
25

26 ³⁶ O.M.C. §2.25.060 (A)(i) (a)(i).

³⁷ O.M.C. §2.25.060 (A) (1)(a)(iii).

³⁸ O.M.C. §2.25.060(A)(1)(a)(iv).

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1 year.³⁹

2 (b) Findings: The evidence shows that respondent performed some inspections in
3 exchange for money. This arrangement is not a gift but income that respondent failed to report.
4 Exhibit Nos. 1-28.

5 (c) Based on the foregoing facts and conclusions, respondent is not found to have
6 violated Count Twelve, though he is found to have violated Count Ten.

7 **95. Count Thirteen: Gift Disclosure Violation: Failing to Report Gifts in excess of**
8 **the City of Oakland Gift Limits**

9 (a) All "Public Servants" within the city of Oakland must report all gifts they receive
10 cumulatively in excess of \$250 in a calendar year on their Statement of Economic Interest, which is
11 known as a Form 700.⁴⁰

12 (b) Findings: The evidence shows that respondent performed some inspections in
13 exchange for money. This arrangement is not a gift but income that respondent failed to report.
14 Exhibit Nos. 1-28.

15 (c) Based on the foregoing facts and conclusions, respondent is not found to have
16 violated Count Thirteen, though he is found to have violated Count Ten.

17 **C. ORDER**

18 96. Based on all of the foregoing, it is recommended that respondent Anthony Harbaugh
19 be ordered to pay a total administrative penalty of **\$22,000** for 9 violations of the City of Oakland
20 Government Ethics Act.

21 Dated: December 2, 2020

22

23

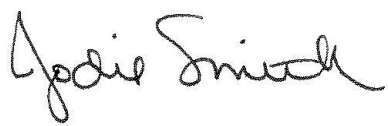
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26

³⁹ OMC §2.25.060(C).

⁴⁰ OMC §2.25.060(C).

By: 
Hearing Officer Jodie Smith

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APPENDIX A – EXHIBIT LIST

Exhibit No. and Description	Offered by:	Submitted without objection:
1. Record of Text Messages between Thomas Espinosa and Elizabeth Williams regarding the Mead Street property	Petitioner	Yes
2. Accela inspection log for Mead Street property	Petitioner	Yes
3. Accela scheduling log for Mead Street property	Petitioner	Yes
4. Accela inspection log for Mead Street property	Petitioner	Yes
5. Accela scheduling log for 27 th Street property	Petitioner	Yes
6. Accela inspection log for 27 th Street	Petitioner	Yes
7. Handwritten bill by Thomas Espinosa to Elizabeth Williams for passing inspections at her properties	Petitioner	Yes
8. Accela scheduling log for Myrtle Street property	Petitioner	Yes
9. Personal cell phone records of respondent	Petitioner	Yes
10. Accela inspection log for Myrtle Street property	Petitioner	Yes
11. Permit Inspection record (Job Card) for Myrtle Street property	Petitioner	Yes
12. Accela scheduling log for Market Street property	Petitioner	Yes
13. Personal cell phone records of respondent	Petitioner	Yes
14. Accela inspection log for Rifle Lane property	Petitioner	Yes
15. Permit Inspection record (Job Card) for Rifle Lane property	Petitioner	Yes
16. Respondent's inspection schedule with handwritten notes regarding Rifle Lane property	Petitioner	Yes

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17. Accela scheduling log for Rifle Lane property	Petitioner	Yes
18. Respondent's inspection schedule with handwritten notes regarding Rifle Lane property	Petitioner	Yes
19. Accela scheduling log for Valley View Road property	Petitioner	Yes
20.	Petitioner	Yes
21. NOV for Valley View Road property	Petitioner	Yes
22. Personal cell phone records of respondent	Petitioner	Yes
23. Respondent's 2015 Statement of Economic Interest filing (Form 700)	Petitioner	Yes
24. Respondent's 2016 Statement of Economic Interest filing (Form 700)	Petitioner	Yes
25. Declaration of PEC Investigator Simon Russell with Attachments 1-69	Petitioner	Yes
26. Demonstrative table of cash payments to respondent for passing inspections	Petitioner	Yes
27. Demonstrative table of inspections that were created by or reassigned to respondent	Petitioner	Yes
28. Demonstrative table of respondent's handwritten inspection notes	Petitioner	Yes