

Item 7 - Stipulation and Case Summary 18-14

1 Kellie F. Johnson
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7 Petitioner

8 BEFORE THE CITY OF OAKLAND
9 PUBLIC ETHICS COMMISSION

10 IN THE MATTER OF) Case No.: 18-14
11)
12) **STIPULATION AND EXHIBIT**
13 JASON OVERMAN Defendant)
14) **Date:** 12/23/2021
15 Respondent.) **Place:** 1 Ogawa Plaza, Hearing Rm. 1 Oakland, CA
16) 94612
17)

18 **STIPULATION**

19 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and Respondent
20 Jason Overman, agree as follows:

- 21 1. This Stipulation will be submitted for consideration by the City of Oakland Public Ethics
22 Commission (Commission) at its next regularly scheduled meeting;
- 23 2. This Stipulation resolves all factual and legal issues raised in this matter and represents the
24 final resolution to this matter without the necessity of holding an administrative hearing to
25 determine the liability of Respondents;
- 26 3. Respondent knowingly and voluntarily waive all procedural rights under the Oakland City
27 Charter, Oakland Municipal Code, and Public Ethics Commission Complaint Procedures,
28 including, but not limited to, the right to personally appear at an administrative hearing
held in this matter, to be represented by an attorney at his own expense, to confront all
witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to
have the matter judicially reviewed;

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- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. In 2017, Respondent Jason Overman a seasoned former City Council Aide and later
6 Lobbyist for “UrbanCore,” which had proposed to contract with or proposed to amend a
7 contract with the City, violated O.M.C. 3.12.140 of the Oakland Campaign Reform Act when
8 he made a contribution in the amount of \$800 to City of Oakland elected official/candidate
9 Abel Guillen before the expiration of the 180 Contractor Contribution prohibition period
10 (Count 1).
- 11 6. Again in 2017, Respondent Jason Overman violated O.M.C. 3.12.040 of the Oakland
12 Campaign Reform Act when he made a contribution in the amount of \$800 to City of
13 Oakland elected official/candidate, Mayor Libby Schaaf, before the expiration of the 180
14 Contractor Contribution prohibition period (Count 2).
- 15 7. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter
16 and is incorporated by reference into this Stipulation;
- 17 8. The Commission will impose upon Respondent a total administrative penalty in the amount
18 of \$2,600 (\$500 on Count 1, \$500 on Count 2, and \$1600 for the unlawful contribution
19 amount, totaling \$2,600);
- 20 9. A cashier’s check from Respondent, in said amount, made payable to the “City of
21 Oakland,” is submitted with this Stipulation as full payment of the administrative penalty,
22 to be held by the Commission until the Commission issues its decision and order regarding
23 this matter;
- 24 10. In the event the Commission refuses to accept this Stipulation, it shall become null and
25 void, and within fifteen business days after the Commission meeting at which the
26 Stipulation is rejected, all payments tendered by Respondent in connection with this
27 Stipulation will be returned to them; and
- 28 11. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
the Commission becomes necessary, neither any member of the Commission, nor the
Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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Kellie Johnson

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Dated: 12/23/2021

Kellie F. Johnson, Enforcement Chief of the City of
Oakland Public Ethics Commission, Petitioner

Dated: 12/28/21

J Overman
Jason Overman, Respondent

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DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Jason Overman PEC Case No. 18-14, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

Dated: _____

Michael MacDonald, Chair
City of Oakland Public Ethics Commission

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1 INTRODUCTION

2 On May 9, 2018, the City of Oakland Public Ethics Commission received a complaint alleging that
3 Respondent, Jason Overman violated the Oakland Campaign Reform Act. Based on the allegations in
4 the complaint, staff opened an investigation to determine whether the Respondent violated the
5 Oakland Campaign Reform Act's Contractor Contribution Ban by making contributions to City of
6 Oakland elected officials, candidates, or their controlled committees. After close consideration of all
7 of the facts and the law, and the reasons explained in this memorandum, Staff recommends that the
8 Commission approve a stipulation that Jason Overman violated the Oakland Campaign Reform Act
9 for a penalty of \$500 on Count 1, \$500 on Count 2 and \$1,600 unlawful contribution totaling \$2,600 in
10 fines and penalties.

11
12 SUMMARY OF LAW:

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

15 **O. M.C. 3.12.140** OCRA, prohibits contributions to candidates from City contractors.¹ This prohibition
16 applies to any "person who contracts or proposes to contract with or who amends or proposes to
17 amend such a contract with the City for," among other things, "purchasing or leasing any land or
18 building from the City, whenever the value of such transaction would require approval by the City
19 Council."²

20
21 TIMELINE OF EVENTS:

22 Overman filed an Initial Lobbyist Registration Form dated June 22, 2015.
23
24

25 ¹ In January 2017, an amended provision of O.M.C. 3.12.040 went into effect expanding the Contractor Contribution Ban to
26 all principals of an entity, including an individual employee, independent contractor or agent of the entity, that is
authorized to represent the entity before the City in regards to a contract or proposal contract.

27 ² See also OMC § 3.12.140(E)(4), which also specifies that "transactions that require approval by the City Council include but
are not limited to ... [c]ontracts for the sale or lease of any building or land to or from the City."

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- 1 07/14/15 Negotiations commenced when the City issued a Notice of Offer and Intent to
2 convey a vacant property known as the East 12th Street Remainder Site.
- 3 08/20/15 Developer selection/bid proposals due.
- 4 12/14/15 Overman filed a Lobbyist Registration Amendment dated December 10, 2015;
5 UrbanCore is listed as a client.
- 6 01/29/16 Overman filed two lobbyist reports, both dated January 28, 2016.
- 7 • UrbanCore is listed as a client on the Annual Lobbyist Registration.
- 8 • 2015 Lobbyist 4th Quarter Report (October 1 – December 31, 2015). Overman
9 reported lobbying on behalf of UrbanCore regarding the governmental
10 action, “E 12th Street Remainder Parcel Developer Selection.” He reported
11 having “[p]rovided information on project evolution and status, advocating
12 for client’s selection as developer of parcel.”
- 13 • Overman further reported lobbying the following persons:
- 14 ▪ Vice Mayor Rebecca Kaplan,
- 15 ▪ the Mayor’s Deputy Chief of Staff,
- 16 ▪ two policy analysts from the Office of the Council President, Lynette
17 Gibson McElhaney, and
- 18 ▪ Chief of Staff, Office of Council member Annie Campbell Washington.
- 19 03/15/16 The City Council adopted Resolution No. 86056 authorizing the City Administrator to
20 enter into an Exclusive Negotiating Agreement (ENA) with Developer.
- 21 03/15/16 Overman reports that he ceased lobbying on behalf of UrbanCore.
- 22 05/04/16 Overman filed a 2016 Lobbyist 1st Quarter Report (January 1 – March 31, 2016) dated
23 April 28, 2016. He reported lobbying for UrbanCore in the developer selection.
- 24 • Overman further reported lobbying the following persons:
- 25 ▪ Mayor Libby Schaaf,
- 26 ▪ Chief of Staff, Office of the Mayor,
- 27
- 28

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- Assistant City Administrator, Office of the Mayor,
- Lynette Gibson McElhaney, Council Member,
- Chief of Staff and Council Aide, Office of Lynette Gibson McElhaney,
- Annie Campbell Washington, Council Member,
- Dan Kalb, Council Member, and
- Chief of Staff, Office of Council Member Dan Kalb.

01/01/17 OCRA expanded the Contractor Contribution ban to include an entity’s principals, employees, independent contractors, and agents that represent or are authorized to represent the entity before the City regarding a contract.

02/15/17 The Distribution and Developer Agreement (DDA) was executed by the City Administrator and Developer. OCRA, Section 3.12.140(K) provides that “[c]ompletion of negotiations occurs when the City... executes the contract or amendment.”

04/28/17 Overman makes \$800 contribution to Abel Guillen.

6/30/17 Overman makes \$800 contribution to Libby Schaaf.

08/14/17 Since negotiations concluded when the Disposition and Development Agreement (DDA) was executed on February 15, 2017, the Contractor Contribution ban applied at least to August 14, 2017 (180 days after February 15, 2017).

FACTUAL SUMMARY AND ANALYSIS:

In late 2015, Overman was retained by UrbanCore to represent and prepare for the approval of a hearing on the “E 12th Street Remainder Parcel Developer Selection” by the City Council that was to occur early 2016. His role was to arrange meetings with various Councilmembers so that UrbanCore could brief them on the Project and make sure that the Council was aware that UrbanCore would be an acceptable choice as the developer of the parcel. Overman lobbied several Councilmembers, their aides, the Mayor, and members of her staff. These meetings were held in the Councilmember’s office or in a conference room.

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2 Overman lobbied on behalf of UrbanCore in the developer selection and appeared at two City
3 Council meetings in support of his client. Notably, Overman gave a statement to the news media
4 about the Project and quoted in a San Francisco Business Times newspaper as “a spokesman” for the
5 Developer. See Roland Li – Reporter, San Francisco Business Times (March 16, 2016).

6
7 Overman reported on his lobbyist registration form that UrbanCore was a client for all of 2016, but
8 the Respondent contends that he only reported lobbying for UrbanCore in the 1st Quarter of 2016
9 (January 1 – March 31). He also reported lobbying for UrbanCore in the 4th Quarter of 2015 (October
10 31 – December 31). He did not report UrbanCore as a client in 2017. The Respondent contends that he
11 had ceased all lobbying activity on behalf of UrbanCore in March 2016, the same day that the City
12 Council adopted Resolution No. 86056.

13
14 Overman’s reported lobbying activities during the 1st Quarter of 2016 occurred in the same period
15 that the City was negotiating to select a Developer. (Negotiations commenced on July 14, 2015.
16 UrbanCore was selected as the developer on March 15, 2016 and the negotiations over the DDA
17 commenced thereafter and did not conclude until February 15, 2017.) In two quarterly lobbyist
18 reports (4th Quarter 2015 an 1st Quarter 2016), Overman stated that he lobbied on behalf of
19 UrbanCore regarding the governmental action, “E 12th Street Remainder Parcel Developer
20 Selection.” He further reported having “[p]rovided information on project evolution and status,
21 advocating for client’s selection as developer of parcel.”

22
23 As a representative/agent of UrbanCore during the negotiation period, Overman’s 2017 contributions
24 would be covered by the Contractor Contribution ban because the negotiations concluded when the
25 DDA was executed on February 15, 2017, and the Contractor Contribution ban applied at least until
26 August 14, 2017. Accordingly, Overman’s \$800 contribution to Abel Guillen on April 28, 2017, and his
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1 \$800 contribution to Mayor Schaaf on June 30, 2017, were prohibited under the Contractor
2 Contribution Ban.

3 The Respondent asserts that when making the contributions, he did not believe he was violating the
4 Contractor Contribution Ban because during the time of his representation of UrbanCore in 2016, he
5 did not meet the definition of contractor and, even if he had met the definition, more than double
6 the 180 day cooling off period had passed since Overman provided any services to UrbanCore. The
7 Respondent contends he stopped providing lobbying services to UrbanCore at the end of March
8 2016 and did not make the alleged impermissible contributions until April and June 2017, respectively.
9

10 **VIOLATION(S):**

11 Jason Overman violated the following Oakland Municipal Code sections:

12
13 **Count 1: Violation of the Contractor Contribution Ban**

14
15 On or about April 28, 2017, Respondent Jason Overman violated O.M.C. 3.12.140 of the Oakland
16 Campaign Reform Act when he made a contribution in the amount of \$800 to City of Oakland elected
17 official/candidate Abel Guillen before the expiration of the 180-day Contractor Contribution
18 prohibition period.
19

20 **Count 2: Violation of the Contractor Contribution Ban**

21
22 On or about June 30, 2017 , Respondent Jason Overman violated O.M.C. 3.12.140 of the Oakland
23 Campaign Reform Act when he made a contribution in the amount of \$800 to City of Oakland elected
24 official/candidate Mayor Libby Schaaf before the expiration of the 180 Contractor Contribution
25 prohibition period.
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PENALTIES:

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the unlawful amount (whichever is greater), per violation of the Oakland Campaign Reform Act.

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

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

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

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Aggravating Factors

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

1. The Respondent had demonstrated knowledge of the rule/requirement at issue.
2. The Respondent is an experienced former City Council Aide and current lobbyist.

Mitigating Factors

1. Respondent does not have prior Public Ethics Commission Violations.
2. The Respondent cooperated with the Public Ethics Commission enforcement activity.
3. The Oakland Campaign Reform Act Contractor Ban was amended in 2017, shortly before the Respondent made the campaign contribution, and expanded the definition of “Contractor” to expressly include lobbyists, among other authorized representatives of the contracting entity.
4. Overman did not participate or provide lobbying services to UrbanCore on the development agreement.
5. The Respondent’s violations of the Oakland Campaign Reform Act were inadvertent.

PROPOSED RESOLUTION

Staff recommends the Commission approve the Stipulation and impose a \$500 penalty on Count 1, a \$500 penalty on Count 2, and \$1,600 penalty for the unlawful contribution, for a total penalty of \$2,600.