

Item #8 - Staff Memo



Michael MacDonald, -Chair
Jerett Yan, Vice-Chair
Avi Klein
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Joseph Tuman

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: February 26, 2021
RE: Case No. 20-04 (a) and (b) ; In the matter of Manuel Altamirano Sr. and Andrew Altamirano prepared for the April 5, 2021, Public Ethics Commission Meeting

BACKGROUND:

On February 4, 2020, Employee Relations Manager Janelle Smith (Smith) reported to the Public Ethics Commission (PEC) Staff that Duvon Wright (Wright), a City Parking Control Technician was approached by a co-worker, Manuel Altamirano Sr. to retract/void two tickets that Wright issued for Use of a Counterfeit/Altered Disabled Placard and Use of Disabled Parking Space on Manuel Altamirano's wife's car in exchange for money.

Commission Staff completed its review and investigation of the matter and found that Manuel Altamirano Sr., among other things, made an offer to pay Wright and Yolanda Powe, both City of Oakland Public Servants, money (or a thing of value) in exchange for the performance of an official act, in violation of the Oakland Government Ethics Act (GEA). For the reasons explained in this memorandum, Staff recommends that the Commission find probable cause that Manual Altamirano violated the Government Ethics Act and schedule a hearing before the Commission. There are insufficient facts to establish that Andrew Altamirano committed or assisted Altamirano Sr. in committing a violation of the Government Ethics Act, therefore, the allegations against him were dismissed.

SUMMARY OF LAW:

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

O.M.C. 2.25.060(A)(2) Misuse of City Position: prohibits a Public Servant from using his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

O.M.C. 2.25.060(A)(1) Misuse of City Resources: prohibits a Public Servant from using or permitting others to use public resources for personal or non-City purposes not authorized by law.

O.M.C. 2.25.080 Bribery: No Public Servant can offer or make, and no Public Servant shall solicit or accept anything of value in exchange for the performance of any official act.

O.M.C. 2.25.060(A)(2) Using Authority as a City Official to Induce or Coerce a Private Advantage: A City employee may not use his or her position, or the power or authority of his or her position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City employee or any other person.¹

FACTUAL SUMMARY:

Overview

Manuel Altamirano Sr. (“Altamirano Sr.”) was hired by the City of Oakland on March 12, 2007, as a Parking Control Technician. Parking Control Technicians work for the Parking and Mobility Division of Parking Enforcement, which itself is a part of the City of Oakland Department of Transportation (“OakDOT”). Ira Christian was Altamirano Sr.’s direct supervisor. Yolonda Powe was a supervisor in the Mobility Division and she was Wright’s Supervisor. The Division Manager of Parking Enforcement was Michael Ford. At all relevant times, Altamirano Sr. worked as a Parking Control Technician in the OakDOT and had a personal and professional relationship with Wright and Yolonda Powe. Altamirano Sr. had two sons that also worked for the Parking and Mobility Division of OakDOT, Andrew Altamirano and Manuel Altamirano Jr.

Altamirano Sr. attempted to bribe another Parking Control Technician, Wright in exchange for voiding a pair of tickets that Wright had issued to Altamirano Sr.’s wife for misuse of a disabled parking placard. Wright did not accept the alleged bribe. Unsuccessful in his attempt to bribe Wright, he attempted to bribe Wright’s supervisor, Yolanda Powe, to void the tickets. Powe did not accept the alleged bribe. The informal complaint also alleged that Altamirano Sr. may have retaliated against Wright by damaging Wright’s car, and that the parking placard in question may have been City property that was stolen.

Summary of Facts:

Shortly after 1:30 p.m. on January 30, 2020, Wright was patrolling a City-owned parking lot located at 1719 Franklin. He spotted a black Porsche parked in a handicap spot, which had a handicap placard on the dashboard with the serial number on the bottom cut off. Wright issued two tickets to the vehicle -- one for misuse of a handicap placard, and one for a "blue zone" violation for parking in a handicapped spot. The fine amounts on the tickets were \$371, the parking spot violation and \$513, the misuse of placard violation, for a total of \$884.

Parking technicians do not have the ability to “run” license plates and see who owns a car. Therefore, Wright was unaware that the vehicle belonged to the wife of his co-worker Altamirano Sr.

That same day, shortly after Wright issued the tickets, Altamirano Sr. or his son Andrew called OakDOT dispatcher LaKeisha Montalvo and learned that it was Wright who issued the tickets. Wright then received a call around 2:00 p.m. from Montalvo. She told Wright that Altamirano Sr. was about to call

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him because Wright had just issued handicap tickets to his wife's car. She also told Wright that she had already informed the Altamiranos that there was nothing she or Wright could do about the tickets.

Within minutes of Wright speaking to Montalvo, Andrew called Wright on his cell phone. Wright rejected the call because he needed a moment to collect himself. He then called Andrew right back; Altamirano Sr. was also on the line already when Andrew picked up.

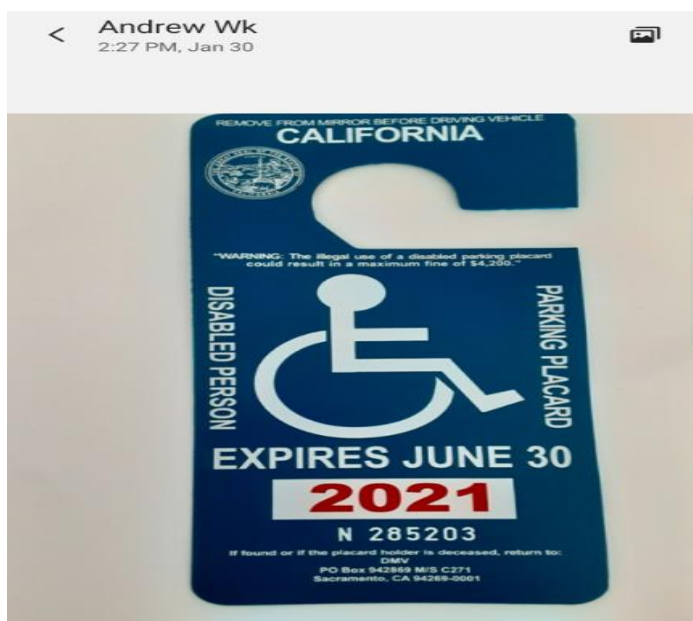
Andrew told Wright that he was aware that he had just issued his mother a handicapped ticket. Wright "played dumb" and asked where the ticket was issued. Altamirano Sr. took over the conversation and said Wright had just issued his wife a ticket in a garage. Cutting to the chase, Wright told Altamirano Sr., at this point that it was impossible to void the tickets because they were high-profile violations, and voiding them without explanation might then place Wright himself in trouble because "the numbers were clearly cut off on the placard. It was clearly a valid ticket"

Altamirano Sr. told Wright, "How about we send you a valid placard and you write the valid placard number on the ticket? And you write, driver arrived, or something to that nature." Wright knew that Altamirano Sr's plan wouldn't work, because Wright had already taken photos of the placard with the numbers cut off, and those photos were downloaded right into OakDOT's system when the tickets are issued. To avoid further pressure, Wright told Altamirano Sr. that he would look into the idea, in anticipation that the conversation would end there.

Altamirano told Wright, "let me just give you a hundred dollars to make these tickets go away." Wright understood that Altamirano Sr. was offering him money in exchange for voiding the tickets."

Wright told Altamirano Sr. that he could not accept any money, but that he would talk to his supervisor, Powe and have her look into the situation.

At 2:27 p.m., Andrew texted Wright the following photo and copies of the tickets Wright had issued:



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The next day at work, Wright spoke to his supervisor, Powe, in her office at the beginning of their shift. Wright told Powe that he had issued a citation the previous day, and was then approached by someone (whom he did not name at first) about “trying to get it taken away.” Wright asked if there were anything that could be done about the tickets. Powe told Wright that the person would need to go through regular appeals process, known as PCAC. She then asked Wright who the person was, and he told her that it was Altamirano Sr., who had been asking on behalf of his wife who had received the tickets. Wright also told Powe that Altamirano Sr. and Andrew had initially called Montalvo about the matter, and that they had wanted Wright to write “void” on the tickets. Powe reiterated that Altamirano Sr. would need to go through the regular appeals process.

Later that morning, Wright was contacted by Andrew and Wright told him there was nothing he could do and relayed the process as Powe instructed. Afterward, Andrew did not text or otherwise communicate with him anything further about the matter after this point, nor did Altamirano Sr.

Later that day, Altamirano Sr. contacted Powe at her office. Altamirano Sr. came in on his day off without his parking uniform on. Powe was surprised that Altamirano Sr. came to speak with her, because she is not his direct supervisor. Altamirano Sr. has never worked for Powe and has no work-related reason to meet with her. Her office is located next to that of Ira Christian, who is Altamirano Sr.’s supervisor.

Altamirano Sr. asked if Powe could “send up a request for the citations to be dismissed.” Powe told him that he would need to appeal the tickets per regular procedure. Altamirano Sr. responded that the tickets amounted to about \$800, and if Powe could arrange to have at least one of them voided then he could give her a couple hundred dollars or some cologne. Powe again told him no, and that he needed to contest the tickets per regular procedure. She asked Altamirano Sr. why he did not just go upstairs and contest them right away. Altamirano Sr. responded that he didn’t have time to do that because he needed to go move his car before he got another citation. Altamirano Sr. then explained that the placard in his wife’s car belonged to his mother, and that somehow his wife had gotten ahold of it and cut the bottom off. He told Powe that he did not know how his wife had gotten ahold of the placard or why she used it, but that \$800 was a lot of money to pay. He asked again if Powe would dismiss the tickets, and she said she would not.

Wright was informed by some of his co-workers that word had gotten out around the office about the situation. Wright also heard that Altamirano Sr. seemed to be upset about the situation. Later that day, Wright got off work, he went to retrieve his car from his usual parking location – the parking lot of the Pilgrim Res Baptist Church, located at 659 16th St (about a five-minute walk from 250 Frank Ogawa Plaza). After getting in his car, he heard glass and saw that his driver’s-side back window was broken. Nothing had been taken or tampered, leading him to believe it was not a break-in but someone just purposefully breaking his window. No other cars were damaged on the lot.

Wright believed Altamirano Sr. damaged his car in retaliation for not voiding the tickets. Altamirano Sr. knew where he parked because they had walked to Wright’s car together before. Altamirano Sr. does not park at that lot. Wright reported the incident to the police. Oakland Risk Management could not obtain the security camera footage of the lot that day because it was not functional.

Powe had walked with Wright to the parking lot and was present when Wright found the damage on his car. She encouraged him to photograph the damage with his phone, and to send the photos to her; she subsequently sent them to Division Manager Michael Ford.

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Later that afternoon, Powe called Ira Christian, who is Altamirano Sr's supervisor. Christian recalled that Powe seemed "very upset" and related that Altamirano Sr. had come to her office that day to talk about some tickets that his wife had received from Wright.

The following Monday, Christian saw a series of e-mails about the matter, including one from Powe and one from Wright which included a lengthy statement recounting his encounter with Altamirano Sr. At that point, Christian did not intend to speak to Altamirano Sr. about the matter, because the e-mails had already gone to Division Manager Michael Ford, and Ford had already escalated the matter to his own superior and to Employee Relations.

However, on the following Tuesday, Altamirano Sr. reported to work and came into Christian's office shortly after 8am. Altamirano came into her office and closed the door behind him, which was unusual. Altamirano Sr. told Christian that he wanted to let her know of an incident that had happened, involving his wife receiving some disabled parking tickets from Wright for a cut-off placard. Altamirano Sr. told Christian that he had asked Wright if he could take the tickets back. Christian said she remained silent while Altamirano Sr. spoke. Altamirano Sr. told her that he had also approached Powe and asked her if she would take the tickets back, but she had told him to contest them. Altamirano Sr. then said that he had even offered to buy Powe some perfume or cologne. Altamirano Sr. told Christian that he had just wanted to get that off his chest. Christian told him thank you, and Altamirano Sr. left the office.

Altamirano Sr. was placed on leave shortly thereafter. Neither Wright nor Powe have spoken to him since. Christian and Ford informed Altamirano Sr. that he would not be returning to work until the investigation into this matter has been conducted.

Risk Management is investigating the incident involving Wright's car. The investigation is ongoing but on April 20, 2020, the director of Risk Management informed PEC Staff of the following:

Technically my department has not yet finished its investigation because we have not yet interviewed Mr. Altamirano, COVID-19 and the availability of Union Representation for Mr. Altamirano has made scheduling his interview difficult. However, generally we have found no evidence to support his having damaged the employee's window. Unless Mr. Altamirano admits to the act during his interview my department will conclude its investigation without substantiating any accusations.

No one has threatened Wright since the day his car was damaged, though he has felt uncomfortable at work. He did not drive to work for a couple of weeks after that. He worries about future retaliation. To Wright's knowledge, neither the Department nor the OPD have done anything about the matter. OakDOT has not conducted its own investigation into this matter; instead it is awaiting the results of investigations by OPD, Risk Management and Ethics.

Subsequently, Altamirano Sr. was laid off by the City during the Covid-19 shutdown. (His sons Andrew and Manuel Jr. were also laid off). According to Parking Enforcement Director Ford, this was the result of the City's general decision to lay off part-time contract workers and was not related to any disciplinary action from the Wright matter.

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Regarding the torn-off placard that Wright originally found in Altamirano Sr.'s wife car: Wright suspects it may be City property. He explained that the Department has a computer system through which they can run placard numbers, and that parking techs can request a run on a placard number and confiscate placards from people if the number does not come back to that person's name. (Wright could not do this in the case of Altamirano Sr.'s wife, because the placard lacked a number). If a parking tech seizes a placard, they will bring it back to the office, cut the number off, and return the number to the DMV; the rest of the placard gets thrown away. Wright said it was possible that the Altamiranos were using one of those discarded placards (recovered from the trash); he told Staff it is "mighty strange" Altamirano Sr.'s wife would have such a cut-off placard.

ANALYSIS:

The City of Oakland prohibits a Public Servant from using his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

On the facts presented, Altamirano Sr. used the advantage of his position with the City Parking Control office when he contacted his co-worker Wright and attempted to induce him, with a cash payment, to void a parking citation Wright issued. Further, Altamirano Sr. committed an additional separate act of Bribery when he offered Powe a thing of value in exchange for voiding the two parking tickets that Wright had issued.

In determining whether Altamirano violated Oakland's Ethics ordinance, Staff can establish, through witness testimony, that Altamirano knowingly misused his position and offered Bribes to two separate public servants.

An Oakland Public Servant is also prohibited from using or permitting others to use public resources for personal or non-City purposes not authorized by law. In this case, we were unable to recover the actual placard that was in the car window at the time Wright issued the citation. Thus, we are not able to confirm that the placard came from a used or confiscated placard that was in the possession of the City. Without the ability to compare and catalog the placard that was in the window, we cannot establish a Misuse of City Resources violation for this alleged act.

Although Wright did sustain damage to his vehicle, there is insufficient evidence to establish that Altamirano or his son damaged Wright's car in retaliation for failing to void the two parking citations. Regarding Andrew Altamirano, outside of making the initial telephone call to Wright where he subsequently turned over the call to his father, we do not have enough information that Andrew Altamirano actively participated in or aided and abetted Altamirano Sr. in the attempted bribery or misuse of position of Wright. Further, there is no evidence that Andrew Altamirano participated in or knew of the offer of the perfume Altamirano Sr. made to Powe.

VIOLATIONS:

For the reasons stated above, staff submits that there is probable cause to find Manuel Altamirano Sr. violated the following violations of the Government Ethics Act.

Count 1: Soliciting Bribes in Exchange for Performance of an Official Act

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On or about January 30, 2020, Respondent, Manuel Oscar Altamirano Sr., violated O.M.C.2.25.070(A) of the Oakland Government Ethics Act when he demanded, sought or offered, money or a thing of value as a bribe to influence a Parking Control Technician for the City of Oakland to perform an official act, for personal enjoyment and/or non-government purposes.

On January 30, 2020, Respondent violated Section 2.25.070 (A) of the Oakland Government Ethics Act by offering to pay at least \$100 to his co-worker Duvon Wright in exchange for a voiding a disabled parking violation ticket that Wright had issued on his wife's car.

Count 2: Soliciting Bribes in Exchange for Performance of an Official Act

On or about January 30, 2020, Respondent, Manuel Oscar Altamirano Sr., violated O.M.C.2.25.070(A) of the Oakland Government Ethics Act when he demanded, sought or offered, money or a thing of value as a bribe to influence a Parking Control Technician for the City of Oakland to perform an official act, for personal enjoyment and/or non-government purposes.

On January 30, 2020, Respondent violated Section 2.25.070 (A) of the Oakland Government Ethics Act by offering to pay at least \$100 or purchase perfume for a City of Oakland OakDOT Supervisor Yolonda Powe in exchange for a voiding a disabled parking violation ticket that was issued to his wife.

Count 3: Misusing City position to induce/coerce others to provide him with economic gain

On or between January 1, 2015, through December 31, 2016, Respondent, Manuel Altamirano Sr., contacted a fellow City of Oakland Parking Enforcement Officer, for the purpose of inducing or coercing that public servant into voiding two parking tickets that his wife received for unlawfully parking in a disability parking spot and using an expired or stolen disability placard.

By using his authority and connections as a City Parking Control Officer to induce or coerce his co-worker to provide him with an economic gain, Respondent violated Section 2.25.060 (A) (2). of the Oakland Government Ethics Act.

PENALTIES:

GEA authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported or received (whichever is greater), per violation of the Oakland Government Ethics 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

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.

Aggravating Factors

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

1. The Respondent is a public servant who abused his position of trust by attempting to induce or coerce his co-worker into voiding a parking ticket. His willful abuse of his position for personal gain puts his own interests above the public in a process that is designed to ensure fairness and restrict special treatment. Both the perception and reality of a City employee attempting to benefit from his employment with the City over the general public violates the public's trust in government, resulting in harm to the Oakland Community;
2. Altamirano engaged in several instances of deception in an attempt to void the issued parking tickets, including attempting to convince another public servant to misrepresent that a parking citation was issued. Most egregious was that he deliberately attempted to get another public servant to make a misrepresentation into the parking control data base representing that the owner of the car appeared in time when, in fact, she had not;
3. Altamirano's conduct was deliberate, including both instances where he attempted to bribe other public servants;
4. His conduct was part of a pattern;

Mitigating Factors

Altamirano has no previous history of ethics violations in the City of Oakland. Altamirano is no longer an employee with the City of Oakland and his opportunity to violate the City ethics ordinances are diminished.

Bribery Violation:

Count 1 and Count 2, Bribery, is the most serious violation of the Oakland Governmental Ethics Act. Pursuant to the Penalty Guideline, the base-level penalty amount for each Bribery count is \$5,000. The maximum penalty is \$5,000 or three times the unlawful amount for each bribery violation.

Misuse of City Position or Authority:

Count 3 is a serious violation of the Oakland Governmental Ethics Act. Pursuant to the Penalty Guideline, the base-level penalty amount for Misuse of Position is \$5,000. The maximum penalty is \$5,000 or three times the unlawful amount.

RECOMMENDATION:

Pursuant to the Public Ethics Commission Complaint Procedures Section IV (D), there is probable cause to believe Manuel Altamirano Sr. violated the Government Ethics Act. Staff does not have current contact information on the Respondent. As a result of the lack of contact, Staff recommends that the Commission schedule a hearing before the Public Ethics Commission. Enforcement will continue its attempts to contact the Respondent, and if successful, will refer the matter back to the Commission to resolve the matter short of a hearing, provided the Respondent seeks to resolve the matter by Stipulation.

There is insufficient evidence to establish that Andrew Altamirano independently or as an aider and abettor assisted Altamirano Sr. in the violations of the Government Ethics Act. Staff issued a dismissal letter in the Matter of Andrew Altamirano, Case No. 20-04(b).