

CITY OF OAKLAND

Public Ethics Commission

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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Milad Dalju, Chief of Enforcement
Simon Russell, Investigator
DATE: October 26, 2018
RE: *In the Matter of Rich Fielding (Case No. 16-11)*; Investigation Summary and Recommendation

I. INTRODUCTION

On July 11, 2016, the Commission received a sworn complaint alleging that Rich Fielding, in the course of his duties as a Principal Inspection Supervisor at the City's Planning and Building Department (the Department), sent a letter to PG&E which incorrectly identified 1919 Market Street as a vacant property and requested PG&E to disconnect the electric and gas service there (the PG&E Letter). According to the complainant, this action violated the Oakland Government Ethics Act (GEA) provisions governing the misuse of City resources or official position.¹

Commission Staff investigated the allegation and found that Mr. Fielding drafted and sent the PG&E Letter to the building's owners pursuant to the Department's policy, and never sent the letter to PG&E. Furthermore, even if the existence of the PG&E Letter caused some of the residents to vacate the property, Commission Staff did not find evidence of a corrupt action or intent outside the scope of Mr. Fielding's duties to give rise to a violation of GEA. Commission Staff therefore recommends that this matter be closed without any further action.

II. SUMMARY OF LAW

Section 2.25.060(A)(1) of GEA prohibits a City employee from using or permitting others to use public resources for personal or non-City purposes not authorized by law.

¹ Under the section headed "Type of Alleged Violation," the complaint states "Use of City Positions & Resources OMC 2.25.060(C)". Section 2.25.060(C) of GEA governs restrictions on gifts, and does not appear to be implicated by the facts in this matter. Commission Staff used its discretion to investigate this matter as a potential violation of Section 2.25.060(A) of GEA, which governs the misuse of City resources and official position.

In an e-mail to Commission Staff on January 8, 2018, the complainant also alleged that the Department violated Section 8.22.360.10 of the Oakland Municipal Code, which the PEC does not have jurisdiction to enforce.

Section 2.25.060(A)(2) of GEA prohibits a City employee from using their position or the power or authority of their 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.

III. FINDINGS

On or about January 8, 2015, the City's Planning and Building Department (the Department) received an official Tenant Complaint and Request for Service from Joy Newhart, a resident of 1919 Market Street, requesting that the Department investigate "a lack of heat, gaps in the flooring, exposed electrical wiring, and common area garbage overflow" at 1919 Market Street.

On April 8, 2015, Tim Low, Deputy Director at the Department, received an email from a reporter at the *East Bay Express* stating that the building at 1919 Market Street was being used as a "live-work building" and asking whether 1919 Market had the appropriate code and zoning to be a residential property. Mr. Low responded that it did not have the proper permits to be used as a live-work building and that the Department would investigate the matter. On the same day, Mr. Low assigned the matter to a Building Inspector and informed the Department Director of the investigation into the matter.

On May 13, 2015, the Department sent a Notice of Violation to Market Holdings LLC, the owners of 1919 Market Street, informing them that 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Code. (Code Enforcement Case No. 1501220.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations before the re-inspection date of June 16, 2015.

On July 15, 2015, the Department sent another Notice of Violation to Market Holdings LLC informing them that Unit #18 of 1919 Market Street was in violation of several Oakland Building Maintenance Codes and the Oakland Building Construction Codes. (Code Enforcement Case No. 1501925.) The Notice of Violation instructed Market Holdings LLC to correct the listed violations, including the violations from Code Enforcement Case No. 1501220, before the re-inspection date of August 17, 2015.

On September 8, 2015, the Department sent another Notice of Violation to Market Holdings LLC in which it reconfirmed the violations in Code Enforcement Case No. 1501220, and instructed Market Holdings LLC to correct the listed violations before the re-inspection date of October 12, 2015.

On September 30, 2015, Mr. Fielding, in his capacity as an official of the Department, sent an email to the owners of 1919 Market, informing them that he was assigned to the pending code enforcement issues with 1919 Market Street.

On November 24, 2015, Mr. Low, in his capacity as an official of the Department, sent a packet of documents to the owners of 1919 Market Street informing them that a re-inspection of 1919

Market Street had occurred on October 15, 2015, that the habitable conditions that were the subject of Code Enforcement Case No. 1501220 remained deteriorated, and that health and safety violations remained unabated. The letter also stated that the violations continued to endanger the residents and visitors of 1919 Market Street to the extent that the premises were determined to be a public nuisance and manifestly unsafe to occupy pursuant to the Oakland Building Maintenance Codes and the Oakland Building Construction Codes. The letter also stated that 1919 Market Street was declared substandard and a public nuisance, that its Certificate of Occupancy was revoked, and that administrative citations totaling \$5,000 were assessed against 1919 Market Street.

The November 24, 2015, letter also ordered the owners of 1919 Market Street to pay, within 14 days, relocation benefits to affected residential tenants to allow abatement work to commence, pursuant to Oakland Municipal Code section 15.60.

The November 24, 2015, letter also informed the owners of 1919 Market Street that they had the right to appeal the Substandard/Public Nuisance Declaration and Administrative Citation in writing by December 17, 2015.

In the packet of documents sent to the owners of 1919 Market Street on November 24, 2015, Mr. Low included a copy of the PG&E Letter, which was signed by Mr. Fielding, dated November 24, 2015, addressed to PG&E, and stated the following:

The subject property is unoccupied, and an attractive nuisance to children and detriment to the neighborhood. The City of Oakland has secured the building to prevent unauthorized entry but the electrical and gas service remain an extreme safety hazard that is endangering life, limb and property.

Pursuant to Oakland Municipal Code Sections 15.08.340D and E, this building is a Public Nuisance and the electric and gas service must be immediately disconnected.

The City has not received any response from the owners and is pursuing condemnation action. It is imperative that Pacific Gas and Electric take steps to immediately remove the meters, and service at the joint pole. The services should not be reconnected without notification from the City of Oakland.

Pursuant to the Department's written procedures, it was standard procedure to include a draft of such a letter addressed to PG&E in the packet sent to owners of properties that were the subject of abatement. According to the Department's records, the PG&E Letter was only sent to the owners of 1919 Market Street and never to PG&E. PG&E also independently confirmed that it never received the PG&E Letter.

On December 7, 2015, the Department received a request from the owners of 1919 Market Street to extend the deadline to vacate the building to January 31, 2016, to avoid a scramble by the tenants to find new housing during the holidays.

On December 23, 2015, the owners of 1919 Market Street and the Department agreed to a compliance plan that required the owners, among other things, to fully vacate the building by January 31, 2016.

On January 29, 2016, the Department “red-tagged” 1919 Market Street as an uninhabitable building. The red-tag notice was posted at the property and stated that no one was to enter the building after January 31, 2016.

On February 2, 2016, the Department re-inspected the property and determined that it was now vacant.

1919 Market Street has since been partially demolished, and is currently in the process of being converted into live/work housing.

V. CONCLUSION

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(1) by misusing City resources, the evidence indicates that Mr. Fielding sent the PG&E Letter to the owners of 1919 Market Street in the course of his duties as a Principal Inspection Supervisor for the Department, after several earlier attempts to resolve the alleged code violations at the property. No evidence indicates that Mr. Fielding sent the PG&E Letter to the property owners “for personal or non-City purposes not authorized by law,” as required by GEA 2.25.060(A)(1). Therefore Mr. Fielding did not misuse City resources by sending the PG&E Letter.

Regarding the allegation that Mr. Fielding violated GEA 2.25.060(A)(2) by using his City position to induce or coerce someone for personal gain, there are two possible theories of liability under that ordinance, neither of which is supported by the facts. First, it might be argued that Mr. Fielding induced or coerced PG&E into shutting down services for the tenants at 1919 Market Street. However, Mr. Fielding’s letter was never actually sent to PG&E, so he could not have induced or coerced PG&E into any action.

Second, it might be argued that the mere threat of a utilities shutdown induced or coerced the tenants at that property to vacate their homes. Indeed, Mr. Low confirmed to the PEC that the Department’s intention in drafting the PG&E Letter was to convince the property owners that the City was serious about the abatement process. However, Section 2.25.060(A)(2) of GEA requires some corrupt action or intent outside the scope of one’s official duties. Here, according to Mr. Low and the Department’s written procedures, drafting such a letter was standard Department procedure. Also, the purpose of the PG&E Letter was to further the Department’s ongoing efforts to address the alleged code violations at the property and protect the health and safety of the tenants. Because the action and purpose of drafting the PG&E Letter were within the scope of Mr. Fielding’s duties with the Department, he did not violate Section 2.25.060(A)(2) of GEA.

VI. RECOMMENDATION

Because the investigation did not find that Mr. Fielding violated the Oakland Government Ethics Act, Commission Staff recommends that this matter be closed without further action.