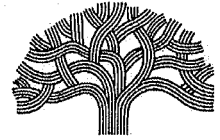


CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
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May 13, 2019

Mr. Cesar Avila

[REDACTED]
Pittsburg, CA 94565-7628

Re: PEC Complaint No. 19-08; Notice of Dismissed Complaint

Dear Mr. Avila:

The City of Oakland Public Ethics Commission (PEC) initiated an informal investigation against you after we received information alleging that you violated the Government Ethics Act Permanent Post Service Restriction on Representing, Advising and/or Assisting Non-City Parties in Particular Matters (O.M.C. 2.25.050). We reviewed the allegations and dismissed it because the allegation in this informal complaint does not warrant a formal investigation into a violation of the Government Ethics Act.

In this case, we received information that you appeared before the City of Oakland's Fire Department in March 2019, to discuss "FA plans, fire alarm and sprinkler system requirements," with a Joseph Sarapochillo on behalf of a licensed marijuana grow business, "Blum."

The City of Oakland imposes restrictions on a former Public Servant upon termination of his or her service or employment. Specifically, O.M.C. 2.25.050 prohibits a former Public Servant from acting as an agent or attorney or otherwise representing any person or entity before the City, among other agencies, with the intent to influence the City or any officer or employee thereof by communicating about a particular matter in which the city is a party or has a direct substantial interest after the Public Servant had participated personally and substantially in the matter as a City Public Servant. A Public Servant includes any full or part-time City employee, consultant, or elected official.

In reviewing this matter, we learned that you appeared alongside Mr. Sarapochillo in attempting to persuade City staff in your former department to take a course of action on a matter on which you worked during your tenure with the City. Though we did not investigate further to determine whether your conduct amounted to a violation of the Government Ethics Act, we are taking this opportunity to advise you about the law in case you find yourself in a similar situation in the future.

Please see the attached summary of post-employment restrictions on City employees, or Public Servants, who have terminated their employment with the City, with particular emphasis on the Permanent Post-Service Restriction.

If you have any questions, you can reach me at (510) 238-4976 or kjohnson3@oaklandca.gov.

Sincerely,



Kellie Johnson
Enforcement Chief,
City of Oakland Public Ethics Commission

2.25.050 - Leaving public service "revolving door" restrictions.

A. Permanent Post-Service Restriction on Representing, Advising and/or Assisting Non-City Parties in Particular Matters.

1. Prohibition. A former Public Servant, after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any person or entity other than oneself or the City before any court, or before any state, federal, or local agency, including the City Council, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter in which both of the following exist:

- a. The City is a party or has a direct and substantial interest; and
- b. The Public Servant participated personally and substantially in the matter as a City Public Servant.

2. Definition. "Particular matter" includes but is not limited to a particular claim, official filing to the City by another, contract, negotiation, grant, permit, license, litigation, settlement, or similar transaction.

3. In determining if communication regarding a particular matter violates this prohibition, representation or agency shall be presumed if a former Public Servant is compensated in any way and for any reason during the preceding twelve (12) month period either prior to or after the communication by a non-City person or entity that is either a party to the particular matter or is intending to influence the particular matter.

4. Restriction on assisting others. No former Public Servant, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another public or private entity regarding a matter or in any proceeding in which the Public Servant would be precluded under Subsection A.1. from personally appearing.

5. Exception for testimony. The prohibitions in Subsections A.1. and A.4. do not prohibit a former Public Servant from testifying as a witness pursuant to a subpoena, provided that no compensation is received other than the fees regularly provided for by law or regulation for witnesses.

B. One-Year Post-Service Restriction on Supervisors Representing Non-City Parties.

1. Prohibition. A former Public Servant, within one (1) year after the termination of his or her service or employment with the City, shall not, with the intent to influence, act as agent or attorney, or otherwise represent, any other public or private entity before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter, as defined in Subsection A.2., in which both of the following exist as it relates to the particular matter:

- a. The City is a party or has a direct and substantial interest; and

b. The Public Servant knows or reasonably should know that the particular matter was actually pending under his or her official responsibility as a Public Servant within a period of one (1) year before the termination of his or her service with the City. Page 4

C. One-Year Restriction on Public Servants Representing Other Persons Before Former Department. No current or former Public Servant, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City) with any officer or employee of the department, board, commission, office or other unit of government, for which the Public Servant served.

1. Mayor, Members of the Council, and their Senior Staff Members. For purposes of the one-year restriction under Subsection C., the "department" for which a former Mayor, a former member of the Council, or a former senior staff member to either the Mayor or a member of the Council served shall be the City and the prohibition in Subsection C. shall extend to communications with:

- a. A board, department, commission or agency of the City;
- b. An officer or employee of the City;
- c. An appointee of a board, department, commission, agency, officer, or employee of the City; or
- d. A representative of the City.

2. For the purposes of this Subsection C., "a former senior staff member to either the Mayor or a member of the Council" means an individual employed in any of the following positions at the time the individual terminated his or her employment with the City: chief of staff, deputy chief of staff, communications or other director, legislative or policy aide, or any position in the Mayor's or Council Member's office that is required to file a Form 700 pursuant to the Oakland Conflict of Interest Code.

D. Employment by a Party to a City Contract on Which the Public Servant Worked. No current or former Public Servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

E. Waiver by the Public Ethics Commission.

1. At the request of a current or former Public Servant, the Public Ethics Commission may waive any of the restrictions in Subsections A., B., or C. for members of City boards and commissions whom, by law, must be appointed to represent any profession, trade, business union or association.

2. At the request of a current or former Public Servant, the Public Ethics Commission may waive the prohibition in Subsection D. if the Commission determines that imposing the restriction would cause extreme financial hardship for the City Public Servant.

(Ord. No. 13278, § 1, 12-8-2014)