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BEFORE THE LOS ANGELES CITY ETHICS COMMISSION

In the Matter of:

EUGENE DAY;

Respondent.

Case No. 2016-08

ACCUSATION

A. BACKGROUND

On March 20, 2018, a probable cause report was served on Eugene Day (Day). The probable cause report alleged that, between December 2013 and June 2015, Day engaged in unauthorized outside employment and misused his City position and authority while working on a large construction project located at 6500 Selma Avenue (the Selma project) as both a plumbing subcontractor and the City inspector charged with approving the plumbing work on that project.

Responsive pleadings in the probable cause process were filed on April 10 and April 19, 2018. Day requested a probable cause conference, which was held on June 4. On July 16, the executive director of the Los Angeles City Ethics Commission (Ethics Commission) determined that probable cause exists to believe that Day violated the City's Governmental Ethics Ordinance (GEO) (Los Angeles Municipal Code (LAMC) §§ 49.5.1 *et seq.*) by failing to obtain prior written approval for outside income and by misusing his City position to create a private advantage for himself and for the project's general contractor, Ramland Construction (Ramland).

The Ethics Commission's director of enforcement must prepare and serve this accusation following the probable cause determination by the executive director. Los Angeles Administrative Code (LAAC) §§ 24.26(d)(1)–(3). If the parties do not stipulate to the entry of an order, the charges described below must be announced publicly. LAAC § 24.26(d)(4).

B. APPLICABLE LAWS

The Ethics Commission is charged with the impartial and effective administration, implementation, and enforcement of the City’s governmental ethics laws. Los Angeles City Charter (Charter) §§ 702, 706. The Ethics Commission’s enforcement processes are governed by the Charter and by the LAAC. *Id.*; LAAC §§ 24.21--24.29.

The GEO was enacted to, among other things, help “assure that the government is respected for its honesty and integrity [and] that its decisions are made on the merits, untainted by any consideration of private gain...”, restore public trust in City government, and prevent City officials from receiving outside income that creates a potential conflict of interests. LAMC §§ 49.5.1(B)(2), (C)(4), (C)(7).

In furtherance of these purposes, the GEO limits certain activities of City officials and employees. A City official is an “elected City officer or an agency board member, officer, employee, commissioner, or consultant who, because of the individual’s service to an agency, is required to file a statement of economic interests pursuant to the Political Reform Act.” LAMC § 49.5.2(C).

The GEO prohibits City officials and employees from misusing or attempting to misuse their City positions or authority to create or attempt to create a private advantage or disadvantage of any kind for any person. LAMC § 49.5.5(A) [amended 2/10/2014; prev. “No City official shall...use his or her position...in any manner intended to induce or coerce any person to provide, directly or indirectly, anything of value which shall accrue to the private advantage, benefit, or economic gain, of the City official...or of any other person.”].

The GEO also prohibits City officials from accepting payment for outside employment without obtaining prior written approval from their general manager, chief administrative officer, or other appointing authority. LAMC § 49.5.7(C)(1) [renumbered 2/10/2014; prev. 49.5.9(B)(1)]. Approval must be denied if the outside employment would conflict with the official’s City duties, including when the “City official’s performance of an act ... could later be subject to the control, inspection, review, audit, or enforcement of the City official’s agency.” LAMC § 49.5.7(C)(3)(a)(ii).

A person is subject to administrative enforcement for violating a provision of the City’s governmental ethics laws. Charter § 706; LAMC § 49.5.16(D).

C. SUMMARY OF ALLEGED FACTS

The acting director of enforcement alleges that Day, while employed as a City plumbing inspector, failed to obtain prior written approval to engage in employment at or receive outside income for the Selma project. The acting director of enforcement further alleges that Day misused his City position as plumbing inspector to create a private advantage, benefit, or economic gain for himself and for Ramland by failing to enforce correction notices, failing to require plan checks, issuing City approvals without

appropriate permits, allowing work outside the scope of permits, and failing to require compliance with building codes.

Day was employed by the Department of Building and Safety (DBS) from July 2008 through June 2015, except for a six-month period in 2010 during which he was laid off. When Day returned to City service in December 2010, he served as the assigned plumbing inspector for District 7 in downtown Los Angeles. As a plumbing district inspector, Day's responsibilities included providing inspection services for commercial and industrial buildings in the City and verifying compliance with state and local plumbing codes for potable and sanitary water, vent, and fuel gas systems. Day was required to file statements of economic interests as a result of his City service and, therefore, was a City official while working on the Selma project.

In addition to his City employment, Day owned and operated a private business called All Day Plumbing and Construction (All Day Plumbing). Ramland's owner selected All Day Plumbing to be the plumbing subcontractor for the Selma project, because he knew that Day was a City inspector. On November 19, 2013, Day signed a subcontractor agreement with Ramland on behalf of All Day Plumbing. Between December 2013 and June 2015, Day received payments from Ramland totaling \$541,000 for plumbing services provided by All Day Plumbing to the Selma project.

Day did not obtain written approval to engage in or receive payment for outside employment. If he had requested approval for his work on the Selma project, DBS would have been required to deny it, because Day would have been performing work that was subject to his own inspection.

The Selma project was located outside of Day's usual assigned inspection area, but he volunteered to serve as the project's City plumbing inspector. On December 12, 2013, less than one month after signing the subcontractor agreement with Ramland, Day visited the Selma project in his official capacity as a City plumbing inspector. On that date, Day inspected the project site, made notes regarding needed corrections, and issued an official correction notice to Ramland requiring a permit for all plumbing being installed at the site and plan checks for the project's sewage ejector and potable water system. However, from December 2013 until June 2015, Day took little or no action to determine whether Ramland complied with the correction notices. While continuing to serve as the project's City inspector, Day approved work without verifying that appropriate permits had been issued and allowed work to be performed outside the scope of existing permits.

Day used his City position to obtain the subcontract on the Selma project, to help conceal his outside employment on the project, and to help Ramland expedite construction and reduce expenses. After Day's conflicting roles came to light, Ramland billed the project owner approximately \$50,000 for additional labor, planning, engineering, permitting, and equipment costs that were directly related to corrections, necessary permits, and plan check requirements that Day had failed to enforce.

D. SUMMARY OF ALLEGED VIOLATIONS

The acting director of enforcement alleges that Day violated the GEO in the following ways.

**COUNT 1
MISUSE OF POSITION OR AUTHORITY**

COUNT 1: Day violated LAMC § 49.5.5(A) between December 12, 2013, and June 25, 2015, by misusing his City position to create or attempt to create a private advantage for himself and Ramland through and in relation to the Selma project.

**COUNT 2
UNAUTHORIZED OUTSIDE EMPLOYMENT**

COUNT 2: Day violated LAMC § 49.5.9(B)(1) between December 23, 2013, and June 12, 2015, by accepting payments totaling \$541,000 for outside employment at the Selma project without obtaining written approval from his general manager.

E. ADMINISTRATIVE HEARING

If the parties do not stipulate to the entry of an order, a public evidentiary hearing must be held to determine whether the alleged violations occurred. Charter § 706(c); LAAC §§ 24.26(d)(4), 24.27(a)(1). If the members of the Ethics Commission determine through the hearing process that one or more violations occurred, they must issue an order and may require Day to, among other things, pay a monetary penalty of up to the greater of \$5,000 per violation or three times the amount of money at issue. Charter § 706(c)(3).

DATED: _____

July 30, 2018 Kirsten M. Pickenpaugh

KIRSTEN M. PICKENPAUGH
Acting Director of Enforcement
Los Angeles City Ethics Commission