



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: June 8, 2018

To: Members of the Ethics Commission

From: Jeff Pierce, Acting Director of Enforcement

Subject: **AGENDA ITEM 5 – Proposed Stipulation, Decision & Order in the Matter of Olson Lee (Ethics Commission Case No. 1617-99)**

Summary This memorandum provides information regarding the Proposed Stipulation appearing in this agenda item and what the Commission may do next regarding this Proposed Stipulation.

Action Requested The Commission may approve the Proposed Stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation.

Pursuant to the Enforcement Regulations the Commission adopted on January 19, 2018, and which became effective on March 20, 2018, the Executive Director may enter negotiations with a respondent(s) at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (*i.e.* a negotiated settlement). Enforcement Reg. § 12(A). The Regulations require that the stipulated order set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13. *Id.*

Immediately after the Executive Director enters a stipulated order with a respondent, the Executive Director must inform the Commission of the proposed stipulation. *Id.* § 12(E). Thereafter, any member of the Commission may request that the stipulated order be reviewed in public session by the full panel of the Commission during its next meeting. *Id.*

Commissioner Kopp requested that the attached Proposed Stipulation be reviewed in public session by the full panel of the Commission. Therefore, the Commission has not yet approved this Proposed Stipulation. *Id.* § 12(F). It may do so by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation.

Members of the public may comment on the Proposed Stipulation.

1 LeeAnn Pelham
2 Executive Director
3 San Francisco Ethics Commission
4 25 Van Ness Avenue, Suite 220
5 San Francisco, CA 94102
6 (415) 252-3100 Telephone
7 (415) 252-3112 Facsimile

BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

8 In the Matter of) SFEC Complaint No. 1617-99
9)
10 OLSON LEE,)
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13 Respondent.) **STIPULATION, DECISION**
14) **AND ORDER**
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THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Olson Lee and the San Francisco Ethics Commission ("the Commission").
2. Respondent and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondent, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to the violations of law described in Exhibit A. Respondent understands and knowingly and voluntarily waives all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

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Administrative Penalties

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3. In compromise and satisfaction of the claims set forth in Exhibit A, Respondent agrees to pay an administrative penalty in the amount of Eight Hundred Dollars (\$800) for one violation of San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") section 3.218, as set forth in Exhibit A. Respondent agrees that \$800 is a reasonable administrative penalty.

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4. Within ten days of the Commission's approval of this Stipulation, Respondent shall deliver to the following address the sum of \$800 in the form of a check or money order made payable to the "City and County of San Francisco:"

San Francisco Ethics Commission
Attn: Enforcement & Legal Affairs Division
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Effect of Non-Compliance

5. If Respondent fails to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondent under Section C3.699-13 of the San Francisco Charter for any available relief.

Additional Terms

6. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Regulations for Investigations and Enforcement Proceedings with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondent understands and acknowledges that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating

1 with or assisting any other government agency in its prosecution of Respondent for any allegations set
2 forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

3 8. This Stipulation is subject to the Commission's approval. In the event the Commission
4 declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9,
5 which shall survive.

6 9. In the event the Commission rejects this Stipulation, and further administrative
7 proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all
8 references to it are inadmissible. Respondent moreover agrees not to challenge, dispute, or object to
9 the participation of any member of the Commission or its staff in any necessary administrative
10 proceeding for reasons stemming from his or her prior consideration of this Stipulation.

11 10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement
12 between the parties hereto and supersedes any and all prior negotiations, understandings, and
13 agreements with respect to the transactions contemplated herein. This Stipulation may not be
14 amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by
15 all parties and approved by the Commission at a regular or special meeting.

16 11. This Stipulation shall be construed under, and interpreted in accordance with, the laws
17 of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining
18 provisions shall remain valid and enforceable.

19 12. The parties hereto may sign different copies of this Stipulation, which will be deemed to
20 have the same effect as though all parties had signed the same document.

21 Dated: 4/19/2018

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23 LeeAnn Pernam, Executive Director
24 San Francisco Ethics Commission

25 Dated: 4/16/18

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27 Olson Lee

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "Olson Lee; SFEC Complaint No. 1617-99," including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

Daina Chiu, Chairperson
San Francisco Ethics Commission

Exhibit A

I. Introduction

The San Francisco Campaign & Governmental Conduct Code (SF C&GCC) prohibits City officers and employees from engaging in employment, activities, or enterprises that their department has identified as incompatible in a Statement of Incompatible Activities (SIA). SF C&GCC § 3.218. The Mayor's Office SIA has identified the following activity as incompatible, and therefore prohibited, with the duties of a Mayor's Office employee:

No employee who works in the following divisions of the Mayor's Office—the Mayor's Office of Housing, the Mayor's Office of Community Development, or the Mayor's Office of Criminal Justice—may serve on the Board of Directors of a non-profit organization that applies for loan or grants administered by the employee's division.

Mayor's Office SIA, § III(A)(3)(B). Mayor's Office employees may acquire Advanced Written Determination from the Mayor to engage in incompatible activities with permission. *Id.* at § III(C)(1). The Ethics Commission's Regulations Related to Conflicts of Interest give City officers and employees immunity from liability for violations of an SIA so long as the employee sought an Advance Written Determination prior to engaging in inconsistent or incompatible conduct, and the material facts are as presented in the employee's written request for the Advance Written Determination. *See* Regulation 3.218-7(c); Mayor's Office's SIA § III(C)(1)¹. The Commission must give the respondent an opportunity to prove that his conduct was not inconsistent, incompatible, or in conflict with his duties before assessing administrative penalties for violations of an SIA. Regulations 3.218-8; 3.218-7(e).

Respondent Olson Lee was the Director of the Mayor's Office of Housing and Community Development (MOHCD) until his retirement on June 2, 2017. As part of the Mayor's Office, Mr. Lee's conduct was governed by the Mayor's Office SIA.

II. Summary of Material Facts

In his January 2015 State of the City address, Mayor Lee announced his intention to create a Housing Accelerator Fund designed to provide short-term, gap financing to affordable housing developers in the City. The City launched the fund on February 2, 2016, by reorganizing the Public Initiatives Development Corporation (a public entity formed by the Redevelopment Agency prior to dissolution) into the Housing Accelerator Fund. MOHCD staff and Mayor's Office staff, in consultation with other City departments, managed this reorganization. The Housing Accelerator Fund is a registered 501(c)(3) non-profit organization.

At its launch, the Housing Accelerator Fund bylaws required that the Director of MOHCD and the Director of the City's Office of Public Finance serve on the Board as *ex officio* representatives from the City and County of San Francisco. Pursuant to this provision, and as part of his job duties, Respondent

¹ "If an individual has not requested an advanced written determination . . . and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this statement." Mayor's Office's SIA § III(C)(1).

Lee served on the Board of Directors for the Housing Accelerator Fund from its inception until his retirement on June 2, 2017. Respondent Lee received no compensation from the Housing Accelerator Fund for his *ex officio* service on the board. From the beginning of Respondent Lee's tenure on the board, the Mayor's Office was aware of and encouraged the arrangement to advance the City's interests in facilitating the creation of affordable housing.

On April 22, 2016, MOHCD issued a Request for Qualifications "[f]or the selection of a qualified, existing non-profit loan fund to raise capital, reduce capital costs, leverage funds, and improve availability of financing for private-party affordable housing acquisitions and repairs in San Francisco" (the RFQ). Per the RFQ: "[t]o leverage additional capital in San Francisco, the [Mayor's Office of Housing and Community Development] intends to lend [\$10,000,000] to the selected Respondent as an anchor investment necessary to attract external, low-cost financing resources." See RFQ, p. 4.

As director of MOHCD, Respondent Lee oversaw the staff that drafted the RFQ and subsequent selection of the Housing Accelerator Fund as the recipient of this \$10,000,000 loan during the same period he was also serving as an *ex officio* member of the Board of Directors for the Housing Accelerator Fund. The Housing Accelerator Fund was the only nonprofit entity that responded to the Mayor's RFQ.

On October 4, 2016, Ethics Commission Staff sent Respondent Lee a letter advising that his participation in the RFQ process may have violated the Mayor's Office SIA and SF C&GCC § 3.218. In light of the concerns raised by Ethics Commission Staff, Respondent Lee submitted a request to Mayor Lee for a determination of this issue under Section III.C of the Mayor's SIA. Mayor Lee issued a determination on October 25, 2016, concluding that Respondent Lee's *ex officio* service on the Board of Directors of the Housing Accelerator Fund is not an incompatible activity under the SIA. Respondent Lee provided Ethics Commission Staff with a copy of this determination the same day.

Respondent Lee's Advance Written Determination describes Respondent Lee's "proposed activity" as follows:

With the Mayor's support, staffs of MOHCD and the Mayor's Office have worked to create a Housing Accelerator Fund (the "HAF"). The HAF will be a 501(c)(3) nonprofit community development fund whose purpose is to assist the development of affordable housing in San Francisco by assembling new funds and to lending those funds to affordable housing developers in San Francisco. I will be serving on the board of directors of the HAF. My HAF role is not incompatible with my role as Director of MOHCD because the City created HAF to advance the City's interests in providing affordable housing and my participation on the Board advances that interest and ensures that the City's voice is represent [sic] on the HAF Board. For the HAF to be successful, its lending activities must be coordinated with activities of MOHCD since it will ultimately provide the take-out financing for HAF loans. My role on the HAF is also critical since the City is providing \$10 million dollars in City funds to the HAF as loan capital and a loss reserve.

Miriam Webster's Dictionary defines "in advance" to mean "to, toward, or in a place or position ahead."² Respondent Lee had knowledge of the Mayor's Office SIA and the prohibitions contained therein.

Staff informed Respondent Lee that the Mayor's determination permitted him to continue to serve on the Housing Accelerator Fund board going forward, but that the Ethics Commission would continue to investigate whether his service on the HAF board prior to October 25, 2016 was incompatible with his job as Director of MOHCD.

III. Conclusions of Law

1. Respondent Lee engaged in incompatible activity by serving on the board of directors for a non-profit organization that applied for loans or grants administered by his division, as expressly prohibited by Mayor's Office SIA § III(A)(3)(B).
2. Respondent Lee should have obtained an Advance Written Determination prior to serving as a board member for the Housing Accelerator Fund. Instead, Respondent Lee obtained an Advance Written Determination from Mayor Lee only after Ethics Commission Staff inquired whether his service on the HAF Board was an incompatible activity under the Mayor's Office SIA and after having participated in a decision to make a grant to a non-profit organization for which he served as a board member.
3. Respondent Lee is not entitled to immunity under Regulation 3.218-7 because he did not obtain an advance written determination until after serving on the Housing Accelerator Board for approximately nine months, during which time he approved a \$10 million grant from MOHCD to HAF.

IV. Penalty Assessment

This matter consists of one violation of the SF C&GCC carrying a maximum total administrative penalty of \$5,000, as authorized by the SF Charter at section C3.699-13(c).

Regulation 3.218-8(b)³ requires the Commission to assess the impact of Respondent Lee's

² Miriam Webster's Dictionary Online, available at <https://www.merriam-webster.com/dictionary/advance> (last visited June 14, 2017).

³ The exact language of Regulation 3.218-8(b) follows: "Penalties for other violations of the SIA will depend upon the Ethics Commission's assessment of the impact of the respondent's activities on the City and the department, board or commission as a whole; compliance with other applicable laws and rules; whether the violation was an isolated incident or part of a pattern of violations; whether the respondent or others were inappropriately enriched by the activity; whether the violation was negligent, knowing or intentional; and the intent and spirit of the SIA; and any other factors that the Ethics Commission deems appropriate and material."

activities on the City and the Mayor's Office as a whole; compliance with other applicable laws and rules; whether the violation was an isolated incident or part of a pattern of violations; whether Respondent Lee or others were inappropriately enriched by the activity; whether the violation was negligent, knowing, or intentional; and the intent and spirit of the SIA.

As the director of MOHCD, Staff concludes that Respondent Lee's violation of the Mayor's Office SIA has an impact on the Mayor's Office as a whole. As director, Respondent Lee should have known his participation on the board of directors for the Housing Accelerator Fund was a potential incompatible activity. His failure to comply with Mayor's Office SIA cannot be cured by his belated request for Advance Written Determination.

On the other hand, Staff has no evidence that Respondent Lee's violation was part of a pattern. Staff has no evidence that Respondent Lee was enriched by his participation on the board of directors for the Housing Accelerator Fund or personally benefited from MOHCD's \$10 million grant. Staff has no evidence that Respondent Lee intentionally violated Mayor's Office SIA. The intent and spirit of the SIA is to prevent City officers and employees from engaging in outside activities that conflict with their official duties. Respondent Lee served on the Housing Accelerator Board as a representative of the City in an *ex officio* capacity and as part of his official job duties.

Respondent Lee failed to request an Advance Written Determination until after serving on the Housing Accelerator Fund Board for approximately nine months.

Based on the foregoing, Staff believes the maximum penalty of \$5,000 for Respondent Lee's single violation of the SIA is not warranted in this instance. Due to the mitigating circumstances surrounding Respondent Lee's stated belief that his *ex officio* seat was part of his job duties and Mayor Lee's subsequent ratification of Respondent Lee's Advance Written Determination, Staff recommends that the Commission approve the negotiated administrative penalty of \$800 for one violation of SF C&GCC section 3.218 as set forth in the Stipulation, Decision, and Order.