



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: November 9, 2018

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 4: Stipulation, Decision, and Order**
• ***In the Matter of Mark Leno & Mark Leno for Mayor 2018* (SFEC Case No. 1718-076)**

Summary: This memorandum provides information regarding the Stipulation appearing on the Consent Calendar.

Action Requested: This memorandum is for informational purposes. No separate Commission action on this memorandum is required.

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. Enforcement Reg. § 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.*

As of November 9, 2018, no Commissioner had requested review of the attached stipulated order in public session by the full panel of the Commission. Absent an amended agenda reflecting a request to review it, the attached stipulation will therefore have been ratified and will have settled the above-titled matter with the full force of a final order of the Commission. Enforcement Reg. § 12(F).

Members of the public may comment on the stipulated order.

LeeAnn Pelham
Executive Director
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Investigative Analyst

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BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of)	SFEC Complaint No. 1718-076
)	
MARK LENO and MARK LENO FOR MAYOR 2018,)	
)	
Respondents.)	FIXED PENALTY STIPULATION, DECISION,
)	AND ORDER
)	

This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Mark Leno and Mark Leno for Mayor 2018 ("Respondents") and the San Francisco Ethics Commission ("the Commission") pursuant to the Ethics Commission's Fixed Penalty Policy.

THE PARTIES STIPULATE AS FOLLOWS:

1. Respondents and the Commission agree to settle and resolve all factual and legal issues in this matter by reaching a final disposition without an administrative hearing. Upon the Commission's approval of this Stipulation and full performance of the terms outlined here, the Commission will take no future action against Respondents related to the violation of San Francisco Campaign and Governmental Conduct Code section 1.161(a), as described herein.

2. This Stipulation shall constitute the complete resolution of all claims by the Commission against Respondents related to this violation of law. Respondents understand and knowingly and

voluntarily waive all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

Fixed Penalty Stipulation

3. Respondents acknowledge responsibility for and agree to pay a fixed penalty in the total amount of One Thousand Dollars (\$1,000) for one violation of San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") section 1.161(a), as described in detail below. The parties agreed penalty assessment is explained more fully in the attached Exhibit A.

4. SF C&GCC section 1.161(a) incorporates the requirements of state law and prohibits a candidate committee from distributing a sign without identifying who paid for the advertisement in no less than five percent of the total height of the advertisement and in a color that has a reasonable degree of contrast with the background of the advertisement. See Gov't Code § 84504.5(c)(2). The ordinance also requires that a sign's disclaimer contain a reference to financial disclosures available at sfethics.org. Respondents distributed the following sign in violation of the City's Campaign Finance Reform Ordinance:

Count	Type of Advertisement	Election Date	Nature of the violation	Penalty
1	Sign	June 5, 2018	Failure to include in the disclaimer statement: - "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a)(4)	\$1,000
			Total penalty:	\$1,000

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5. Within ten days of the Commission’s approval of this Stipulation, Respondents shall deliver to the following address the sum of \$1,000 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

6. If Respondents fail to pay the penalty as described in paragraph 3 and 5 or if Respondents' payment does not clear, then the Commission may reopen this matter and prosecute Respondents under Section C3.699-13 of the San Francisco Charter for relief, including the full penalty of \$5,000 per violation.

Respondents' waiver of hearing rights by settling this matter

7. Respondents understand, and hereby knowingly and voluntarily waive, 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 Respondents' expense, to confront and cross-examine all witnesses testifying at the hearing, and to subpoena witnesses to testify at the hearing.

8. Respondents understand and acknowledge 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 with or assisting any other government agency in its prosecution of Respondents for the violation described in this Stipulation.

9. This Stipulation is subject to the Commission's approval. In the event the Commission declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 10, which shall survive.

1 10. In the event the Commission rejects this Stipulation, and further administrative
2 proceedings before the Commission are necessary, Respondents agree that the Stipulation and all
3 references to it are inadmissible. Respondents also agree not to challenge, dispute, or object to the
4 participation of any member of the Commission or its staff in any necessary administrative proceeding
5 for reasons stemming from the Commissioner or staff member's prior consideration of this Stipulation.

6 11. This Stipulation, along with the attached Exhibit A, reflects the entire agreement
7 between the parties and supersedes any and all prior negotiations, understandings, and agreements
8 with respect to the violations described in this Stipulation.

9 12. This Stipulation can only be amended or modified in writing between the parties, and
10 then such amendment or modification must be approved by the Commission.


11 13. This Stipulation is interpreted and enforced under California law. If any part of the
12 Stipulation is found to be unenforceable, the remaining parts shall remain valid and enforceable.
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2 14. The parties may sign different copies of this Stipulation, which will have the same effect
3 as though all parties had signed the same document.
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6 Dated 10/13/18

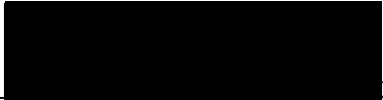

Mark Leno

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8 Dated 10/13/18


Mark Leno for Mayor 2018

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10 Printed Name MARK LENO

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12 Dated 11/6/2018


LeeAnn Pelham, Executive Director of the Ethics Commission

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IT IS SO ORDERED.

Dated _____

Exhibit A: Penalty Calculation

This matter consists of one violation of the SF C&GCC carrying a maximum total administrative penalty of \$5,000. *See* SF Charter § C3.699-13(c), SF C&GCC § 1.170(c).

When determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (a) the severity of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the violation was willful; (d) whether the violation was an isolated incident or part of a pattern; (e) whether the respondent has a prior record of violations of law; and (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations. *See* Enforcement Reg. § 9(D).

However, in 2013, the Ethics Commission approved policies to establish fixed penalties for violations of certain provisions of SF C&GCC, including violations of SF C&GCC section 1.161. Staff is bound by the adopted policies regarding these violations until the Commission changes them. The Commission retains the authority to approve or reject the stipulation and settlement amounts.

According to the fixed penalty policy, if respondents present no exonerating evidence prior to the 14-day deadline, Staff will propose penalties to the Commission for its consideration according to the following schedule:

- \$1,000 per violation will be proposed for a Stipulation signed prior to the issuance of the Probable Cause Report;
- \$2,500 per violation will be proposed for a Stipulation signed after the issuance of the Probable Cause Report; and
- \$4,000 per violation will be proposed for a Stipulation signed after the Commission makes a finding of probable cause.

The policy provides further that mitigating or aggravating factors may reduce or increase the penalties the schedule sets forth.

The policy states that the Commission will consider each mitigating or aggravating factor to determine how much weight to give to each. The following lists of mitigation and aggravation factors are not exhaustive:

Mitigation Factors:

- Absence of any intention to conceal, deceive, or mislead
- Violation was negligent or inadvertent
- Violation was isolated and not part of a pattern
- No prior record of violations of law with the Commission
- The degree to which the Respondent cooperated with the investigation
- The degree to which the Respondent demonstrated a willingness to remedy any violations (only applicable if a Respondent agrees to a stipulation prior to issuance of Probable Cause Report)
- Respondent filed all required disclosure statements and/or amendments within 14 days of initial contact by Enforcement staff

- A disclosure containing the required information appeared on a mass mailing, electioneering communication, or campaign advertisement, but the disclosure was in font size that was not 14-point

Aggravation Factors:

- Evidence shows an intent to conceal, deceive, or mislead
- Violation was deliberate
- Violation was part of a pattern
- Prior record of violations of law with the Commission
- The degree to which the Respondent was uncooperative with the investigation
- The degree to which the Respondent failed to demonstrate a willingness to remedy any violations
- Respondent failed to file required disclosure statements and/or amendments within 14 days of initial contact by Enforcement staff

In this matter, the proposed Stipulation was signed prior to the issuance of the Probable Cause Report. Therefore, the proposed penalty according to the policy is \$1,000 per violation. Staff requests that the Commission consider the following mitigating factors for this matter: The Respondents' violation was absent of any intention to conceal, deceive, or mislead and the violation was isolated and not part of a pattern.

RECOMMENDATION

After considering all the facts of this case, the fixed penalty policy, and previous investigations, Ethics Commission Staff recommend imposing the agreed upon penalty of \$1,000 for one violation of SF C&GCC section 1.161(a).