



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU
CHAIR

NOREEN AMBROSE
VICE-CHAIR

YVONNE LEE
COMMISSIONER

FERN M. SMITH
COMMISSIONER

LATEEF H. GRAY
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: August 12, 2019

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 7: Proposed Stipulation, Decision and Order**
• ***In the Matter of Mónica Chinchilla for School Board 2018***
(SFEC Complaint No. 1819-026)

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 at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (i.e. a negotiated settlement). Enf. 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. Enf. 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 today, no Commissioner had requested review of the attached stipulated order in public session by the full panel of the Commission. It therefore appears on the Consent Calendar. The Commission may approve the stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation. Enf. Reg. § 12(F).

Members of the public may comment on the Proposed Stipulation.

LeeAnn Pelham
Executive Director
Thomas McClain
Senior Investigative Analyst, Cal. State Bar No. 293560

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100 Telephone
(415) 252-3112 Facsimile

BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of)	SFEC Complaint No. 1819-026
)	
MÓNICA CHINCHILLA FOR SCHOOL BOARD 2018,)	
)	
Respondent.)	FIXED PENALTY STIPULATION, DECISION,
)	AND ORDER
)	
)	
)	
)	

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Mónica Chinchilla for School Board 2018 ("Respondent"), 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.

3. In compromise and satisfaction of the claims set forth in Exhibit A, Respondent acknowledges responsibility for and agrees to pay an administrative penalty in the amount of \$1,083 for one violation of San Francisco Campaign and Governmental Conduct Code section 1.114, subdivision (a), as set forth in Exhibit A. Respondent agrees that \$1,083 is a reasonable administrative penalty. Based on the Commission's Fixed Penalty Policy, the maximum penalty in this matter prior to a hearing on the merits is \$5,000. The maximum penalty after a hearing on the merits is \$9,750.

4. Within ten business days of the Commission's approval of this Stipulation, shall either pay through the City's online payment portal, or otherwise deliver to the following address the sum of \$1,083 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

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

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

8. 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 9, which shall survive.

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

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

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

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

1 Dated: 7/17/2019

2 LEEANN PELHAM, EXECUTIVE DIRECTOR
3 SAN FRANCISCO ETHICS COMMISSION

4 Dated: 7/17/2019

5 INEZ CARRASCO, TREASURER
6 MÓNICA CHINCHILLA FOR SCHOOL BOARD 2018, RESPONDENT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

IT IS SO ORDERED.

DAINA CHIU, CHAIR
SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Candidate committees in City and County of San Francisco elections are prohibited from accepting contributions over \$500. Mónica Chinchilla for School Board 2018 (“Respondent”) is Mónica Chinchilla’s candidate-controlled committee established for her campaign for the Board of Education of the San Francisco Unified School District. In October 2017, Respondent accepted an in-kind contribution of goods or services with a fair market value of \$3,750. In doing so, Respondent violated San Francisco Campaign and Governmental Conduct Code section 1.114, subdivision (a), Contributions – Limits and Prohibitions.

II. Applicable Law

The San Francisco Campaign and Governmental Conduct Code (“SF C&GC”) incorporates the definition of “contribution” from the California Political Reform Act (“PRA”). (SF C&GCC § 1.104.) Pursuant to Government Code section 82015, subdivision (a),

“Contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received or if it is clear from the surrounding circumstances that the payment is not made for political purposes.

A “payment” means a “distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Gov’t Code § 82044.) “Contribution” includes goods or services received “by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public” (commonly referred to as an “in-kind contribution”). (2 Cal. Code Regs. § 18215, subd. (b)(2).) Under the PRA, “full and adequate consideration” means “fair market value.” (Gov’t Code § 82025.5.) The PRA defines “fair market value” as “the estimated fair market value of goods, services, facilities or anything of value other than money.” (*Id.*)

III. Summary of Material Facts

In its FPPC Form 460 for January 1, 2017 through December 31, 2017, Respondent reported that on October 4, 2017, it received an in-kind contribution from Dalen Oshiro with a value of \$3,750. In the Form 460, Respondent described the goods or services provided as “development of campaign website.”

//

//

//

IV. Conclusions of Law

Count 1: Violation of San Francisco Campaign and Government Conduct Code section 1.114, subdivision (a) – Contributions – Limits and Prohibitions

By accepting goods or services for which it did not pay full and adequate consideration, Respondent accepted an in-kind contribution. In City and County of San Francisco elections, in-kind contributions are subject to the same individual contribution limit as monetary contributions: \$500. By accepting an in-kind contribution with a fair market value of \$3,750 and paying nothing in return, Respondent accepted a contribution that is \$3,250 over the contribution limit. In doing so, Respondent violated San Francisco Campaign and Governmental Conduct Code section 1.114, subdivision (a), Contributions – Limits and Prohibitions.

V. Penalty Assessment

This matter consists of one violation of the San Francisco Campaign and Governmental Conduct Code section 1.114, subdivision (a). Based on the nature of the violation in this matter, it is governed by the Commission's Fixed Penalty Policy up to and until a finding of probable cause at a Probable Cause Conference by the Executive Director. The maximum administrative penalty up to and until a hearing on the merits is \$5,000. If the matter were to proceed to a hearing on the merits, the maximum administrative penalty would be \$9,750.

Because the matter involves a contribution over the maximum contribution limit, in addition to any administrative penalty the Commission assesses, Respondent must forfeit the excess amount over the contribution limit to the General Fund of the City and County of San Francisco. (SF C&GCC § 1.114, subd. (f).) However, the Commission may waive the forfeiture. (*Id.*) If waiver were to be imposed in this matter, Respondent would be required to forfeit \$3,250 to the General Fund of the City and County of San Francisco.

When determining penalties, the Ethics Commission considers all relevant circumstances surrounding the matter, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was willful; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's ability to pay. (Enf. Regs. § 9, subd. (D).)

This is a serious violation, as Respondent accepted an in-kind contribution six and a half times over the acceptable contribution limit. However, Enforcement Staff did not find evidence of an intent to conceal by Respondent. After receiving the contribution, Respondent's treasurer, Inez Carrasco, contacted Commission Staff to determine how to report the contribution. Carrasco followed Commission Staff's advice and reported the fair market value of the contribution in its FPPC Form 460. This was the first time the candidate had run for elective office and the first time Carrasco served as a campaign treasurer. Carrasco indicated to Commission Staff that she and the candidate were unaware of the distinction between campaign volunteer services and in-kind contributions of services. At the time of the violation, the Commission had not yet hosted its campaign treasurer training for the 2018 election cycle. Respondent does not have a prior record of violations in front of the Ethics Commission.

Additionally, Respondent has cooperated through the settlement process; Respondent's treasurer contacted Commission Staff shortly after receiving the Notice of Preliminary Review and indicated Respondent's willingness settle the matter by stipulation, conserving Commission Staff's resources.

In light of the facts of this matter and the aggravating and mitigating penalty factors considered above, Commission Staff and Respondent have agreed upon an administrative penalty of \$1,083, one-third the amount of the excess contribution received, and no forfeiture requirement imposed in this instance. Thus, Respondent agrees to pay \$1,083 for one violation of San Francisco Campaign and Governmental Conduct Code section 1.114, subdivision (a).