



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: December 13, 2019

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 5: Proposed Stipulation, Decision and Order**
• ***In the Matter of Affordable Housing for All, Yes on D***
(SFEC Complaint No. 1718-134A)

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
Eric Willett
Senior Investigative Analyst

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. 1718-134A
)	
AFFORDABLE HOUSING FOR ALL, YES ON D,)	
)	
Respondent.)	FIXED PENALTY STIPULATION, DECISION,
)	AND ORDER
)	

This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Affordable Housing for All, Yes on D ("Respondent") and the San Francisco Ethics Commission ("the Commission") pursuant to the Ethics Commission's Fixed Penalty Policy.

THE PARTIES STIPULATE AS FOLLOWS:

1. Respondent 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 Respondent 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 Respondent related to this violation of law. Respondent 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. Respondent acknowledge responsibility for and agree to pay a fixed penalty in the total amount of One Thousand Dollars for two violations 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 an independent expenditure committee from distributing electronic media advertisements without including "Who funded this ad?" text as a hyperlink. See Gov't Code § 84504.3(a). The hyperlink must lead to a website containing the "Ad paid for by" and "Committee major funding from" disclaimers in a contrasting color and in no less than 8-point font. See Gov't Code §§ 84502, 84503(a), and SF C&GCC § 1.161(a)(1). The ordinance also requires that an electronic media advertisement contain a reference to financial disclosures available at sfethics.org. Respondent distributed electronic media advertisements in violation of the City's Campaign Finance Reform Ordinance:

Count	Type of Advertisement	Election Date	Nature of the violation	Penalty
1	Electronic Media Ads (Short Message Service)	June 5, 2018	Failure to include rollover (hyperlink) disclaimer statement: <ul style="list-style-type: none">- "Who funded this ad?" in violation of SF C&GCC section 1.161(a) and Gov't Code section 84504.3(a)	\$500
2	Electronic Media Ads (Short Message Service)	June 5, 2018	Failure to include a landing page with the disclaimer statement: <ul style="list-style-type: none">- "Paid for by" in violation of Gov't Code section 84502- "Committee major funding from" in violation of Gov't Code section 84503(a)- The names of the top contributors in descending	\$500

			order, beginning with the largest contributor, each on a separate centered horizontal line, in violation of Gov't Code sections 84503(a) and SF C&GCC section 1.161(a)(1) - The phrase "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a)(4)	
			Total penalty:	\$1,000

5. Within ten days of the Commission's approval of this Stipulation, Respondent shall either pay the penalty through the City's online payment portal or otherwise 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 Respondent fail to pay the penalty as described in paragraph 3 and 5 or if Respondent's payment does not clear, then the Commission may reopen this matter and prosecute Respondent under Section C3.699-13 of the San Francisco Charter for relief, including the full penalty of \$5,000 per violation.

Respondent's waiver of hearing rights by settling this matter

7. Respondent 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 Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing, and to subpoena witnesses to testify at the hearing.

8. Respondent 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 Respondent 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.

10. In the event the Commission rejects this Stipulation, and further administrative proceedings before the Commission are necessary, Respondent agree that the Stipulation and all references to it are inadmissible. Respondent also agree 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 the Commissioner or staff member's prior consideration of this Stipulation.

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

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

13. This Stipulation is interpreted and enforced under California law. If any part of the Stipulation is found to be unenforceable, the remaining parts shall remain valid and enforceable.

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1 14. The parties may sign different copies of this Stipulation, which will have the same effect
2 as though all parties had signed the same document.

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5 Dated

12/5/19


Affordable Housing for All, Yes on D

6
7 Printed Name

Matthew Alvarez

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9 Dated

12/5/2019


LeeAnn Pelham, Executive Director of the Ethics Commission

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IT IS SO ORDERED.

Dated _____

Daina Chiu, Ethics Commission Chairperson

Exhibit A: Penalty Calculation

This matter consists of two violations of the SF C&GCC carrying a maximum total administrative penalty of \$10,000. *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 the SF C&GCC, including violations of section 1.161. According to the policy, 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 an incorrect font size

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 mitigation, Respondent cooperated with the investigation, investigators found no evidence of an intent to conceal, deceive, or mislead, and the violation did not appear to be part of a pattern. Further, the proposed Stipulation was signed prior to requiring the issuance of a Probable Cause Report.

RECOMMENDATION

After considering all the facts of this case, the fixed penalty policy, and any factors in mitigation or aggravation, Ethics Commission Staff recommend a penalty of \$1,000 for two counts in violation of SF C&GGC section 1.161(a).