



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

June 7, 2021

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 Amy Lee and Mark Luellen (SFEC Complaint No. 2021-014).***

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 Commission's Enforcement Regulations, 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
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BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of)	SFEC Complaint No. 2021-014
)	
EUN YOUNG "AMY" LEE AND MARK LUELLEN,)	
)	
Respondents.)	STIPULATION, DECISION
)	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 Eun Young "Amy" Lee and Mark Luellen ("Respondents" collectively) and the San Francisco Ethics Commission (the Commission).

2. Respondents 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 Respondents, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondents related to the violations of law described in Exhibit A.

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

3 3. Respondents acknowledge responsibility for and agree to pay an administrative penalty
4 in the amount of \$12,670 for eight counts in violation of San Francisco Campaign & Governmental
5 Conduct Code (SF C&GCC) section 3.410(c) as set forth in Exhibit A. Respondents agree that \$12,670 is a
6 reasonable administrative penalty.

7 4. Within ten business days of the Commission's approval of this Stipulation, Respondents
8 shall either pay the penalty through the City's online payment portal or otherwise deliver to the
9 following address the sum of \$12,670 in the form of a check or money order made payable to the "City
10 and County of San Francisco":
11

12 San Francisco Ethics Commission
13 Attn: Enforcement & Legal Affairs Division
14 25 Van Ness Avenue, Suite 220
15 San Francisco, CA 94102

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

19 6. Respondents understand, and hereby knowingly and voluntarily waive, any and all
20 procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's
21 Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to
22 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
23 Respondents' expense, to confront and cross-examine all witnesses testifying at the hearing and to
24 subpoena witnesses to testify at the hearing.

25 7. Respondents understand and acknowledge that this Stipulation is not binding on any
26 other government agency with the authority to enforce the San Francisco Campaign & Governmental
27 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 Respondents 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, Respondents agree that the Stipulation and all
8 references to it are inadmissible. Respondents moreover agree 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 amended
14 orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties
15 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.
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1 Dated: 06-01-2021 | 14:48:03 PDT

DocuSigned by:

LeeAnn Pelham

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2 LEEANN PELHAM, EXECUTIVE DIRECTOR
3 SAN FRANCISCO ETHICS COMMISSION

4 Dated: 06-01-2021 | 13:08:47 PDT

DocuSigned by:

Eun Young "Amy" Lee

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6 EUN YOUNG "AMY" LEE

8 Dated: 06-01-2021 | 14:31:18 PDT

DocuSigned by:

Mark Luelen

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10 MARK LUELLEN

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of “Eun Young “Amy” Lee and Mark Luellen, SFEC Complaint No. 2021-014,” 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: _____

NOREEN AMBROSE, CHAIRPERSON
SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Respondents Eun Young “Amy” Lee (Lee) and Mark Luellen (Luellen) are permit consultants with 3S, LLC (“Respondents” collectively), who registered with the Ethics Commission in October 2019. Following an investigation into unreported permit consultant activity throughout 2020, Commission Investigators substantiated Respondents’ filing obligations for that period, notified the Respondents, and Lee and Luellen subsequently filed the required disclosure statements. As detailed below, Respondents made unreported permit consultant contacts which they failed to timely disclose in violation of San Francisco Campaign & Governmental Conduct Code section 3.410(c).

II. Applicable Law

Permit Application Processing

Definitions

In pertinent part, San Francisco Campaign and Governmental Conduct Code (SF C&GCC) section 3.405 defines “permit consultant” to include, “any individual who receives or is promised compensation to provide permit consulting services to commence on or after January 1, 2015 on a Major Project or a Minor Project.”

SF C&GCC section 3.405 defines “permit consulting services” to include, “any contact with the Department of Building Inspection, the Entertainment Commission, the Planning Department, or the Department of Public Works to help a permit applicant obtain a permit.”

SF C&GCC section 3.405 defines “contact” to include, “any communication, oral or written, including communication made through an agent, associate or employee,” and to exclude, “a request for information, as long as the request does not include any attempt to influence an administrative or legislative decision.”

SF C&GCC section 3.405 defines “major project” to include, “any project located in the City and County which has actual or estimated construction costs exceeding \$1,000,000 and which requires a permit issued by the Department of Building Inspection or the Planning Department.”

Permit Consultant Registration and Disclosures

Permit consultants must register with the Commission and comply with disclosure requirements no later than five business days after providing initial permit consulting services and before providing any further permit consulting services. SF C&GCC § 3.410(a).

Permit consultants must file quarterly reports and each quarterly report shall contain, among other requirements, the following:

- the contact information for each person from whom the permit consultant or the permit consultant's employer received or expected to receive economic consideration for permit consulting services during the reporting period, and the amount of economic consideration the permit consultant received or expected to receive; and
- for each contact with the Department of Building Inspection, the Entertainment Commission, the Planning Department, or the Department of Public Works in the course of providing permit consulting services during the reporting period:
 - the name of each officer or employee of the City and County of San Francisco with whom the permit consultant made contact;
 - a description of the permit sought or obtained, including the application number for the permit; and
 - the client on whose behalf the contact was made.

SF C&GCC § 3.410(c).

III. Summary of Material Facts

Lee left City employment as Deputy Executive Director with the San Francisco Redevelopment Agency in January of 2013 and Luellen left City employment as a Principal Planner with the Planning Department in July 2018.

In 2015, Lee founded 3S, LLC, a consulting firm that conducts public policy, finance, and code consulting. According to Lee, prior to 2019 the LLC's business was primarily advising clients about City permit filings and general advice on code interpretation or for projects valued under \$1 million. During 2019, 3S, LLC began making more direct contact with the City on behalf of clients and started working on projects valued at more than \$1 million.

In October 2019, Lee and Luellen registered with the Commission as permit consultants, disclosed that they were employed by 3S, LLC, and filed permit consultant Quarterly Reports as required for the period July 1 through September 30, 2019.

In January 2020, Lee and Luellen filed permit consultant Quarterly Reports as required for the period October 1 through December 31, 2019.

Neither Lee nor Luellen filed a permit Quarterly Report for the period January 1 through March 31, 2020.

On April 16, 2020, Commission Staff notified both Lee and Luellen that they had failed to file the quarterly report due on April 15, 2020 for the period January 1 March 31, 2020.

Neither Lee nor Luellen filed a quarterly report for any subsequent reporting period in 2020.

Following contact by Commission Investigators in January 2021, Respondents indicated they had mistakenly lapsed in their filing obligations and would remedy their failure to report as soon as possible.

Lee and Luellen filed their outstanding Quarterly Reports for 2020 on March 3, 2021.

IV. Conclusions of Law

Based on permit consulting activities substantiated by Commission Investigators and Respondents' failure to publicly and timely disclose those activities, Respondents acknowledge responsibility for the following violations of the City's permit consulting laws:

Counts 1 and 2

Providing undisclosed permit consulting services for the period January 1 through March 31, 2020 in violation of SF C&GCC section 3.410(c).

Count 1: Respondent Lee failed to disclose permit consulting services she provided during the period January 1 through March 31, 2020, by April 15, 2020, as required by SF C&GCC section 3.410(c), and only reported 323 days later that she had received \$6,350 for contacts with City employees or officials for engaging in reportable permit consulting services during that period.

Count 2: Respondent Luellen failed to disclose permit consulting services he provided during the period January 1 through March 31, 2020, by April 15, 2020, as required by SF C&GCC section 3.410(c), and only reported 323 days later that he had received \$7,000 for contacts with City employees or officials for engaging in reportable permit consulting services during that period.

Counts 3 and 4

Providing undisclosed permit consulting services for the period April 1 through June 30 in violation of SF C&GCC section 3.410(c).

Count 3: Respondent Lee failed to disclose permit consulting services she provided during the period April 1 through June 30, by July 15, 2020, as required by SF C&GCC section 3.410(c), and only reported 232 days later that she had received \$2,625 for contacts with City employees or officials for engaging in reportable permit consulting services during that period.

Count 4: Respondent Luellen failed to disclose permit consulting services he provided during the period April 1 through June 30, by July 15, 2020, as required by SF C&GCC section 3.410(c), and only reported 232 days later that he had received \$3,750 for contacts with City employees or officials for engaging in reportable permit consulting services during that period.

Counts 5 and 6

Providing undisclosed permit consulting services for the period July 1 through September 30 in violation of SF C&GCC section 3.410(c).

Count 5: Respondent Lee failed to disclose permit consulting services she provided during the period July 1 through September 30, by October 15, 2020, as required by SF C&GCC section

3.410(c), and only reported 140 days later that she had received \$7,800 for contacts with City employees or officials for engaging in reportable permit consulting services during that period.

Count 6: Respondent Luellen failed to disclose permit consulting services he provided during the period July 1 through September 30, by October 15, 2020, as required by SF C&GCC section 3.410(c), and only reported 140 days later that he had received \$10,500 for contacts with City employees or officials for engaging in reportable permit consulting services during that period.

Counts 7 and 8

Providing undisclosed permit consulting services for the period October 1 through December 31 in violation of SF C&GCC section 3.410(c).

Count 7: Respondent Lee failed to disclose permit consulting services she provided during the period October 1 through December 30, 2020, by January 14, 2021, as required by SF C&GCC section 3.410(c), and reported only 48 days later that she had received \$7,800 for contacts with City employees or officials for engaging in reportable consulting services during that period.

Count 8: Respondent Luellen failed to disclose permit consulting services he provided during the period October 1 through December 30, 2020, by January 15, 2021, as required by SF C&GCC section 3.410(c), and reported only 48 days later that he received \$4,850 for contacts with City employees or officials for engaging in reportable consulting during that period.

V. Penalty Assessment

This matter consists of eight counts of undisclosed permit consulting activity totaling \$50,675 over a 12 month period in violation of Article III of the San Francisco Campaign and Governmental Conduct Code. The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of the City of up to \$5,000 for each violation, or three times the amount which the respondents failed to report properly. SF Charter § C3.699-13(c); *see also* SF C&GCC § 3.145(b). Additionally, SF C&GCC section 3.415(a) provides that the Ethics Commission shall, in addition to any other penalties or remedies established in this Chapter, impose a late filing fee of \$50 per day if any permit consultant fails to submit any information required by this Chapter after any applicable deadline. Therefore, at three times the amount not properly reported, and \$50 per day for late disclosure of the relevant reports, the maximum potential administrative enforcement penalty for which Respondents could be liable under applicable law would be \$226,325: three times the \$50,675 received but not reported in permit consulting payments, and \$74,300 in late filing fees.

Pursuant to its Enforcement Regulations, when determining penalties the Ethics Commission considers all of the relevant circumstances surrounding the case, 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. SF Ethics Commission Enforcement Regulations § 9(D).

Applying the penalty factors enumerated above, Staff believes the failure to report permit consulting activities as required is significant. It was the purpose and intent of the people of the City and County of San Francisco to impose reasonable registration and disclosure requirements on permit consultants to protect public confidence in governmental processes. Failure to disclose permit consulting services as the law requires deprives the public full knowledge about the compensated permit consulting activities in the City at the time they are undertaken. In this instance, because Respondents failed to disclose their permit consulting activity for a full year, they failed to timely report 80 contacts with City employees or officials on behalf of multiple clients for which they were collectively paid \$50,675 for their consulting services. Respondents, however, were formerly employees of the City and County of San Francisco's Planning Department and the San Francisco Redevelopment Agency, and knew or had reason to know that permit consultants are subject to filing requirements under City law.

In mitigation, Lee and Luellen cooperated with the Ethics Commission, promptly filed their outstanding reports once notified by Commission Staff and have no history of prior enforcement matters with the Commission.

In balancing the above factors, considering prior analogous enforcement cases resolved by the Ethics Commission, and to promote a deterrent effect, Staff proposes \$12,670 in penalties for the violations of City law as follows: Count 1 - \$1,588, Count 2 - \$1,750, Count 3 - \$656, Count 4 - \$938, Count 5 - \$1,950, Count 6 - \$2,625, Count 7 - \$1,950, and Count 8 - \$1,213. This penalty represents approximately 25 percent of Respondents' unreported permit consulting contact activity in the City and County during the time periods at issue in this matter and the parties agree that the \$12,670 administrative penalty is warranted based on the facts in this matter.