

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. Respondent acknowledges responsibility for and agrees to pay an administrative penalty as set forth in Exhibit A. Respondent agrees that the penalty is a reasonable administrative penalty.

4. Within ten business 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 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 prosecute Respondent under Section C3.699-13 of the San Francisco Charter for any available relief.

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.

03-23-2023 | 20:36:28 PDT

Dated: _____

DocuSigned by:
Gayathri Thaikendiyil
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GAYATHRI THAIKENDIYIL, ACTING EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

03-23-2023 | 13:14:09 PDT

Dated: _____

DocuSigned by:
Gwyneth Borden
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GWYNETH BORDEN

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of “Gwyneth Borden, SFEC Complaint No. 1920-081,” 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: _____

YVONNE LEE, CHAIRPERSON

SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Gwyneth Borden (“Respondent”) is the Vice Chair of the San Francisco Municipal Transportation Agency (“SFMTA”) Board of Directors. Before joining the SFMTA Board, Respondent served on the Planning Commission from 2008 to 2014. In addition to being Vice Chair of the SFMTA, Respondent also owns a private consulting business, Ground Floor Experiences (“GFE”).

On or around December 1, 2019, Respondent, while serving as a member of the SFMTA, entered into a paid agreement, through GFE, with the owners of the restaurant Fiorella, to assist them in applying for and obtaining from the Planning Commission a Conditional Use Authorization (“CUA”) to allow Fiorella to operate and use an existing outdoor space at a newly acquired location. Beginning December 10, 2019, Respondent engaged in several communications with employees of the Planning Department to assist Fiorella in processing the CUA application and to get the matter placed on the Planning Commission’s Consent Calendar for final approval. Respondent also contacted all seven Planning Commissioners two days before the scheduled Planning Commission meeting regarding Fiorella’s CUA application. Additionally, Respondent emailed Supervisor Dean Preston’s Office on behalf of Fiorella regarding the CUA application.

Respondent engaged in prohibited conduct when she received compensation for contacting employees and officers of the City on behalf of Fiorella while she herself was a City officer. Respondent’s prohibited contacts with the Planning Commissioners also qualified her as a lobbyist. However, Respondent failed to register as a lobbyist within five days after the first contact she made with the Planning Commissioners and did not file a monthly report disclosing these contacts, in violation of the law. Additionally, because Respondent qualified as a lobbyist, she was also required to continue to file monthly reports, even if she did not engage in any lobbyist activities, or to terminate her registration. However, she failed to either file the required monthly reports or to terminate.

II. Applicable Law

Rule Against Compensated Advocacy by City Officers

City law states that “[n]o officer of the City and County shall directly or indirectly receive any form of compensation to communicate orally, in writing, or in any other manner on behalf of any other person with any other officer or employee of the City and County with the intent to influence a government decision.” SF C&GCC section 3.224(a). Among the purposes of this rule is to help ensure that City officers do not use their public positions, and the influence that comes with it, to personally enrich themselves by helping paying clients secure favorable outcomes from the City. It also helps ensure that City processes are conducted fairly and objectively and are not unduly influenced by the intervention of other City officers who are acting on behalf of paying clients. This also helps protect public confidence that City decision making is fair and merit-based and not susceptible to undue influence.

Lobbyist Disclosure Laws

City law requires lobbyists to register and file regular reports with the Ethics Commission disclosing their lobbying activity and their clients. The purpose of this reporting is to inform the public about instances in which individuals are being paid to influence the actions of City officials, who is paying for these services, and what outcomes are being sought. The Lobbyist Ordinance within the San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”) defines a “lobbyist” as either “a contact lobbyist or expenditure lobbyist.” SF C&GCC § 2.105. A contact lobbyist is an individual who makes five or more contacts in any calendar month with City officers on behalf of his or her employer, or an individual who makes any contact with a City officer on behalf of another person who pays the individual or his or her employer for lobbyist services. SF C&GCC § 2.105. A “contact” is “any communication, oral or written, including communication made through an agent, associate, or employee, for the purpose of influencing local legislative or administrative action.” SF C&GCC § 2.106(a). An “officer of the City and County” is any person holding City elective office, any member of a board or commission, any person appointed as the chief executive officer under any such board or commission, the head of each City department, the Controller, and the City Administrator. *Id.* § 3.203.

City law requires lobbyists to register with the Ethics Commission and comply with monthly disclosure requirements. The law requires lobbyists to register no later than five business days after qualifying as a lobbyist and prohibits them from making any contacts after that time if they are not registered. SF C&GCC section 2.110(a). Once an individual qualifies as a Contact Lobbyist, the lobbyist is subject to all disclosure requirements and prohibitions until the lobbyist terminates their registration. City law requires each lobbyist to file monthly reports with the Ethics Commission, which must disclose details about the lobbyist’s clients, payments received or promised, and lobbying activities. SF C&GCC section 2.110(c).

III. Summary of Material Facts

Respondent has been a member of the SFMTA Board of Directors since 2014, and Respondent previously served on the Planning Commission from 2008 to 2014. Respondent also owns a personal consulting business, Ground Floor Experiences (“GFE”), which she founded in 2019.

Contract with Fiorella

Through GFE, Respondent entered into a three-month “Service Agreement” effective December 1, 2019, with Fiorella. Pursuant to the agreement, Respondent was to “provide consulting services to the Company in the area of operation and management of hospitality businesses. . . .” Fiorella had just secured a new location determined to have an unpermitted outdoor space, so Fiorella needed to secure a Conditional Use Authorization (“CUA”) for the space. As part of her agreement with Fiorella, Respondent engaged in numerous contacts on behalf of Fiorella with other officers or employees of the City with the intent to influence the permit application decision by the Planning Commission.

Communications with City Employees

Between December 10, 2019 and May 27, 2020, Respondent communicated with six employees of the Planning Department on multiple occasions by email and also by phone for the purpose of assisting Fiorella apply for and obtain a CUA for their new business location. Respondent assisted Fiorella in submitting its application for the CUA and corresponding with staff of the Planning Department to ensure that the matter was placed before the Planning Commission for action. Following

approximately 32 separate communications Respondent had with staff of the Planning Department, the matter was placed on the Planning Commission meeting agenda for May 28, 2020.

Communications with City Officers

On May 26, 2020, two days before the Planning Commission meeting, Respondent emailed all seven Planning Commissioners regarding the CUA agenda item. Respondent sent similar emails to all seven Commissioners, stating,

I am reaching out to answer any questions or concerns you may have about an item on your Consent Calendar, 1240 9th Avenue, which is a former Park Chow restaurant location. It's a Conditional Use Authorization to legalize an existing 'Outdoor Activity' space which was a dining space used by Park Chow for 20 years before they shuttered in 2018. Immediately upon considering the space, my client, Fiorella, reached out to Planning to get a Letter of Determination to understand any necessary permitting required for this location and discovered that the upstairs outdoor dining area was never legally permitted. Fiorella is a neighborhood Italian restaurant featuring wood-fired pizzas, pastas, and other Italian favorites, founded by experienced restaurant operators

Respondent then went on to describe the nature of Fiorella's business, provided some details about its history and some background about its owners. Respondent praised Fiorella, noting that not only is Fiorella "recognized for its delicious food," but it is also "known for its iconic custom wallpaper, featuring Bay Area luminaries from Joe Montana to Dennis Richmond." Respondent also referenced an article published in the San Francisco edition of Eater.com, regarding how the location was "uniquely personal." Respondent closed the emails by stating, "Anyway, I just wanted to check to answer any questions or concerns. Feel free to reach out at any time."

While the details regarding the Fiorella matter on the Consent Calendar that Respondent sent to all seven Commissioners were identical, Respondent's introductory greeting to each Commissioner varied based on her familiarity or relationship with the Commissioner. With one of the Commissioners, Respondent sent follow-up emails in response to the Commissioner's request for additional information and clarification regarding the matter.

Additionally, on March 10, 2020, Respondent emailed Supervisor Dean Preston's office, in whose district the restaurant was located, to provide background information about Fiorella and its owners and to note Fiorella's plan to open in the summer with use of its outdoor space, which would depend on Fiorella acquiring the CUA from the Planning Commission. Respondent also attached a factsheet, in lieu of a community meeting, in order to avoid non-essential gatherings and noted that she was available to answer any questions anyone might have.

Although Respondent's agreement was originally to last through March, it was extended to May, which was when the Planning Commission meeting was held and the CUA was approved. The Planning Commission minutes for the May 28, 2020 meeting show that the matter was placed on the Consent Calendar and the action was "approved with conditions" without any speakers. All seven Commissioners voted in the affirmative.

Respondent received compensation totaling \$12,500 from Fiorella. Respondent made no additional contacts with the Planning Commission or any other City officer for compensation on behalf of Fiorella after May 2020. Based on a review of the scope of services and the email communications between Respondent and City officers and employees, most of Respondent's time spent pursuant to the agreement with Fiorella was spent contacting employees and officers of the City to secure approval of the Conditional Use Authorization.

Respondent maintains that at the time she took on this project, she did not know that she was prohibited from contacting other City officers or employees on behalf of a client. Respondent noted that she learned that her conduct may have been prohibited from the City Attorney's Office around the same time the CUA was approved. Respondent made no further contacts with City officers or employees for compensation on behalf of Fiorella or any other clients after that time. Respondent provided the Enforcement Division with the email communications she made with employees and officers of the City in connection with this matter.

IV. Conclusions of Law

Because Respondent, who is a sitting City officer, accepted compensation to contact City officers and employees with the intent to influence a governmental decision regarding Fiorella's application for a CUA, Respondent violated the rule against compensated advocacy. Additionally, Respondent's contacts with the City officers qualified her as a lobbyist, but she failed to register as a lobbyist and report these contacts as required by law. Respondent acknowledges responsibility for the following violations of City law:

COUNT 1 – CONTACTS WITH PLANNING DEPARTMENT STAFF **Engaging in compensated advocacy in violation of SF C&GCC section 3.224(a)**

As described above, Respondent communicated approximately 32 times with six City employees for the purpose of influencing official action on Fiorella's application for a CUA. By receiving compensation from Fiorella to communicate with Planning Department staff with the intent to influence a governmental decision, Respondent violated the rule against compensated advocacy.

COUNT 2 – CONTACTS WITH CITY OFFICERS **Engaging in compensated advocacy in violation of SF C&GCC section 3.224(a)**

On March 10, 2020, Respondent contacted Supervisor Preston's office for the purpose of seeking Preston's support regarding the Planning Commission's pending action on Fiorella's CUA application. Also, on May 26, 2020, two days before the Planning Commission meeting, Respondent contacted all seven Planning Commissioners on behalf of Fiorella to encourage the approval of Fiorella's CUA application, which was agendaized on the Planning Commission's upcoming Consent Calendar. By receiving compensation from Fiorella to communicate with City Officers with the intent to influence a governmental decision, Respondent violated the rule against compensated advocacy.

COUNT 3 – LOBBYING VIOLATIONS **Failure to register and file disclosures as a lobbyist in violation of SF C&GCC section 2.110**

Respondent also qualified as a contact lobbyist when she emailed members of the Planning Commission and one member of the Board of Supervisors for the purpose of influencing official action

on the CUA, which was a local administrative action. Because Respondent was paid to make these contacts, these communications qualified Respondent as a contact lobbyist. As such, pursuant to SF C&GCC section 2.110, Respondent was required to register as a lobbyist with the Ethics Commission within five business days of qualifying as a lobbyist. Because she failed to register as a lobbyist with the Ethics Commission, Respondent violated SF C&GCC section 2.110(a).

Respondent was also required to file a monthly lobbyist report for May 2020 on June 15, 2020. This report should have included the contacts she made to the members of the Planning Commission and one member of the Board of Supervisors, the dates the contacts were made, the outcome she was seeking, the name of the client on whose behalf she was making the contacts, and any economic consideration she had received or expected to receive from that client. Because Respondent failed to file and include the required information regarding her lobbying activities in a May 2020 lobbyist statement, Respondent violated SF C&GCC section 2.110(c).

Additionally, having qualified as a contact lobbyist, Respondent was required to continue to file monthly reports, even if she did not engage in any reportable activity. Alternatively, Respondent could have terminated her registration as a lobbyist, which would have ended her monthly reporting requirement. Because she failed to file the required monthly reports and/or terminate as required under the law, Respondent violated SF C&GCC section 2.110(c).

V. Penalty Assessment

This matter consists of multiple violations of the Campaign and Governmental Conduct Code. These violations are set forth as the three counts as listed above. The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of “up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.” SF Charter § C3.699-13(c).

Pursuant to its Enforcement Regulations, when determining penalties, the Ethics Commission may consider any 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. Ethics Commission Enforcement Regulations § 9(D).

Respondent should have been aware of her obligations under the law. As a long-time public official who has served in multiple City appointed positions, including the Planning Commission and the SFMTA Board, Respondent has completed the annual ethics training required for City officers since 2015 and was informed about City ethics laws through information and materials made available by the Office of the City Attorney, including the Good Government Guide. Respondent’s failure to register as a lobbyist and to disclose her contacts with City officers prevented her conduct from coming to light sooner. Nevertheless, there is no evidence to suggest a deliberate intent on Respondent’s part to violate the law, nor is there any other evidence of a deliberate intention to conceal, deceive or mislead by Respondent. Also, Respondent stated that her work with Fiorella was her first time working as a consultant. Respondent’s violations appear to have been isolated to this specific matter, and she has no prior or other record of violations of law with the Ethics Commission. Respondent was cooperative with the investigation, timely replied to all inquiries, and provided all requested information to staff.

Counts 1–2: Compensated Advocacy

The harm in this case is heightened because Respondent was a former member of the same Commission that she improperly sought to influence and appeared to have a personal relationship with at least one of the Commissioners, with whom she had previously served concurrently on the Planning Commission. Respondent’s status as a former Planning Commissioner increased the chances for improper influence and the danger that the public would view the outcome of the Planning Commission’s process as biased. Additionally, the scope of this violation is significant, with Respondent making at least 32 separate communications with six City employees and eight communications with City officers in support of her client’s application for a CUA.

The appropriate penalty for Respondent’s compensated advocacy communications with Planning Department staff is \$3,000. The appropriate penalty for Respondent’s compensated advocacy communications with City officers is \$5,000. These penalties reflect the number, scope, and nature of Respondent’s communications.

Count 3: Lobbyist Registration and Reporting

Although Respondent was prohibited from accepting payment for contacting City officers as discussed above, she was still required to disclose this conduct once she engaged in it. Respondent’s failure to register as a lobbyist and to disclose her contacts with City officers deprived the public of information about who was paying to influence a City decision and resulted in Respondent’s prohibited conduct not being discovered sooner.

Respondent contacted all members of the Planning Commission and one member of the Board of Supervisors on behalf of Fiorella regarding its CUA application without allowing the public to know that these contacts were made and that they were made on behalf of a paying client. Further, Respondent not only failed to register as a lobbyist, but she also failed to file the monthly report in May and additional monthly reports until she terminated her lobbyist registration. Although she ceased all lobbyist activities after the contacts with the Planning Commissioners and received no additional payments from Fiorella after the month of May, Respondent was still required to continue to file monthly reports or to terminate her registration. The appropriate penalty for Count 3 is \$1,000, which reflects a reasonable consequence for failure to register and report lobbying contacts of the nature and scope of Respondent’s communications with City officers and considering the other penalty imposed for compensated advocacy.

Penalty per count:

Count One – Compensated Advocacy (Planning City Six Employees): \$3,000

Count Two – Compensated Advocacy: (Contact with Eight City Officers) \$5,000

Count Three – Failure to Register and Report as a Lobbyist: \$1,000

Total Penalty: \$9,000