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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA
11

12 In the Matter of) FPPC No. 10/123
13)
14 MICHAEL ALLEN,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)

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18 Complainant, Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondent Michael Allen, hereby agree that this Stipulation will be submitted for consideration by
20 the Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter, and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503, and 11523 of the Government Code, and in Section 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by
4 failing to disqualify himself from two governmental decisions in which he had a financial interest, in
5 violation of Section 87100 of the Government Code (1 count), as described in Exhibit 1, which is
6 attached hereto and incorporated by reference, as though fully set forth herein. Exhibit 1 is a true and
7 accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Three Thousand Dollars (\$3,000). A cashier's check or money order from Respondent in said
11 amount, made payable to the "General Fund of the State of California," is submitted with this Stipulation
12 as full payment of the administrative penalty, and shall be held by the State of California until the
13 Commission issues its decision and order regarding this matter. The parties agree that in the event the
14 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
15 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
16 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
17 further stipulates and agrees that in the event the Commission rejects the Stipulation, and a full
18 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
19 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.
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21 Dated: _____

Roman G. Porter
Executive Director
Fair Political Practices Commission

24 Dated: _____

Michael Allen, Respondent

DECISION AND ORDER

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The foregoing Stipulation of the parties “In the Matter of Michael Allen, FPPC No. 10/123,” including all attached exhibits, is hereby accepted as the final Decision and Order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

Chairman
Fair Political Practices Commission

EXHIBIT 1

I. INTRODUCTION

In this matter, in his position as Planning Commissioner with the City of Santa Rosa, Respondent Michael Allen impermissibly made two governmental decisions which had a reasonably foreseeable material financial effect on his economic interests.

For the purposes of this Stipulation, Respondent's violations of the Political Reform Act (the "Act"),¹ are stated as follows:

COUNT 1: On August 13, 2009, as a member of the City of Santa Rosa Planning Commission, Respondent made two governmental decisions by voting to adopt Resolution No. 11477, recommending that the Santa Rosa City Council certify the Final Environmental Impact Report ("EIR") for the Draft Santa Rosa General Plan 2035 ("the Plan"), and Resolution No. 11478, recommending adoption of a focused revision of the Plan, in which he knew, or had reason to know, he had a financial interest, in violation of Section 87100 of the Government Code.

II. SUMMARY OF THE LAW

Conflicts of Interest: Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official.

Public Official: Under Section 82048, the term "public official" includes employees of the State Legislature and planning commissioners.

Decisions: A public official "makes a governmental decision" when the official, acting within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his or her agency to any course of action; (4) Enters into any contractual agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is made because of his or her financial interest. (Regulation 18702.1, subdivision (a).)

Economic Interests: A public official has an economic interest in any business entity in which the official has a direct or indirect interest worth two thousand dollars (\$2,000) or more in which the official is director, officer, partner, trustee, employee, or holds any position of management. (Sections 82005 and 87103, subdivisions. (a) and (d), and Regulation 18703.1.) Unless an exception applies, a public official has an economic interest in any source of income, as defined in Section 82030,

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

aggregating five hundred dollars (\$500) or more received by, or promised to, the official within 12 months prior to the time when a decision is made. (Section 87103, subd. (c) and Regulation 18703.3, subdivision (a)(1)). An official's income includes gross income from his or her business.

Directly Involved Economic Interests: Regulation 18704.1 provides, in pertinent part, that a person is directly involved in a decision before an official's agency when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made or; (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material. (Regulation 18705.3, subdivision (a).) This is known as the "one penny rule."

Indirectly Involved Economic Interests: If a business entity or source of income is indirectly involved in a governmental decision, the materiality standards in Regulations 18705.1, subdivision (c), apply to a business entity, and the standards of Regulation 18705.3, subdivision (b), apply to a source of income. For businesses valued at \$100,000 or less, a financial effect is material if the decision will result in an increase or decrease in the entity's gross revenues for a fiscal year of \$20,000 or more. (Regulation 18705.1, subdivision (c)(4).)

Nexus Test: There is a separate materiality standard which applies in cases where there is a "nexus" between duties owed to a source of income and an official's public agency. Any reasonably foreseeable financial effect on a person who is a source of income to a public official is also deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision. (Regulation 18705.3, subdivision (c).)

Foreseeability: A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met. (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

Manner of Disqualification: A public official who holds an office specified in Section 87200, including a planning commissioner, upon identifying a conflict of interest, or a potential conflict of interest, and immediately prior to the consideration of the matter at a public hearing shall: (1) Publicly identify the financial interest; (2) Recuse himself or herself from discussing and voting on the matter; and (3) Leave the room until after the discussion, vote, and any other disposition of the matter. (Section 87105 and Regulation 18702.5.)

III. SUMMARY OF THE FACTS

A. RESPONDENT'S CONTRACT WITH SCWA

For several years prior to and including all relevant times specified herein, Respondent Allen has owned a business as a sole proprietorship, Law Offices of Michael Allen, (or Michael Mediation Inc.) DBA Collaborative Housing Solutions. Respondent provides personal services as a workforce housing consultant. Respondent was also District Director for California State Senator Pat Wiggins from on or about January 22, 2007, to December 2010, following his election to the State Assembly.

On or about January 23, 2007, Respondent and the Sonoma County Water Agency (“SCWA” or “Agency”) entered into a contract for \$70,000. Respondent was to: 1) Conduct a Feasibility Study/Master Plan for converting buildings on a 7.4-acre site owned by the SCWA at 2150 West College Avenue in the City of Santa Rosa (“West College Site”) into workforce housing; 2) Conduct outreach efforts to inform elected officials and decisionmakers of the SCWA’s proposed employee housing program; and 3) Develop a “business plan” which would describe home ownership financing alternatives. On or about January 27, 2009, Respondent’s contract was increased by \$25,000 (for a total of \$95,000). The scope of services was expanded to include planning, research and collaboration with the City of Santa Rosa, to include the “College Avenue property” as part of the City of Santa Rosa’s General plan amendment.

From April 2008 to August 2009, Respondent received, or was promised, approximately \$86,108 for work under the contract, and at least \$500 for each month during that period. Respondent subcontracted with HartSonoma (or “Hart/Marin”), real estate consultants, to prepare the master plan (also referred to as the “feasibility” or “site” plan) and the business plan. Respondent paid the subcontractor \$22,000-\$24,000.

In connection with fulfillment of the terms of the contract, Respondent submitted the plans to Randy Poole, then General Manager of SCWA, and Michael Thompson, SCWA Project Manager, who reviewed the work product and approved the recommendations. Randy Poole and Michael Thompson met with Respondent, as necessary, to provide guidance regarding the contract. The work product was also discussed with other public officials, including two members of the Board of Supervisors, Shirlee Zane and Efren Carrillo, also members of the SCWA Board of Directors.

On or about August 5, 2008, at the request of SCWA staff and Respondent, the Sonoma County Board of Supervisors, acting in their capacity as SCWA Board of Directors, authorized staff to send a letter to the City of Santa Rosa regarding re-zoning of the 2150 West College Avenue property. On or about August 11, 2008, Michael Thompson sent a letter to Wayne Goldberg, City of Santa Rosa Director of Advanced Planning, requesting inclusion of the 2150 West College property in the City of Santa Rosa’s review and revision of its General Plan Housing Element. The letter stated that the site was currently zoned Public Institutional and that SCWA was prepared to work with the City of Santa Rosa in the General Plan re-designation of this site to Medium/High Density Residential, as part of its Housing Element revision process, including the required environmental review and rezoning.

During the period February 2009 to June 2009, Respondent met with other public officials and submitted progress reports reflecting that progress regarding the “2150 College project” was moving forward with the City of Santa Rosa. In one e-mail communication sent on or about March 1, 2009, to Supervisor Shirlee Zane, Respondent indicated that he believed at that time that inclusion of the College Creek site in the updated housing element plan would save about \$150,000.

On or about October 6, 2009, the Sonoma County Board of Supervisors, in their capacity as SCWA Board of Directors, considered another contract for \$75,000 between the SCWA and Respondent. The agreement would have authorized execution of a contract for continuation of

consulting services for the 2150 West College Avenue Neighborhood Project (Work Force Housing Project) between the Agency and Respondent. The contract was put on hold.

B. CITY OF SANTA ROSA PLANNING COMMISSION

Between 2007-2009, the City of Santa Rosa considered a focused revision of the Housing Element and other policies of the City of Santa Rosa General Plan. The Draft General Plan Santa Rosa 2035 was released to the public on or about January 6, 2009, and a public meeting was held January 12, 2009, to receive comments. As Chair of the Accountable Development Coalition, an organization comprised of housing advocates, Respondent sent a letter dated January 7, 2009, commenting on the Housing Element update portion of the plan released for public comment. According to Lisa Kranz, Supervising Planner for the City of Santa Rosa, the released Draft General Plan 2035 included a land use diagram showing properties to be redesignated in an enclosed foldout.

On or about January 5, 2009, Respondent filed an application to serve as City of Santa Rosa Planning Commission. In his publicly available Application Form dated January 5, 2009, Respondent wrote:

Question #4 I have one potential conflict of interest. I have been the lead consultant for the Sonoma County Water Agency in investigating the feasibility of converting 2150 College Avenue (past SCWA offices) to workforce housing. This project if it goes forward would require zoning changes that would be considered by the Planning Commission.

On or about January 13, 2009, Respondent was appointed to the City of Santa Rosa Planning Commission. On his Assuming Office Statement of Economic Interests (“SEI”), Respondent reported his consulting business had a fair market value between \$10,000 - \$100,000. Respondent also reported the SCWA as a source of income of at least \$10,000.

On or about March 9, 2009, the Draft EIR was made public by planning commission staff. The EIR detailed the proposed land use redesignation for the SCWA property and included a map detailing the land use change and parcel number (Figure 3.3, General Plan Land Use Change). The attached map enlarged the parcels and showed the land use change for each of the properties. The change from Public/Institutional to Medium High Density for the SCWA property was shown. Table 4.A-1 (Proposed Land use Changes), also listed SCWA and its 2150 West College Avenue (APN 010-320-029) property. The chart showed the 2020 General Plan designation as Public/Institutional and the 2035 General Plan designation as Medium High Density. It also stated in the text that adoption of the proposed General Plan 2035 would result in changes to the land use designation for the five parcels described at Table 4.A-1, which included the SCWA property.

According to Ms. Lisa Kranz, if redesignation of the SCWA property was not included in the General Plan amendment process, SCWA would have to apply for a General Plan amendment outside of this process, which occurs about three times a year in the City of Santa Rosa. While there were no fees for processing a land use redesignation as part of the 2035 General Amendment process, Ms. Kranz stated that there is a fee, based on a fee schedule, for land use designation changes made outside of that process.

On April 2, 2009, and April 23, 2009, mandatory public hearings were held to prepare recommendations to the City Council of Santa Rosa concerning the Draft General Plan 2035 and EIR. Between May 14, 2009, and July 30, 2009, there were five public comment hearings to deliberate on specified elements of the General Plan. Respondent was present at these hearings and participated in discussions.

On August 13, 2009, the Planning Commission finalized its recommendations to the City Council on the Draft General Plan 2035 and Final EIR and adopted two resolutions recommending to the City Council certification of the Final EIR and adoption of the proposed Santa Rosa General Plan 2035. Also, the Planning Commissioners, including Respondent, voted to make recommendations to the City Council of Santa Rosa, as set forth in Resolution No. 11477 and Resolution No. 11478. Resolution 11477 recommended certification of the Final EIR for the Draft Santa Rosa General Plan 2035, which contained all recommended changes of the Planning Commission, including the land use redesignation of the 2150 West College Avenue property. Resolution 11478 recommended adoption of a focused revision of the Santa Rosa General Plan, entitled Santa Rosa 2035, and made findings and recommendations with regard to the significant impacts identified in the Final EIR for the Plan.

On or about November 3, 2009, the City of Santa Rosa adopted its General Plan 2035, including the Final EIR and the Planning Commission's recommendations contained in Resolutions Nos. 11477 and 11478. On February 2, 2010, Respondent Allen resigned from the City of Santa Rosa Planning Commission, and was elected to the California Assembly on November 2, 2010.

COUNT 1
RESPONDENT'S VOTES TO ADOPT RESOLUTION NOS. 11477 AND 11478
WERE IN VIOLATION OF SECTION 87100

On or about August 13, 2009, as a member of the City of Santa Rosa Planning Commission, Respondent made governmental decisions of the Planning Commission by voting to adopt Resolution No. 11477 and Resolution No. 11478, in violation of Section 87100 of the Government Code. Resolution No. 11477 recommended that the Santa Rosa City Council certify the Final EIR for the Draft Santa Rosa General Plan 2035, which included the land use redesignation of the 2150 West College Avenue property. Resolution 11478 recommended adoption of a focused revision of the Santa Rosa General Plan 2035.

Respondent received from SCWA at least \$500 within 12 months prior to August 13, 2009, or approximately \$29,484, by virtue of his consultant contract, which yielded his business total income of approximately \$86,108. (Section 87103, subdivision (c).)

Respondent's actions in connection with the contract show Respondent knew or had reason to know that SCWA would be directly involved in planning commission decisions concerning the general plan amendment process, and that SCWA would be materially financially affected by Respondent's votes. The objectives were known to Respondent, as evidenced by the Santa Rosa Board of Supervisors' action item of August 5, 2008, authorizing staff to send a letter to the City of Santa Rosa regarding re-zoning of the 2150 West College Avenue property. On or about August 11, 2008, the letter was sent. The letter indicated that the site was currently zoned Public Institutional and that SCWA was

prepared to work with the City of Santa Rosa in the General Plan “re-designation” of the site to Medium/High Density Residential, as part of its Housing Element revision process. Respondent was also required under the January 27, 2009, amended contract to include the “College Avenue property” as part of the City of Santa Rosa’s General Plan amendment process. Respondent’s progress reports for the period February to June 2009 reflect that Respondent’s worked to further the redesignation and rezoning of the property through the general amendment process.

Under the direct involvement test of the “nexus rule,” as set forth in Regulation 18705.3, subdivision (c), any reasonably foreseeable financial effect on a person who is a source of income to a public official is deemed material if the public official receives or is promised the income to achieve a goal or purpose which would be achieved, defeated, aided, or hindered by the decision. The “nexus rule” applied because Respondent received payments from SCWA to fulfill the terms of his contract with SCWA, which accomplished the land use redesignation of the SCWA property. Respondent’s votes as a planning commissioner directly advanced the goal of inclusion of, or incorporation of, the subject property located at 2150 West College Avenue in the City of Santa Rosa General Plan 2035 and EIR. As a City of Santa Rosa Planning Commissioner, Respondent was prohibited from voting, participating in the making, or influencing decisions, for compensation, concerning his private work. Under these facts, the financial effect on Respondent is deemed to be material as to SCWA under the provisions of Regulation 18705.3, subdivision (a).

Under Regulation 18705.3, a material financial effect existed if SCWA would be affected by even one penny, and this standard was met. On August 13, 2009, it was reasonably foreseeable that the decisions would have a material financial effect on SCWA because no processing fees were assessed.

IV. CONCLUSION

This matter is being charged as one count of violating the Act carrying a maximum administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and if applicable, whether appropriate amendments were made to provide full disclosure.

Participation in the decisionmaking process despite a disqualifying financial interest is a serious violation of the Act. Accordingly, this case justifies an administrative penalty in the amount of \$3,000 for Respondent’s votes at the August 13, 2009, Planning Commission public hearing to adopt Resolutions Nos. 11477 and 11478.

V. FACTORS IN AGGRAVATION

Respondent took a position with the State Legislature as District Director for California State Senator Pat Wiggins on or about January 22, 2007. Respondent should have been familiar with the conflict-of-interest rules of the Political Reform Act. Respondent then took a position on the City of Santa Rosa Planning Commission in January 2009 and made decisions which directly accomplished what he was contracted to do in his private capacity.

Respondent was present in at nine public hearings of the City of Santa Rosa Planning Commission regarding amendments to the General Plan 2035 and Draft or Final EIR from the period of April 2, 2009, to August 13, 2009. Respondent Allen did not publicly disclose his disqualifying interests, or potentially disqualifying interests, as required by Section 87105, so that members of the public could evaluate whether his actions were impartial.

Respondent Allen's business was an additional potentially disqualifying economic interest.

VI. FACTORS IN MITIGATION

In mitigation, Respondent has no history of violations under the Act and cooperated fully with the investigation, including providing an interview and being forthcoming and timely in the conduct of the investigation.

Also considered as a mitigating factor is Respondent's contention that the violations were unintentional. Respondent indicates: 1) That because the property was public property and because the contract ante-dated his appointment to the Planning Commission, he believed there would be no conflict of interest; 2) Prior to, and upon, appointment to the Planning Commission, he disclosed his potential conflict of interest with matters involving the SCWA on his SEI's by identifying SCWA as a source of income and identifying the potential conflict of interest on his Planning Commission application; 3) There was no obvious way of knowing the parcel had already been redesignated on the Land Use Map by staff before the Commission began deliberations; and 4) He relied too heavily on staff to inform him of what properties were involved in receiving changes to designation and zoning.

In addition, the votes were unanimous.

VII. PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).