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

12 In the Matter of ) FPPC No. 10/581  
13 )  
14 THOMAS BARTEE, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
17 )

18 Complainant Gary S. Winuk, Enforcement Chief of the Fair Political Practices Commission, and  
19 Respondent Thomas Bartee agree that this stipulation will be submitted for consideration by the Fair  
20 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 Respondents, pursuant to Section 83116 of the Government Code.

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 Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the  
27 right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 attorney at Respondents' 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 Thomas Bartee violated the Political Reform  
4 Act when, on December 18, 2007, he made a governmental decision in which he had a financial interest,  
5 in violation of Government Code Section 87100 (1 count). All counts are described in Exhibit 1.  
6 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a  
7 true and accurate summary of the facts in this matter.

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

20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary S. Winuk, Chief of Enforcement  
Fair Political Practices Commission

22  
23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas Bartee, Respondent

1 **DECISION AND ORDER**

2  
3 The foregoing Stipulation of the parties “In the Matter of Thomas Bartee,” FPPC No. 10/581,  
4 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political  
5 Practices Commission, effective upon execution below by the Chairman.

6 IT IS SO ORDERED.

7  
8 Dated: \_\_\_\_\_

9 \_\_\_\_\_  
10 Ann Ravel, Chair  
11 Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Respondent Thomas Bartee was a member of the Vallejo Redevelopment Agency at all times relevant to this complaint. As a member of the redevelopment agency, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act<sup>1</sup> (the “Act”) from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent impermissibly used his official position to make a governmental decision in which he had a financial interest.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On December 18, 2007, as member of the Vallejo Redevelopment Agency, Respondent Thomas Bartee made a governmental decision in which he had a financial interest, by voting on a design contract for the Downtown Vallejo Square Sidewalk and Street Improvement Project, Phase I, which is within 500 feet of his real property, in violation of Section 87100 of the Government Code.

### SUMMARY OF THE LAW

#### Conflicts of Interest

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subdivision (b).)

In furtherance of this goal, 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. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.<sup>2</sup>

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<sup>1</sup> 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 18109 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.

<sup>2</sup> Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official votes on a matter, obligates his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (b), a public official has a financial interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. Pursuant to Section 82035, real property is deemed to be within the jurisdiction with respect to a local government agency if the property, or any part of the property, is located within or not more than two miles outside of the boundaries of the jurisdiction, or within two miles of any land owned or used by the local governmental agency.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.2, subdivision (a)(1), real property in which a public official has an economic interest is directly involved in a governmental decision if “the real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision.” Under Regulation 18704.2, subdivision (d), if the real property is “directly involved” in a governmental decision, the materiality standards in regulation 18705.2, subdivision (a) apply.

Fifth, under Regulation 18705.2, subdivision (a), any financial effect of a governmental decision on the public official’s real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), 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 as a result of the governmental decision.

Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends on the facts of each particular case. An effect of a decision on real property is considered “reasonably foreseeable” if there is a substantial likelihood that it will affect property values, either positively or negatively, or will alter or change the use of the property in some manner. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

## SUMMARY OF THE FACTS

Respondent Bartee was a member of the City of Vallejo Redevelopment Agency at all times relevant to this complaint. Respondent Bartee owns real property, (the Georgia Street property) within 500 feet of the Downtown Vallejo Square Sidewalk and Street Improvement Project, in Vallejo, California.

On December 18, 2007, Respondent voted on Resolution 07-20, which authorized the Executive Director to execute an agreement for the design of a portion of the Downtown Vallejo Square Sidewalk and Street Improvement Project, Phase I. The motion passed, 6-0.

The Street Improvement Project included diagonal parking, curb extensions, decorative paving, pedestrian lighting, bike racks, trash receptacles, street trees and street furniture; as well as the replacement of curbs, gutters and sidewalks, including surface storm drainage modifications, as well as the rehabilitation of paving in alleyways.

### COUNT 1

#### MAKING A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. Respondent Was a Public Official as Defined by the Act

As member of the City of Vallejo Redevelopment Agency, on December 18, 2007, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against making a governmental decision in which he has a financial interest under Section 87100.

2. Respondent Made a Governmental Decision

At the December 18, 2007, City of Vallejo Redevelopment Agency meeting, Respondent Bartee voted to approve an agreement for the design of a portion of the Downtown Vallejo Square Sidewalk and Street Improvement Project, Phase I. Respondent Bartee voted on the motion to approve the contract, which was approved by a 6-0 vote. Consequently, Respondent made a governmental decision for purposes of Regulation 18702.1, subdivision (a).

3. Respondent Had an Economic Interest in Real Property

At the time of the governmental decisions, Respondent Bartee owned real property (the "Georgia Street Property") in Vallejo, California. As the real property is worth \$2000 or more, Respondent had an economic interest in real property for the purposes of section 87103, subdivision (b).

4. Respondent's Economic Interest Was Directly Involved in the Decision

Respondent's Georgia Street Property is within 500 feet of the boundaries of the Downtown Vallejo Square Sidewalk and Street Improvement Project. Therefore, the governmental decision made on December 18, 2007 to approve the project and approve a contract to implement its construction, directly involved Respondent Bartee's economic interest in real property under

Regulation 18704.2, subdivision (a)(1).

5. Applicable Materiality Standard

Because Respondent's real property was directly involved in the governmental decision, any financial effect of the decisions on his real property is presumed to be material. (Regulation 18705.2(a)(1))

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

The governmental decision which respondent made on December 18, 2007 concerned approval of a contract for a design project in a commercial section of downtown Vallejo, which included diagonal parking, curb extensions, decorative paving, pedestrian lighting, bike racks, trash receptacles, street trees and street furniture. It also involved replacement curbs, gutters and sidewalks, including surface storm drainage modifications, as well as the rehabilitation of paving in alleyways. It was reasonably foreseeable at the time Respondent made the governmental decision that the construction of these street improvements would be beneficial to Respondent's commercial property and would have some financial effect on that real property.

By making a governmental decision in which he had a financial interest, Respondent Bartee violated section 87100 of the Act.

### CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000 per violation for a total of \$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; and whether there was a pattern of violations.

Respondent contends that he always recused himself from the relevant discussion and vote when advised of potential conflicts by the city attorney's office on all prior occasions. The City Attorney's office would contact the Vallejo Public Works Department regarding agenda items; and the Department would prepare a "conflicts map" indicating if any agenda item was within a 500 foot radius of any councilmember's property. Respondent contends he voted on the December 18, 2007 resolution because he was not advised of a potential conflict by the city attorney's office. Additionally, there is no history of prior violations of the Act by Respondent.

Making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. The typical administrative penalty for a

conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties.

Other similar cases regarding a violation of Section 87100 that have been recently approved by the Commission include:

*In the Matter of Jan Horton, FPPC No. 09/671*, had a similar fact pattern; a member of the Yorba Linda City Council made a governmental decision by voting to send the 2008-2014 Draft Housing Element back to staff for refinement on the housing densities of specific parcels which were located within 500 feet of her real property. The commission approved settlement of this case, with a \$3,000 penalty for the violation, on September 22, 2011.

*In the Matter of Gregory Fox, FPPC NO. 10/798*, had a similar fact pattern; involving a cemetery district board member who made and participated in making governmental decisions, concerning the development of district property within 500 feet of his property. The agreed upon penalty in that case was \$3,000 for each conflict count, approved by the Commission on November 10, 2011.

### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, the facts of this case and consideration of penalties in prior enforcement actions, the Enforcement Division recommends the imposition of the agreed upon penalty of Three Thousand Dollars (\$3,000).