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

12 In the Matter of) FPPC No. 09/043
13)
14 JORDAN EHRENKRANZ,) STIPULATION, DECISION and
15 Respondent.) ORDER
16)
17)

18 Complainant, Fair Political Practices Commission, and Respondent Jordan Ehrenkranz, hereby
19 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
20 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 three governmental decisions in which he had a financial interest, in
5 violation of Section 87100 of the Government Code (2 counts), 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) for each count, in an amount totaling Six Thousand Dollars
11 (\$6,000). A cashier's check or money order from Respondent in said amount, made payable to the
12 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
13 administrative penalty, and shall be held by the State of California until the Commission issues its
14 decision and order regarding this matter. The parties agree that in the event the Commission refuses to
15 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
17 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
18 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

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22 Dated: _____

Gary Winuk, Enforcement Chief, on behalf of
Fair Political Practices Commission

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25 Dated: _____

Jordan Ehrenkranz, Respondent

DECISION AND ORDER

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The foregoing Stipulation of the parties “In the Matter of Jordan Ehrenkranz, FPPC No. 09/043,” 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: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

I. INTRODUCTION

In this matter, in his position as City Councilmember for the City of Canyon Lake, Respondent Jordan Ehrenkranz (“Respondent”) impermissibly made governmental decisions which had a reasonably foreseeable material financial effect on sources of income to him. For the purposes of this Stipulation, Respondent’s violations of the Political Reform Act (the “Act”),¹ are stated as follows:

- COUNT 1: On December 17, 2008, as a member of the City Council for the City of Canyon Lake, Respondent made governmental decisions by voting twice at meeting of the City Council on decisions relating to a moratorium on hillside development, in which he knew, or had reason to know, he had a financial interest, in violation of Section 87100 of the Government Code.
- COUNT 2: On January 7, 2009, as a member of the City Council for the City of Canyon Lake, Respondent made a governmental decision by voting on urgency Ordinance No. 110U - Hillside Preservation Ordinance Moratorium, 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

A. Conflicts of Interests

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.

1. Public Official: A “public official” includes a member of a city council. (Section 82048.)
2. Governmental Decisions: A public official “makes a governmental decision” when the official votes on a matter. (Reg. 18702.1, subd. (a).)
3. Economic Interests: A public official has an economic interest in:
 - a. *Business Entities* - 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, subds. (a) and (d), and Reg. 18703.1.)

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.

- b. *Sources of Income* - Any source of income, as defined in Section 82030, 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 Reg. 18703.3, subd. (a)(1).) An official also has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity which is a source of income to the official as defined in Section 87103, subdivision (c). (Reg. 18703.3, subd. (a)(2) and Reg. 18703.1, subd. (d)(2).)

4. Directly Involved Economic Interests: A person is directly involved in a decision before an official's agency when that person: (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. (Reg. 18704.1, in pertinent part.) 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. (Reg. 18705.3, subd. (a).)

Real property is directly involved in a decision if the 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. (Reg. 18704.2, subd. (a).)

5. Indirectly Involved Economic Interests: The materiality standards in Regulation 18705.1, subdivision (c), apply to a business entity that is an economic interest to an official and is indirectly involved in a decision.

The standards in Regulation 18705.3, subdivision (b), apply to sources of income that are business entities and are indirectly involved in a decision. For sources of income who are individuals, the effect of a decision is material if: a) The decision will affect the individual's income, investments, or assets or liabilities (other than real property) by \$1,000 or more; or (b) the decision will affect the individual's real property interest in a manner that is considered material under Regulation 18705.2, subdivision (b). Regulation 18705.2, subdivision (b), in turn, provides that the financial effect of a governmental decision on real property which is indirectly involved is presumed not to be material, unless there are specific circumstances regarding the decision, its financial effect, and the nature of the real property which make it reasonably foreseeable that the decision will have a material financial effect on the property. Examples of specific circumstances to be considered include the development potential or income producing potential of the real property. (Reg. 18705.1, subs. (b)1)(A).)

6. 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. (Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)²

B. Manner of Disqualification: A public official who holds an office specified in Section 87200, including a member of a city council, who has a financial interest in a decision within the

² A disqualified public official may participate in a governmental decision if he or she can establish that the effect is indistinguishable from the effect on the public generally (Reg. 18707.1); or that the public official's participation is legally required. (Section 87101 and Reg. 18708.)

meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, recuse himself or herself as specified in Section 87105 and Regulation 18702.5.

C. Statements of Economic Interests: Section 87200 lists specific public officials who are required to file statements of economic interests under the provisions of the Act, including members of city councils. Sections 87202 – 87204 provide that these officials must file assuming, annual, and leaving office statements disclosing investments, business positions, interests in real property, and income.

III. SUMMARY OF THE FACTS

A. Conflicts of Interests.

1. Public Official: On December 3, 2008, Respondent assumed office as councilmember for the City of Lake Canyon. At all relevant times, other City Council members of the City of Canyon Lake were Mayor Mary Craton, Mayor Pro Tem Nancy Horton, Councilmember Tablot, and Councilmember Martin (“Marty”) Gibson. Marty Gibson passed away in November 2010.

2. Governmental Decisions: In 2008 and 2009, the City of Canyon Lake was involved in making decisions concerning hillside preservation. At a City Council Strategic Planning session on December 9, 2008, Councilmember Talbot suggested that the City Council consider a ridgeline preservation ordinance. There was more discussion on the matter at a meeting on December 17, 2008. The City Council discussed the possibility of a preservation ordinance for Canyon Lake which could affect development of properties alongside at least seven different areas and 14 individual ridgelines within the city.

In public comment, David Carlton, testified against a possible moratorium stating that such ordinance would only affect one property and would render his property “useless.” A motion was made by Councilmember Tablot for “staff to review and determine where Canyon Lake ridgelines are and bring back to Council for further discussion on a hillside preservation ordinance. “ The motion passed with Respondent voting “Aye” and Councilmember Gibson recusing himself stating he owned property that was part of the ridgeline discussion. A second motion was made by Councilmember Tablot for a “moratorium until a decision has been made on the preservation ordinance.” Respondent voted “No” and Councilmember Gibson recused himself from the discussion again. The motion did not pass.

At a City Council special meeting on January 7, 2009, Urgency Ordinance No. 110U – Hillside Preservation Ordinance Moratorium was considered. This was an urgency ordinance to adopt a temporary moratorium for hillside preservation. It prohibited any development or construction on city hillsides. For purposes of the urgency ordinance “hillside” referred to significant slopes, hills, knolls, canyon, or similar topographic features. The moratorium would last 45 days unless removed. Councilmember Gibson recused himself on the matter again. Three councilmembers voted “Aye” and Respondent voted “No.” The motion to adopt the ordinance failed since a 4/5 vote was required.

Respondent and Councilmember Gibson recused themselves from taking action on proposed Ordinance 112, a permanent ordinance, at the city council meeting of March 4, 2009, when the City Council adopted Ordinance 112.

3. Economic Interests: Respondent and his spouse own the Ehrenrankz Family Trust, which makes loans to individuals and entities. The trust is an economic interests of Respondent within meaning of Sections 87103, subdivisions (a), (c), and (d).

Also for purposes of Section 87103, subdivision (c), Respondent's other sources of income at all relevant times include persons which had outstanding loans with Respondent's loan business, including the Hixavo Partnership ("Hixavo"), and Marty Gibson and Dave Carlton, both controlling owners of Hixavo. (Section 87103, subdivision (c); *In re Nord* (1983) 8 FPPC Ops. 6.) Respondent also had an economic interest in Hixavo and its controlling partners by virtue of a loan made by his trust to Hixavo. On or about February 21, 2008, the Ehrenkranz Family Trust loaned \$100,000 to Dave Carlton using Hixavo, a general partnership owned by Marty Gibson and Dave Carlton as general partners, as collateral on the loan. Respondent reported Hixavo as a source of income on his 2008 Assuming Office Statement dated December 30, 2008, indicating that Hixavo made loan repayments of between \$1,001 to \$10,000 during the applicable reporting period. The loan was paid off the loan on or about December 2008, through payments from Hixavo. Respondent admits he knew Councilmember Gibson and Dave Carlton were co-owners of Hixavo, which was reported by Councilmember then Marty Gibson as having a value of over \$1,000,000.

Under the provisions of Regulation 18703.3, subdivision (a)(2), Sky Blue Investments, Inc. ("Sky Blue") was also an economic interest of Respondent at all relevant times because it was "an otherwise related business entity" of Hixavo, a source of income to Respondent. The two businesses were "otherwise related" because of the shared management and control by the same persons. (Regulation 18703.1, subdivision (d).) Sky Blue partners were Marty Gibson, Dave Carlton, and Vince Martin. Marty Gibson and Dave Carlton, in turn, owned Hixavo.

Stock ownership in Sky Blue was reported by Marty Gibson on his 2007, 2008 and 2009 SEI's as being worth over \$1,000,000, and he reported he was "Director." Reported business activity included property development, which included a 35-acre parcel of undeveloped property. According to maps for the proposed ordinances, the Sky Blue parcel is within 500 feet of the ridgelines which were the subject of the hillside preservation ordinances considered in 2008 and 2009 by the Canyon Lake City Council.

4, 5 and 6. Reasonably foreseeable material financial effect on Respondent's Economic Interests.

For purposes of this matter, the relevant economic interests of Respondent were indirectly involved in the decisions. However, it was reasonably foreseeable that Marty Gibson and Dave Carlton would be financially affected by the decisions in a material manner. Councilmember Gibson and Mr. Carlton stated at public meetings, where Respondent was present, that the decisions would affect their undeveloped real property. It was substantially likely that the moratorium decisions would affect the development potential or income producing potential of their real property. It was, therefore, reasonably foreseeable that the decisions would affect their income or investments in Hixavo and/or Sky Blue by \$1,000 or more, within meaning of Regulation 18705.3, subsection (b)(3)(A). This specific circumstance also made it reasonably foreseeable that the decisions regarding a moratorium on development along the hillside of the city would have a material financial effect on the property within the meaning of Regulation 18705.3, subsection (b)(3)(B), and 18705.2, subdivision (b).

RESPONDENT'S VIOLATIONS

COUNTS 1 – 2

Respondent's votes relating to the moratorium ordinance were in violation of Section 87100.

As to Count 1, on December 17, 2008, as a member of the City Council for the City of Canyon Lake, Respondent made two governmental decisions by voting on whether to direct staff to submit for City Council consideration an urgency ordinance to adopt a temporary moratorium for hillside preservation and by voting against a moratorium on development along the hillside in the interim. As to Count 2, on January 7, 2009, as a member of the City Council for the City of Canyon Lake, Respondent made a governmental decision by voting against Urgency Ordinance No. 110U-Hillside Preservation Ordinance Moratorium.

Respondent knew, or had reason to know, he had a financial interest in these decisions, in violation of Section 87100 of the Government Code. At the time of the governmental decisions, then Councilmember Marty Gibson, Dave Carlton, and Hixavo were potentially disqualifying sources of income to Respondent of at least \$500 by virtue of his \$100,000 loan to Hixavo, which was outstanding within twelve months of the governmental decisions. Respondent was also present at meetings when Marty Gibson and Dave Carlton disclosed the potential impact of the decisions on their real property interests. It was reasonably foreseeable that due to their interests in undeveloped property which, was within 500 feet of the ridgelines, the decisions would either affect their income or investments by \$1,000 or more, within meaning of Regulation 18705.3, subsection (b)(3)(A), or the value of their property, within meaning of Regulation 18705.3, subsection (b)(3)(B).

IV. CONCLUSION

This matter is being charged as two counts of violating the Act carrying a maximum administrative penalty of Five Thousand Dollars (\$5,000) per violation for a total of Ten Thousand Dollars (\$10,000).

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.

Making a governmental decision in which an official has a financial interest is considered a serious violation of the Act as it creates the appearance that a governmental decision was made on the basis of a public official's financial interests. In aggravation, Respondent was present at several public meetings of the City of Canyon Lake regarding a hillside preservation ordinance. However, there is no record of Respondent's abstention or public disclosure of his disqualifying interests or potentially disqualifying interests, as required by Section 87105 and Regulation 18702.5, despite

recusal by Councilmember Marty Gibson, a source of income to Respondent by virtue of a loan to Hixavo Company within the previous twelve months, and Dave Carlton's public comments that a possible moratorium on development would render his property useless.

Respondent also had economic interests that could have triggered disqualification, some of which were not reported on his originally-filed SEI's. Because Respondent makes loans through his trust, the decisions regarding hillside preservation could potentially affect individuals who had undeveloped land and they could affect the character of neighborhoods, which could affect the value of real property. Specifically, Respondent made a loan to at least one business entity, Hixavo, of which both controlling owners had property affected by development decisions.

In mitigation, Respondent has no history of violations under the Act, was cooperative with the agency, and filed amendments to his SEI's properly disclosing all of his economic interests. Respondent recused himself from decisions on and following February 4, 2009. Finally, Respondent was a newly-elected official at the time of the violations and indicates he had not yet received training on the conflict-of-interest laws.

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. In February 2011, The Commission approved a \$3,000 penalty where the respondent, as a member of the City of Santa Rosa Planning Commission, made governmental decisions by voting to adopt two resolutions concerning the City's General Plan, which affected his sources of income. In mitigation, the Commission considered that the respondent cooperated with the investigation. (*In the Matter of Allen*, FPPC No. 10/123.)

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) for each violation.