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

11
12 In the Matter of) FPPC No. 12/696
13)
14 CHRIS CANNING,) STIPULATION, DECISION and
Respondent.) ORDER
15)
16)
17)

18 Complainant, the Fair Political Practices Commission, and respondent Chris Canning
19 (“Respondent”) agree that this Stipulation will be submitted for consideration by the Fair Political
20 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, 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,
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 making
4 governmental decisions in which he knew, or had reason to know, he had a financial interest, in
5 violation of Government Code section 87100 (1 count).

6 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
7 though fully set forth herein. Exhibit 1 is a true and 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 \$3,000. A cashier's check from Respondent in said amount, made payable to the "General Fund of
11 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
12 to be held by the State of California until the Commission issues its decision and order regarding this
13 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
14 become null and void, and within 15 business days after the Commission meeting at which the
15 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be
16 reimbursed to Respondent. Respondent further stipulate and agree that in the event the Commission
17 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
18 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
19 consideration of this Stipulation.

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21 Dated: _____

Gary Winuk, Enforcement Chief,
On behalf of the
Fair Political Practices Commission

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25 Dated: _____

Chris Canning, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Chris Canning” FPPC No. 12/696,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Chris Canning ("Respondent") has been a member of the Calistoga City Council (the "Council") since December 7, 2010. As a public official, Respondent was prohibited by Government Code section 87100 of the Political Reform Act (the "Act")¹ from making, participating in making, or attempting to use his official position to influence any governmental decision in which he knew, or had reason to know, he had a financial interest.

Respondent has also been the executive director of the Calistoga Chamber of Commerce ("Chamber") since March 1, 2010. At all relevant times, the Silver Rose Inn and Winery (the "Inn"), Enchanted Resorts, Inc. ("Enchanted Resorts"), and the Resort at Indian Springs, LLC ("Indian Springs"), were paying members of the Chamber.

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

COUNT 1: On May 8, May 15, August 14, August 21, September 18, December 18, 2012, and January 15, 2013, Respondent Chris Canning, in his capacity as a member of the Calistoga City Council, made governmental decisions in which he knew, or had reason to know, he had a financial interest, by voting on matters that had a reasonably foreseeable financial effect on the Calistoga Chamber of Commerce while he was the executive director of the Calistoga Chamber of Commerce, in violation of Government Code section 87100.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violations.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

Conflict-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, subd. (b).)

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.

In furtherance of this goal, Section 87100 prohibits public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, they have 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 a recognized 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.²

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 government agency. Section 82041 defines "local government agency" to include a city council.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. A public official "makes a governmental decision" when the official votes on a matter. (Regulation 18702.1, subd. (a)(1).)

Third, the official must have an economic interest that may be financially affected by the governmental decision. A public official has an economic interest in any person from whom he or she has received income aggregating \$500 or more within 12 months prior to the time when the relevant governmental decision is made. (Regulation 18703.3, subd. (a)(1).) The definition of "person" includes an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision, or if there is a nexus between the official's duties owed to the source of income and the official's public agency. A nexus exists between the official's duties owed to the source of income and the official's public agency 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).)

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. 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. (Regulation 18705.3, subdivision (c).)

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. 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. (Regulation 18706, subd. (a), *In re Thorner* (1975) 1 FPPC Ops. 198.)

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

SUMMARY OF THE FACTS

In 2011, the Inn applied to the City of Calistoga (the "City") to demolish its existing resort and build a new spa, winery, and restaurant in its place, and to establish a geothermal energy on the site.

On May 8, 2012, the Council held a special public meeting to discuss and vote on matters directly related the Inn's application. At the meeting, the Council, including Respondent, voted to approve five matters directly related to the Inn's application.

At the Council's May 15, 2012, regular public meeting, the Council, including Respondent, voted to approve two matters directly related to the Inn's application.

At the time Respondent voted on each of the seven matters, the Inn's annual membership dues to the Chamber were \$235. Based on the Inn's application to the City and the Chamber's membership dues structure at the time of the votes, the completion of its renovations would result in the Inn's annual membership dues to the Chamber increasing to \$1,709.

In 2012, Enchanted Resorts applied to the City to build a resort, including hotel units, residence club units, custom residences, a public restaurant and bar, event facilities, a spa, swimming pools, parking, and support facilities.

On August 14, 2012, the Council held a special meeting to discuss and vote on matters directly related to Enchanted Resorts' application. At the meeting, the Council, including Respondent, discussed the matters and voted to continue the discussion to August 21, 2012.

At the Council's August 21, 2012, regular public meeting, the Council, including Respondent, voted to approve six matters directly related to Enchanted Resorts' application.

At the Council's September 18, 2012, regular public meeting, the Council, including Respondent, voted to approve two matters directly related to the Enchanted Resorts' application.

At the time Respondent voted on each of the eight matters, the Enchanted Resorts' annual membership dues to the Chamber were \$235. Based on Enchanted Resorts' application to the City and the Chamber's membership dues structure at the time of the votes, the completion of its resort in Calistoga would result in Enchanted Resorts' annual membership dues to the Chamber increasing to \$2,250

In 2012, Indian Springs applied to the City to expand their resort to include additional guest rooms, a restaurant, an event building, a gym, a yoga studio, and a hotel registration building.

At the Council's December 18, 2012, regular public meeting, the Council, including Respondent, voted to approve three matters directly related to Indian Springs' application.

At the Council's January 15, 2013, regular public meeting, the Council, including Respondent, voted to approve a matter directly related to Indian Springs' application.

At the time Respondent voted on each of the four matters, Indian Springs' annual membership dues to the Chamber were \$1,181. Based on Indian Springs' application to the City and the Chamber's membership dues structure at the time of the votes, the completion of its

expansion would result in the Indian Springs' annual membership dues to the Chamber increasing to \$2,371.

1. Respondent was a Public Official:

At all times relevant to this matter, Respondent was a member of the Council, and thus a public official under the Act.

2. Respondent made a Governmental Decision:

On May 8, May 15, August 14, August 21, September 18, December 18, 2012, and January 15, 2013, Respondent, in his capacity as a member of the Council, voted on the aforementioned matters before the Council. Each time Respondent voted on a matter, he made governmental decision.

3. Respondent had an Economic Interest:

During the 12 months prior to May 8, May 15, August 21, and September 18, 2012, Respondent received approximately \$77,475.36 of income from the Chamber. During the 12 months prior to the December 18, 2012, and January 15, 2013, Respondent received approximately \$82,737.66 of income from the Chamber. He therefore had an economic interest in the Chamber at the time of each of the aforementioned decisions.

4. There was a Nexus between Respondent's Duties owed to the Chamber and the Council:

Respondent's duties as the executive director of the Chamber included overseeing all Chamber functions and promoting Chamber policies and activities. The Chamber had received presentations supportive of resort renovation and expansion and had specifically endorsed a ballot measure to approve the Inn's application after a group filed a referendum against the Inn's application and after the original Council votes in May 2012. Because the Inn, Enchanted Resorts and Indian Springs were paying members of the Chamber and Respondent's duties as the executive director of the Chamber included promoting all of the Chamber's policies, Respondent's votes on the Inn, Enchanted Resorts, and Indian Springs' applications to build, renovate, and/or expand its resorts created a nexus between Respondent's duties owed to the Chamber and his duties owed to the Council. (Regulation 18705.3, subd. (c).)

5. Any Reasonably Foreseeable Financial Effect on the Chamber met the Materiality Standard:

Because there existed a nexus between Respondent's duties to the Chamber and the Council, any reasonably foreseeable financial effect on the Chamber is deemed material. (Regulation 18705.3, subd. (c).)

6. It was Substantially Likely that Respondent's Decisions would have a Financial Effect on the Chamber:

At the time of the decisions, the Inn, Enchanted Resorts, and Indian Springs' annual membership dues to the Chamber were \$235, \$235, and \$1,181, respectively, and it was substantially likely that Respondent's decisions would result in the completion of their plans to build/renovate/expand their resorts, which would increase the Inn, Enchanted Resorts, and Indian Springs' annual membership dues to the Chamber by \$1,474, \$2,015, and \$1,190, respectively.

As such, it was reasonably foreseeable at the time of the decisions that the decisions would have a financial effect on the Chamber.

Thus, by making the above governmental decisions in which he had a financial interest, Respondent violated Section 87100.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty 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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Participating in government decisions in which an official has a financial interest may create the appearance that the governmental decisions were a product of that conflict-of-interest.

Recent penalties concerning conflict-of-interest violations include:

In the Matter of Theodore Park, FPPC No. 11/058: In July 2012, the Commission fined the Acting Deputy Director of the Real Estate Services Division of the California Department of General Services \$3,500 for making a series of governmental decisions in which he had a disqualifying financial interest by virtue of his community property interest in his wife's pro-rate share of partnership income. The respondent took full responsibility for his actions, cooperated with the Enforcement Division by agreeing to an early settlement of the matter, and had no prior enforcement actions. The spouse's total share of income attributable to the client that was directly involved in the governmental decision was \$40,000 over the four year period during which the respondent made five governmental decisions that were reasonably foreseeable to have a material financial effect on that client.

In the Matter of Antoinette Renwick, FPPC No. 10/567: In April 2013, the Commission fined a City of Oakland manager \$3,500 for awarding six Blight Abatement Performance Agreements, worth \$118,545, to a contractor who was the source of a \$50,000 loan to the respondent.

In this matter, Respondent's decisions were reasonably foreseeable to lead to a financial benefit of \$4,679 per year to his employer. Additionally, Respondent received approximately \$80,000 from the Chamber in the 12 months prior to the decisions for the purpose of promoting the interests of businesses, including the Inn, Enchanted Resorts, and Indian Springs. However, Respondent does not have a history of enforcement actions, has been cooperative in the investigation of this matter, and has agreed to an early settlement of this matter.

PROPOSED PENALTY

Accordingly, the imposition of an administrative fine of \$3,000 is recommended.

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