

1 GALENA WEST
Chief of Enforcement
2 ZACHARY W. NORTON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 16/066
13)
14 JONATHAN SHARKEY,)
15) STIPULATION, DECISION and
16) ORDER
17)

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Jonathan Sharkey 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 the Respondent, pursuant to Section 83116 of the Government Code.

24 Sharkey 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
26 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not
27 limited to, the right to personally appear at any administrative hearing held in this matter, to be
28 represented by an attorney at Sharkey's own expense, to confront and cross-examine all witnesses

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

4 It is further stipulated and agreed that Sharkey violated the Political Reform Act when, on
5 November 9, 2015, as a member of the Port Hueneme City Council, Jonathan Sharkey made a
6 governmental decision in which he had a financial interest, by voting to approve the 2015-2016 city
7 budget and Capital Improvement Program, which included funding for park improvement projects at
8 two parks located within 500 feet of Sharkey's residence, in violation of Government Code Section
9 87100 (1 count). This count is described in Exhibit 1, which is attached hereto and incorporated by
10 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
11 matter.

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

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26 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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Dated: _____

Jonathan Sharkey, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Jonathan Sharkey,” FPPC No. 16/066,
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.

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6 IT IS SO ORDERED.

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8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Jonathan Sharkey is a member of the Port Hueneme City Council. The Political Reform Act (the “Act”)¹ prohibits public officials from making, participating in making, or attempting to influence a governmental decision in which the official knows or has reason to know he has a financial interest. Sharkey violated the Act by voting to approve the 2015-2016 Capital Improvement Program, which included funding for park improvement projects at two parks located within 500 feet of Sharkey’s residence, at the November 9, 2015 meeting.

SUMMARY OF THE LAW

All statutory/regulatory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violation in question— November 9, 2015.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform 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.² To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that public officials are disqualified from certain matters in order that conflicts of interest may be avoided.³ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁴

Conflicts of Interest

The primary purpose of 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.”⁵

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. A public official makes a governmental decision when the official votes on a

¹The Political Reform Act is contained in Government Code Sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 81001, subdivision (h).

³ Section 81002, subdivision (c).

⁴ Section 81002, subdivision (f).

⁵ Section 81001, subdivision (b).

matter.⁶ 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 four steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.

Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests? In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. An effect is it reasonably foreseeable when the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.⁷

Step Two: Will the reasonably foreseeable financial effect be material? The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, or when it would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.⁸

Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?⁹

Step Four: If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision.¹⁰

SUMMARY OF THE FACTS

As a member of the Port Hueneme City Council, Sharkey made a governmental decision when he voted to approve the 2015-2016 Capital Improvement Program, at the November 9, 2015 meeting.

The Capital Improvement Project allocations included \$340,000 in general upgrades and improvements at Hueneme Beach Park, including lighting and picnic tables, and \$762,000 in improvements at Moranda Park, including basketball, tennis court, and baseball field upgrades, barbeque area improvements and lighting. Approximately \$500,000 would be spent on these projects in 2015-2016, with remainder spent over the next four years.

⁶ Regulation 18704, subdivision (a).

⁷ Regulation 18701, subdivision (b)(2).

⁸ Regulation 18702.2, subdivisions (a)(11) and (12)

⁹ Regulations 18700, subdivision (d)(3) and 18703.

¹⁰ Regulations 18700, subdivision (d)(4) and 18704.

At all times relevant to this matter, Sharkey owned real property, consisting of his personal residence, located within 500 feet of both Hueneme Beach Park and Moranda Park.

VIOLATION

Count 1: Conflict of Interest

On November 9, 2015, as a member of the Port Hueneme City Council, Jonathan Sharkey made a governmental decision in which he had a financial interest, by voting to approve the 2015-2016 Capital Improvement Program, which included funding for park improvement projects at two parks located within 500 feet of Sharkey's residence, in violation of Section 87100.

The relevant analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision are set forth below.

Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests? In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. An effect is it reasonably foreseeable when the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.¹¹

The material financial effect on Sharkey's property was reasonably foreseeable in this matter, because the governmental decision involved the approval of just over \$1.1 million in funds for improvement projects at two parks, approximately half of which would be spent on process undertaken in the upcoming fiscal year that were both located within 500 feet of his residence. In addition, Sharkey should have been able to anticipate that significant improvements and upgrades to parks in the immediate vicinity of his home would have a financial effect on his property value as a potential outcome under normal circumstances.

Step Two: Will the reasonably foreseeable financial effect be material? As Sharkey's residence is located less than 500 feet both from Huneme Bach Park and Moranda Park, the financial effect of the decision to approve the Capital Improvement Program on Sharkey's property is material. In addition, a reasonably prudent person using due care and consideration would believe that a decision to upgrade both parks would influence the market value of the house.

Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally? Sharkey's property is located within 500 feet to two parks that would receive funding for park improvement projects. Although park improvements do generally effect the residences in the immediate vicinity in a similar fashion, a significant segment (i.e. 25% of Port Hueneme residential property) cannot be found within 500 feet of both parks with improvement projects

¹¹ Regulation 18701, subdivision (b)(2).

being financed by the governmental decision. Thus, the material financial effect on his economic interest is not indistinguishable from the financial effect on the public generally and no evidence was found to the contrary.

Step Four: If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision.

By making a governmental decision in which he knew, or had reason to know, he had a financial interest, Sharkey violated Section 87100.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily filed amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Cases similar to this one include:

- *In the Matter of Harold Griffith*, FPPC No. 12/192. Harold Griffith, President of the Rancho Adobe Fire Protection District, attempted to use his official position to influence a governmental decision in which he had a material financial interest, by testifying before the City of Cotati Design Review Committee regarding a proposed highway rehabilitation project, located within 500 feet of his real property. On December 13, 2012, the Commission approved a penalty of \$3,000 for the violation.

A conflict of interest violation typically results in fines in the medium to high range. In this case, the governmental decision involved the approval of a significant amount of funding for park improvement projects. Sharkey contends he did not realize that he had a conflict of interest when he made the decision, and made no attempt to conceal his action or financial interest. He cooperated fully with Commission staff in investigating and resolving this matter. Sharkey contends that his violation of the Act was inadvertent, and that he relied on inaccurate legal advice. Sharkey also has no prior violations of the Act.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5 and penalties in prior similar cases, a penalty of \$3,000 is recommended.