

1 GALENA WEST  
Chief of Enforcement  
2 THERESA GILBERTSON  
Commission Counsel  
3 Fair Political Practices Commission  
1102 Q Street, Suite 3000  
4 Sacramento, CA 95811

5 Telephone: (916) 323-6421  
6 Facsimile: (916) 322-1932

7 Attorneys for Complainant

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

11 In the Matter of:

12 PHIL RATH,

13 Respondent.

FPPC Case No. 18/1230

14 STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent Phil Rath (“Rath”) is a member of the Civic San Diego Board of Directors, a not- for-  
17 profit economic development organization wholly owned by the City of San Diego. Board members of  
18 Civic San Diego are designated as public officials and must file periodic statements of economic interest  
19 (“SEI”) and adhere to a conflict of interest code. Rath failed to disclose a financial interest on two SEIs  
20 and subsequently made decisions as a public official on a matter involving that financial interest, in  
21 violation of the City of San Diego Ethics Ordinance<sup>1</sup> (“SD Ethics Code”) and the Political Reform Act<sup>2</sup>  
22 (“Act”).

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26 <sup>1</sup> The City of San Diego Ethics Ordinance is contained in the San Diego Municipal Code, specifically, sections  
27 27.3501, *et seq.* All references to San Diego’s ordinances are herein referred to as “SD Ethics Code” and can be accessed at  
the following link: <https://www.sandiego.gov/city-clerk/officialdocs/legisdocs/muni>

28 <sup>2</sup> The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections  
81000 through 91014. 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. All regulatory references  
are to this source.

1 On August 9, 2018, Rath and the City of San Diego Ethics Commission entered into a Stipulation,  
2 Decision, and Order regarding four violations of the SD Ethics Code, in which Rath agreed and paid an  
3 \$11,000 fine. In coordination with the City of San Diego Ethics Commission, Rath now agrees to enter  
4 into this Stipulation, Decision, and Order to resolve violations of the Act. As such, Rath agrees that there  
5 is probable cause to find that there is a violation of the Act and waives his procedural right to a hearing on  
6 this determination. Pursuant to Section 91008.5, this Stipulation, Decision, and Order is the final judgment  
7 for the violations described herein.

## 8 SUMMARY OF THE LAW

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

10 When enacting the Political Reform Act, the people of California found and declared that previous  
11 laws regulating political practices suffered from inadequate enforcement by state and local authorities.<sup>3</sup>  
12 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”<sup>4</sup> One purpose  
13 of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>5</sup>

### 14 Statement of Economic Interests

15 An express purpose of the Act is to ensure that the assets and income of public officials, which may  
16 be materially affected by their official actions, should be disclosed so that conflicts of interest may be  
17 avoided.<sup>6</sup> In furtherance of this purpose, the Act requires every local agency to adopt and promulgate a  
18 conflict of interest code, and any violation of such a code is deemed a violation of the Act.<sup>7</sup>

19 An agency’s conflict of interest code must specifically designate the positions within the agency  
20 required to file SEIs and identify what economic interests must be disclosed by officials in those positions.  
21 The Civic San Diego’s Board Corporation Policy, Section 2.0, designates Members of the Board (any and  
22 all) as a position that is required to file an assuming office, leaving office, and annual SEIs. On those SEIs,  
23 board members of Civic San Diego are required to disclose all reportable investments and business  
24 positions in, and sources of income and gifts from, any person, firm or entity that has engaged in, or  
25 provided any of the following within the boundaries of the City of San Diego during the applicable

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27 <sup>3</sup> Section 81001, subdivision (h).

<sup>4</sup> Section 81003.

28 <sup>5</sup> Section 81002, subdivision (f).

<sup>6</sup> Section 81002, subdivision (c).

<sup>7</sup> Section 87300

1 reporting period: land development; construction; acquisition or sale of real property; engineering;  
2 surveying; architecture; appraisals; soils testing, analysis, and/or compaction; office equipment and  
3 supplies; newspapers, printing and reproduction services; banks and savings and loan; securities and  
4 investment companies; title insurance and escrow; financial audit services; public utilities; insurance,  
5 including brokers and agencies; planning, landscaping and/or land use consultants. In addition, board  
6 members must report all reportable sources of income and gifts from any person, firm or entity that supplies  
7 goods or services to Civic San Diego.

8 A source of income includes the filer's pro rata share of income received by any business entity in  
9 which the filer has a ten percent or greater ownership interest.<sup>8</sup> In addition, filers must disclose the names  
10 and sources of income to a business entity if the filer's pro rata share of the gross income from a single  
11 reportable source was \$10,000 or more during the reporting period.<sup>9</sup>

### 12 **Conflict of Interest**

13 A public official may not make, participate in making or attempt to use his official position to  
14 influence a governmental decision in which he knows, or has reason to know, he has a financial interest.<sup>10</sup>  
15 A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will  
16 have a material financial effect on any source of income of \$500 or more received by the public official  
17 within 12 months prior to the decision.<sup>11</sup> A material financial effect is reasonably foreseeable when the  
18 financial interest is explicitly involved in the governmental decision, such as being the named party or is  
19 the subject of a governmental decision before the official or the official's agency.<sup>12</sup> A financial interest is  
20 the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation  
21 or any license, permit, or other entitle to, or contract with, the financial interest. When the official receives  
22 income in exchange for the sale of goods or services, the financial effect is material if the source is a  
23 claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the  
24 proceeding.<sup>13</sup>

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<sup>8</sup> Section 82030, subdivision (a).

<sup>9</sup> Regulation 18730(b)(7)(C)(2), incorporated by reference in Civic San Diego's Corporation Policy section 5.1.

<sup>10</sup> Section 87100.

<sup>11</sup> Section 87103, subdivision (c).

<sup>12</sup> Regulation 18701, subdivision (a).

<sup>13</sup> Regulation 18702.3, subdivision (a)(1).

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2 **SUMMARY OF THE FACTS**

3 Phil Rath (“Rath”) is a member of the Civic San Diego Board of Directors. Civic San Diego is a  
4 not-for-profit organization wholly owned by the City of San Diego and aims to foster public-private  
5 partnerships, economic development, and more. Rath assumed office as a member of the Civic San Diego  
6 Board of Directors on July 28, 2015 and is required to periodically file SEIs.

7 Rath holds a 49% ownership interest in Rath Miller, LLC (“Rath Miller”). On November 8, 2013,  
8 Rath Miller entered into an agreement with developer Affirmed Housing Group (“Affirmed”) to provide  
9 public affairs services in connection with Affirmed’s efforts to obtain funding from the County of San  
10 Diego for an affordable housing project located in San Marcos. In compensation for the firm’s services,  
11 Rath Miller received its first payment from Affirmed for \$22,000 on December 18, 2014. The second  
12 payment in the amount of \$100,000 was initially due on March 31, 2015, but the deadline was extended in  
13 response to a request from the client and the payment was ultimately made on August 8, 2015.

14 Affirmed engages in land development within the City of San Diego. Since Rath owns 49% of Rath  
15 Miller, he was required to report any source of income to Rath Miller where his pro rata share was \$10,000  
16 or more. For these reasons, Rath was required to disclose Affirmed as a source of income to Rath Miller  
17 on both his assuming office statement and his annual statement for 2015. Rath did report his ownership of  
18 Rath Miller and four reportable sources of income of \$10,000 or more received through the firm, but he  
19 failed to report his portion of income received from Affirmed during the reporting periods.

20 Rath had a conflict of interest due to this source of income when he participated in the discussion  
21 of and then voted for a governmental decision regarding Affirmed. On January 5, 2016, in response to a  
22 Request for Proposals issued by Civic San Diego, Affirmed submitted one of three bids to develop a  
23 143,800-square foot mixed use project at the northwest corner of Hilltop Drive and Euclid Avenue in the  
24 Chollas View neighborhood of Encanto Neighborhoods Community Planning Area in the City of San  
25 Diego (“Hilltop & Euclid project”). On June 8, 2016, the Real Estate and Budget/Finance Joint Committee  
26 of the Civic San Diego Board voted (6-0, 1 abstention) to approve the staff recommendation to enter into  
27 an Exclusive Negotiation Agreement with Affirmed to develop the Hilltop & Euclid project. Rath was a  
28 member of the Committee and participated in this matter. In addition to voting in favor of supporting the

1 staff recommendation, Respondent participated in the discussion concerning the procedural issues and the  
2 selection of Affirmed, commenting that, “I do believe that the Affirmed project is the best option for this  
3 organization.”

4 On June 22, 2016, the entire Civic San Diego Board voted (6-1) to recommend that the City Council  
5 enter into an Exclusive Negotiation Agreement with Affirmed to develop the Hilltop & Euclid project.  
6 Rath participated in this matter and voted in favor of the motion. Rath stated, “[I]t’s clear that this is the  
7 winner of this contest... and who I think we should proceed with.”

8 **VIOLATION**

9 **Count 1**

10 Failure to Timely Report an Economic Interest

11 For his position on the Civic San Diego Board, Rath failed to disclose income from Affirmed on  
12 an Assuming Office SEI and an Annual SEI for 2015, in violation of section 87300.

13 **Count 2**

14 Conflict of Interest

15 By participating in the discussion and voting in favor of Affirmed’s bid to develop the Hilltop &  
16 Euclid project on June 8, 2016 and June 22, 2016, Rath made a governmental decision he knew or should  
17 have known would have a material effect on Affirmed who Rath had a financial interest in because Rath  
18 received income of \$500 or more from Affirmed within the prior 12 months, in violation of section  
19 87100.

20 **PROPOSED PENALTY**

21 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
22 count.<sup>14</sup> Thus, the maximum penalty that may be imposed is \$10,000.

23 In determining the appropriate penalty for a particular violation of the Act, the Commission  
24 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission  
25 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention  
26 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)

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<sup>14</sup> See Section 83116, subdivision (c).

1 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were  
2 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>15</sup>

3 The Commission considers penalties in prior cases with comparable violations. *In the Matter of*  
4 *Simon Lee*, FPPC No. 16/677 (the Commission approved a stipulated decision on September 21, 2017.)  
5 Simon Lee was an alternate commissioner on the City of San Marino Planning Commission and prior to  
6 that, he was a member of the City of San Marino Design Review Committee. Lee violated the Act by  
7 failing to disclose two sources of income on his annual and leaving office SEI and by making decisions as  
8 a public official on matters involving those sources. The Commission charged one count for failure to  
9 disclose and one count for the conflict of interest for each source for a total of four counts and a total  
10 administrative penalty of \$10,000. For the two conflict counts, the Commission charged \$3,500. Lee voted  
11 on applications presented by his own clients for whom he had prepared work that was used in the  
12 applications presented to his agency. For the SEI violations, the Commission charged \$2,000 and \$1,000.  
13 The two SEI violations were charged differently because only one nondisclosure was during the time period  
14 and for the office that had the conflict of interest.

15 For count 1, a penalty of \$2,000 is recommended. Rath reported other sources of income received  
16 by and through his company, Rath Miller, but he failed to report the income from Affirmed on both an  
17 assuming office SEI and the annual SEI for 2015. This is similar to the count charged at \$2,000 in *Lee*,  
18 because the income that was not reported was relevant to a vote that took place in that year.

19 For count 2, a penalty of \$3,000 is recommended. Rath participated in and ultimately voted twice  
20 on a matter that directly involved a source of income to Rath. However, in mitigation, Rath did not work  
21 directly on the project that was before the Board, unlike the case of *Lee*.

22 Based on the foregoing, a total penalty in the amount of \$5,000 is recommended.

### 23 CONCLUSION

24 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
25 Respondent, Phil Rath, hereby agree as follows:

26 1. Respondent violated the Act as described in the foregoing pages, which are a true and  
27 accurate summary of the facts in this matter.

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<sup>15</sup> Regulation 18361.5, subdivision (d).

1           2.       This stipulation will be submitted for consideration by the Fair Political Practices  
2 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3           3.       This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
4 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
5 liability of Respondent pursuant to Section 83116.

6           4.       Respondent has consulted with his attorneys, Gil Cabrera of the Cabrera Firm and James  
7 Harrison of Remcho Johansen & Purcell, and understands, and hereby knowingly and voluntarily waives,  
8 all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through  
9 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing  
10 held in this matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-  
11 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an  
12 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter  
13 judicially reviewed.

14           5.       Respondent agrees to the issuance of the decision and order set forth below. Also,  
15 Respondent agrees to the Commission imposing against them an administrative penalty in the amount of  
16 \$5,000. One or more payments totaling said amount—to be paid to the General Fund of the State of  
17 California—is/are submitted with this stipulation as full payment of the administrative penalty described  
18 above, and same shall be held by the State of California until the Commission issues its decision and order  
19 regarding this matter.

20           6.       If the Commission declines to approve this stipulation—then this stipulation shall become  
21 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
22 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to  
23 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before  
24 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
25 shall be disqualified because of prior consideration of this Stipulation.

1           7.       The parties to this agreement may execute their respective signature pages separately. A  
2 copy of any party's executed signature page, including a hardcopy of a signature page transmitted via fax  
3 or as a PDF email attachment, is as effective and binding as the original.  
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5 Dated: \_\_\_\_\_

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Galena West, Chief of Enforcement  
Fair Political Practices Commission

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

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Phil Rath

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1           The foregoing stipulation of the parties “In the Matter of Phil Rath” FPPC Case No. 18/1230 is  
2 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon  
3 execution below by the Chair.

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5           IT IS SO ORDERED.

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7           Dated: \_\_\_\_\_

\_\_\_\_\_ Alice T. Germond, Chair  
Fair Political Practices Commission