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3 **FAIR POLITICAL PRACTICES COMMISSION**
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7

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

12 In the Matter of) FPPC No. 12/030
13)
14 KAREN BURNHAM,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Karen Burnham 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 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. It is further
3 stipulated and agreed that Respondent Karen Burnham violated the Political Reform Act by failing to
4 report gifts received in the amount of fifty dollars or more on his annual Statement of Economic
5 Interests, in violation of Sections 87300 and 87302 of the Government Code (2 counts). All counts are
6 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
7 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 Two Thousand Dollars (\$2,000). A cashier's check from Respondent in said amount, made payable
11 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

20
21 Dated: _____

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

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25 Dated: _____

Karen Burnham,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Karen Burnham,” FPPC No. 12/030,
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

EXHIBIT 1

INTRODUCTION

Respondent Karen Burnham (“Respondent”) has been the Assistant City Manager for the City of Oxnard since at least 1999. As a designated employee, Respondent is required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).¹ In this matter, Respondent received gifts exceeding the reporting threshold of \$50 in 2007 and 2008, and failed to report these gifts on her annual SEIs for those years.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: In 2007, Respondent Karen Burnham, as Assistant City Manager for the City of Oxnard, failed to report gifts received from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on her 2007 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.

COUNT 2: In 2008, Respondent Karen Burnham, as Assistant City Manager for the City of Oxnard, failed to report gifts received from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on her 2008 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a Conflict of Interest Code. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter. (Section 87300.)

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, 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 as in effect at the time of the violations, unless otherwise indicated.

Disclosure Provisions

Section 82019, subdivision (a), defines “designated employee” to include any member of any agency whose position is “designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” Each Conflict of Interest Code shall require that each designated employee file annual statements, disclosing reportable investments, business positions, interests in real property and sources of income. (Section 87302.) “Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).)

Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code and that Code shall have the force of law. In addition, any violation of that Code by a designated employee shall be a violation of the Act. Section 87302, subdivision (b), provides that an agency’s Conflict of Interest Code must require each designated employee of the agency to file annual statements of economic interests at a time specified in the agency’s conflict of interest code, disclosing investments, income, business positions, and interests in real property, held or received at anytime during the previous calendar year and that the information required to be disclosed describing these interests is the same as that required by Sections 87206 and 87207. An agency’s Conflict of Interest Code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

The City of Oxnard’s Conflict of Interest Code (“Oxnard Code”) incorporates the Regulation 18730 model code by reference and lists the position of “Assistant City Manager” as a designated employee who makes or participates in making governmental decisions which may foreseeably have a material effect on their financial interests. The Oxnard Code lists the Assistant City Manager as a designated employee in Disclosure Category 1. The Oxnard Code states that Disclosure Category 1 requires that the designated employee complete all schedules of his annual SEI to disclose²:

- “1. All financial interests, sources of income, investments and business positions and business entities located within or subject to the jurisdiction of the City [of Oxnard].
2. Business entities doing business, planning to do business, or having done business during the prior two years within the City [of Oxnard].
3. Any other financial interest, investment, interest in real property, source of income, or business position if the business entity in which the investment or business position is held, the interest in real property, financial interest or source of income may foreseeably be affected materially by any decision made or participated in by the designated person by reason of the City [of Oxnard] position held.”

² This disclosure excludes income from pensions for disability or retirement paid by a governmental entity.

Disclosure of Gifts

Section 89503, subdivision (c), of the Act states that “No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or his statement of economic interests.” The \$250 gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503, subdivision (f). For 2007 and 2008, the applicable gift limit from a single source was \$390.

Section 82028, subdivision (a), provides that a “gift” means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Regulation 18941 states that “...a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.” Regulation 18944 states that a gift confers a personal benefit on the official when the official³ enjoys a direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over who will use the gift or how to dispose of the gift. In addition, Regulation 18945, subdivision (a), states that a person is the source of a gift if the person either gives the gift directly to the official or the “person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials.” Regulation 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney’s office. Respondent Burnham was the Assistant City Manager for the City of Oxnard at all times relevant to this matter. Respondent Burnham failed to disclose J.F. Shea Co., & Affiliated Companies (“Shea LLC”), a developer who does business in the City of Oxnard, on her annual SEIs for the years 2007 and 2008 after receiving meals from Shea LLC exceeding the \$50 reporting threshold.

COUNT 1

Failure to Disclose Gifts on a Statement of Economic Interests

Respondent Burnham was the Assistant City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received. Respondent filed her 2007 SEI with the Oxnard City Clerk on March 19, 2008, and disclosed a real property interest, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent in 2007:

³ Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

Date	Gift	Donor	Value
04/10/07	Lunch	Shea LLC	\$18.40
05/20/07	Dinner	Shea LLC	\$135.86
TOTAL:			\$154.26

By failing to report \$154.26 in gifts received from Shea LLC in 2007 on her 2007 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 2

Failure to disclose gifts on a Statement of Economic Interests

Respondent Burnham was the Assistant City Manager for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received. Respondent filed her 2008 SEI with the Oxnard City Clerk on March 13, 2009, and disclosed a real property interest, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent in 2008:

Date	Gift	Donor	Value
05/18/08	Dinner	Shea LLC	\$157.18
TOTAL:			\$157.18

By failing to report \$157.18 in gifts received from Shea LLC in 2008 on her 2008 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

CONCLUSION

This matter consists of two counts, which carries a maximum possible administrative penalty 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): 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 the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

Regarding the failure to disclose gifts received over the \$50 reporting threshold on SEIs, the typical penalty amounts have varied depending on the circumstances of the case. Recent prior penalties concerning SEI disclosure violations include:

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interests provisions of the Act.
- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Burnham did not disclose gifts received from a developer who regularly does business within his jurisdiction. Respondent states that she does not drink alcohol, eat red meat, or smoke, so she believed that her personal consumption fell below the reporting threshold for these meals. Respondent has no prior history of violating the Act. Respondent amended her SEIs when contacted by the Enforcement Division. Based on the above prior cases and the information provided in this case, imposition of a \$1,000 penalty for each count is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) is recommended.