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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10  
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12 In the Matter of ) FPPC No. 15/767  
13 )  
CITY OF REDLANDS, )  
14 ) STIPULATION, DECISION and  
Respondent. ) ORDER  
15 )  
16 )  
17 )

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
19 Respondent the City of Redlands agree that this Stipulation will be submitted for consideration by the  
20 Fair 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 The City of Redlands understands, and hereby knowingly and voluntarily waives, any and all  
25 procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in  
26 Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but  
27 is not limited to, the right to personally appear at any administrative hearing held in this matter, to be  
28 represented by an attorney at the City of Redlands' own expense, to confront and cross-examine all

1 witnesses 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 the City of Redlands violated the Political Reform Act by  
5 producing and sending copies of the “A City that Works” mailer at public expense, in the summer of  
6 2015, which featured a message from, and photograph of, the mayor, in violation of Government Code  
7 Section 89001 (1 count). This count is described in Exhibit 1, which is attached hereto and  
8 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of  
9 the facts in this matter.

10 The City of Redlands agrees to the issuance of the Decision and Order, which is attached hereto.  
11 The City of Redlands also agrees to the Commission imposing upon it an administrative penalty in the  
12 amount of \$2,000. A cashier’s check from the City of Redlands, in said amount, made payable to the  
13 “General Fund of the State of California,” is submitted with this Stipulation as full payment of the  
14 administrative penalty, to be held by the State of California until the Commission issues its decision  
15 and order regarding this matter. The parties agree that in the event the Commission refuses to accept  
16 this Stipulation, it shall become null and void, and within fifteen (15) business days after the  
17 Commission meeting at which the Stipulation is rejected, all payments tendered by the City of  
18 Redlands in connection with this Stipulation shall be reimbursed to the City of Redlands. The City of  
19 Redlands further stipulates and agrees that in the event the Commission rejects the Stipulation, and a  
20 full evidentiary hearing before the Commission becomes necessary, neither any member of the  
21 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
22 Stipulation.

23 Dated: \_\_\_\_\_

\_\_\_\_\_  
Galena West, Chief of Enforcement  
Fair Political Practices Commission

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27 Dated: \_\_\_\_\_

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Paul W. Foster, on behalf of  
the City of Redlands, Respondent

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

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Sam Irwin, Redlands City Clerk, Attesting

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of the City of Redlands,” FPPC No.  
3 15/767, including all attached exhibits, is hereby accepted as the final decision and order of the Fair  
4 Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_  
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10 Joann Remke, Chair  
11 Fair Political Practices Commission  
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## **EXHIBIT 1**

### **INTRODUCTION**

Respondent is the City of Redlands (“Redlands”), located in San Bernardino County.

This case was self-reported by the Redlands City Attorney, who stated that Redlands produced and sent well over 200 copies of a mass mailer, at city expense, which included a message from the mayor, along with his name and photograph.

The Political Reform Act<sup>1</sup> (the “Act”) prohibits the sending of any mass mailing, featuring an elected official, at public expense.

### **SUMMARY OF THE LAW**

#### **Mass Mailing at Public Expense**

A “mass mailing” is defined by of the Act as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.<sup>2</sup>

No mass mailing may be sent at public expense.<sup>3</sup> A mailing is prohibited if all of the following criteria are met:<sup>4</sup>

- (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. The item delivered must be a tangible item, such as a written document.
- (2) Features an elected officer affiliated with the agency which produces or sends the mailing. An item features an elected officer when the item includes, among other things, the elected officer’s photograph or signature.<sup>5</sup> A mailing containing the name, office, photograph or any other reference to an elected officer who consults or acts in concert with the agency to prepare or send the mailing also fulfills the second criteria.
- (3) Costs of design production and printing exceeding \$50.00 are paid with public moneys, and the design, production or printing is done with the intent of sending the item other than as permitted by this regulation, and
- (4) More than two hundred substantially similar items are sent, in a single calendar month.<sup>6</sup>

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. The Regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

<sup>2</sup> Section 82041.5.

<sup>3</sup> Section 89001.

<sup>4</sup> Regulation 18901, subdivision (a).

<sup>5</sup> Regulation 18901, (c)(2).

<sup>6</sup> Regulation 18901, subdivision (b), contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.

## SUMMARY OF THE FACTS

In the summer of 2015, Redlands prepared and sent a mass mailing, at public expense, featuring Mayor Paul W. Foster. The mailer, a publication entitled “A City that Works,” was prepared by staff at the utilities department, and mailed to all water customers in Redlands. The inside cover included a message from the mayor, along with his photograph and title. The costs for the design, printing, and postage exceeded \$50, and were paid for by Redlands.

## VIOLATION

City of Redlands produced and sent copies of the “A City that Works” mailer at public expense, in the summer of 2015, which featured a message from, and photograph of, the mayor, in violation of Government Code Section 89001.

## CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“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 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.

The Commission also considers penalties in prior cases involving similar violations. Recent penalties for sending a newsletter or mass mailing featuring an elected officer at public expense include:

*In the Matter of the City of Temecula and Jeff Comerchero*; FPPC No. 13/924. The City of Temecula and Jeff Comerchero, an elected Temecula City Councilmember, sent two brochures, at public expense, featuring Comerchero, an elected member of the Temecula City Council, with a message by, signature of and photograph of Comerchero. The Commission approved a penalty of \$2,000 for each count on April 17, 2014.

*In the Matter of Truckee Tahoe Airport District*; FPPC No. 14/774. The District produced and sent two separate newsletters, each of which included an interview with and photograph of a member of the District’s board. There was no evidence the board members knew the photographs

would be included, as this was also done by staff without their knowledge. The Commission approved a penalty of \$2,000 for each count on January 15, 2015.

Using public funds to pay for the design and production of a mass mailing featuring an elected officer can be a serious violation of the Act as it misuses public funds for prohibited purposes. Redlands cooperated with the investigation, has no prior history with the Enforcement Division, and is taking steps to review all future city publications prior to distribution. In addition, the mayor is not up for re-election until 2018.

### **PROPOSED PENALTY**

After considering the factors listed above, a penalty of a penalty of \$2,000 for the Count is recommended.