

1 ANGELA J. BRERETON  
Chief of Enforcement  
2 THERESA GILBERTSON  
Senior Commission Counsel  
3 Fair Political Practices Commission  
1102 Q Street, Suite 3000  
4 Sacramento, CA 95811

5 Telephone: (916) 323-6421  
6 Email: tgilbertson@fppc.ca.gov

7 Attorneys for Complainant

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

11 In the Matter of:

12 DIRK STARBUCK,

13 Respondents.

FPPC Case No. 18/00297

14 STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent Dirk Starbuck (“Starbuck”) is a councilmember for the City of Lompoc. He was first  
17 elected in 2010 and has served continuously.

18 This case arose from two sworn complaints.

19 The Political Reform Act<sup>1</sup> (“Act”) prohibits officials from making, participating in making, or  
20 attempting to influence governmental decisions in which the official knows or has reason to know they  
21 have a financial interest. Starbuck participated in discussions and voted on governmental decisions as a  
22 member of the Lompoc City Council. The governmental decisions at issue had a reasonably foreseeable  
23 material effect on Starbuck’s financial interest.

24  
25  
26  
27  
28 <sup>1</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 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. All legal references and discussions  
3 of law are intended to be citations to statutes and regulations as they existed at the time of the violations  
4 in this case.

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

6 When enacting the Political Reform Act, the people of California found and declared that  
7 previous laws regulating political practices suffered from inadequate enforcement by state and local  
8 authorities.<sup>2</sup> Thus, it was decreed that the Act “should be liberally construed to accomplish its  
9 purposes.”<sup>3</sup>

10 One purpose of the Act is to ensure that public officials perform their duties in an impartial  
11 manner, free from bias caused by their own financial interests or the financial interests of persons who  
12 have supported them.<sup>4</sup> Along these lines, the Act requires that the assets and income of public officials  
13 are required to be disclosed and in appropriate circumstances.<sup>5</sup> Further, the officials should be  
14 disqualified from acting in order that conflicts of interest may be avoided.<sup>6</sup>

15 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will  
16 be “vigorously enforced.”<sup>7</sup>

17 **Conflicts of Interest**

18 A public official may not make, participate in making, or attempt to use their official position to  
19 influence a governmental decision in which they know, or have reason to know, they have a financial  
20 interest.<sup>8</sup> A public official has a financial interest in a governmental decision if it is reasonably  
21 foreseeable that the decision will have a material financial effect, distinguishable from its effect on the  
22 public generally, on any real property in which the public has a direct or indirect interest of at least  
23 \$2,000 or on a business entity in which the public official has a direct or indirect investment worth at  
24

25  
26 <sup>2</sup> Section 81001, subdivision (h).

<sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81001, subdivision (b).

<sup>5</sup> Section 81002, subdivision (c), Section 87100, and Sections 87200 *et seq.*

<sup>6</sup> Sections 87100, *et seq.*

28 <sup>7</sup> Section 81002, subdivision (f).

<sup>8</sup> Section 87100.

1 least \$2,000.<sup>9</sup> A business entity is defined as any organization or enterprise operated for profit, including  
2 but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation,  
3 or association.<sup>10</sup> This would include the rental of property to commercial tenants.

4 To determine whether a public official has a prohibited conflict of interest under the Act, the first  
5 step is to determine whether it is reasonably foreseeable for the governmental decision to have a financial  
6 effect on the public official's financial interests.<sup>11</sup> For a financial interest not explicitly involved in a  
7 decision, a financial effect need not be likely to be considered reasonably foreseeable. In general, if the  
8 financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is  
9 reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not  
10 subject to the public official's control, it is not reasonably foreseeable.<sup>12</sup> If a decision will provide or  
11 deny an opportunity or create an advantage or disadvantage for one of the official's financial interests,  
12 the effect would be considered reasonably foreseeable.<sup>13</sup>

13 The second step is to determine if the reasonably foreseeable financial effect will be  
14 foreseeable.<sup>14</sup> For a real property interest of an official, the financial effect is material if the  
15 governmental decision would:

- 16 1) change the development potential of the parcel of real property,<sup>15</sup>
- 17 2) change the highest and best use of the parcel of real property in which the official has a  
18 financial interest;<sup>16</sup>
- 19 3) Change the character of the parcel of real property by substantially altering traffic levels or  
20 intensity of use, including parking, of property surrounding the official's real property parcel,  
21 the view, privacy, noise levels, or air quality, including odors, or any other factors that would  
22 affect the market value of the real property parcel in which the official has a financial  
23 interest;<sup>17</sup>

---

25 <sup>9</sup> Section 87103 and Regulation 18700.

26 <sup>10</sup> Section 82005.

27 <sup>11</sup> Regulation 18700, subdivision (d)(1).

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

<sup>13</sup> Regulation 18701, subdivision (b)(5).

<sup>14</sup> Regulation 18700, subdivision (d)(2).

<sup>15</sup> Regulation 18702.2, subdivision (a)(7).

<sup>16</sup> Regulation 18702.2, subdivision (a)(9).

<sup>17</sup> Regulation 18702.2, subdivision (a)(10).

1 4) Would cause a reasonably prudent person, using due care and consideration under the  
2 circumstances, to believe that the governmental decision was of such a nature that its  
3 reasonably foreseeable effect would influence the market value of the official's property.<sup>18</sup>

#### 4 **SUMMARY OF THE FACTS**

5 At all relevant times, Starbuck owned a parcel of real property located in a zoning district known  
6 as the Old Town Commercial District ("OTC.") Starbuck disclosed his ownership of this property on  
7 annual statements of economic interests.

8 As a member of a city council, Starbuck is subject to the conflict of interest provisions of the Act.  
9 Starbuck had a conflict of interest when he participated in and voted on matters that had a reasonably  
10 foreseeable material financial effect on his financial interests.

11 On November 7, 2017, the City of Lompoc adopted Ordinance 1640(18) to allow commercial  
12 cannabis dispensaries where the zoning permitted pharmacies as a land use by right. At the time, the  
13 OTC, where Starbuck's real property interest is located, did not permit pharmacies by right and therefore  
14 this district was ineligible for commercial cannabis dispensaries. Starbuck was not present at this meeting  
15 and did not take action on this item.

16 On February 6, 2018, the city council directed staff to begin drafting an ordinance to permit  
17 commercial cannabis dispensaries in the OTC. The consensus at the time was that the cannabis industry  
18 would help to bring economic growth to the OTC through increased tax revenue and increased foot  
19 traffic. Starbuck participated in this discussion.

20 On February 20, 2018, the city council considered a proposed ordinance No. 1646(18) to permit  
21 commercial cannabis dispensaries in the OTC District. At the introduction, the City Attorney presented  
22 the proposed ordinance and information indicating what parcels would be eligible for a cannabis  
23 dispensary under the proposal and under the staff's interpretation of state law. The City Attorney noted  
24 that most of the OTC would currently be ineligible to be a cannabis dispensary due to a state law  
25 requiring a 600-foot set back zone or buffer zone around "youth centers." Of note, the staff determined  
26 that dance studios qualified as "youth centers" because it was understood that the studios catered  
27 primarily to youths. The dance studios located in the OTC had the effect of creating a buffer zone large  
28

---

<sup>18</sup> Regulation 18702.2, subdivision (a)(12).

1 enough that it rendered most of the OTC ineligible for the permit to be a cannabis dispensary under the  
2 state law. Starbuck's property was located in one of the buffer zones presented at the meeting due to a  
3 dance studio. At this meeting, the City Attorney expressed that Starbuck was permitted to participate and  
4 vote to advance the ordinance because his property was inside the buffer zone.

5 During this discussion item, Starbuck asked why the staff was interpreting a dance studio to fall  
6 under the definition of "youth center." The City Attorney advised the council that the council could make  
7 its own interpretation of youth center to exclude dance studios but cautioned that Starbuck would have to  
8 recuse himself because under a new interpretation, Starbuck's property could become eligible to be a  
9 dispensary. As the City Council continued to discuss the dance studio issue, the City Attorney again  
10 admonished that Starbuck should leave the room. Starbuck left for part of the meeting. However,  
11 Starbuck returned to participate in the vote to advance the ordinance as proposed by staff, even though  
12 Starbuck's property was in the area that was being regulated.

13 On March 6, 2018, the council again discussed the interpretation of dance studios as "youth  
14 centers." At no time did the City Attorney repeat his advice that Starbuck recuse himself from these  
15 discussions. At the meeting, there was no comment made as to Starbuck's participation. Starbuck  
16 remained at the dais for the discussion. A council member made a motion to remove dance studios from  
17 the definition of "youth centers." Starbuck seconded the motion, but the motion failed.

18 On March 20, 2018, the council voted, including Starbuck, to adopt Ordinance 1646(18) to allow  
19 commercial cannabis dispensaries in the OTC. At that time of adoption, Starbuck's property would not  
20 have been eligible to be a commercial cannabis dispensary because of a nearby dance studio located  
21 within 600 feet of Starbuck's property. However, the decision changed the development potential for the  
22 property and the surrounding OTC.

23 On April 3, 2018, the council voted, by a 3-2 margin, that dance studios would not be considered  
24 "youth centers" for purposes of the buffer zones. The council directed staff to remove the buffer zones  
25 around any and all currently operating dance studios inside the City of Lompoc. As a result of this  
26 direction, Starbuck's property was now outside of any buffer zone created by the location of a youth  
27 center and therefore would be eligible to apply to be a commercial cannabis dispensary under the  
28 ordinance.

1 Under the Act, a conflict of interest is where there is a reasonable foreseeability that a  
2 governmental decision will have a material financial effect on an official's financial interest. The first  
3 step is to determine if the decision is reasonably foreseeable to have a financial effect. In this mater, both  
4 decisions provided a new opportunity for Starbuck by authorizing cannabis dispensaries, a potentially  
5 lucrative business, on Starbuck's real property interest. The March 20 vote to adopt Ordinance 1646(18)  
6 was reasonably foreseeable to have a financial effect because though Starbuck's property was not eligible  
7 at a time, the condition creating the ineligibility was not in the law itself but rather the conditions on the  
8 ground (the existence of a dance studio in the vicinity.) It is possible that in the future, the dance studio  
9 would move or would change character sufficient to no longer be a "youth center," and the property  
10 would then be eligible to be a cannabis dispensary by virtue of the authorizing ordinance. As it is a  
11 realistic possibility that the buffer zones could change over time as local businesses open and close and  
12 as the ordinance authorized a new, potentially lucrative, land use for the OTC, it is reasonably  
13 foreseeable that the ordinance would have a financial effect on Starbuck's property. The April 3 vote was  
14 reasonably foreseeable because the vote had the effect of reducing the buffer zones inhibiting the  
15 permitting of cannabis dispensaries, allowing more parcels to possibly become a dispensary. The vote  
16 also had the effect of removing a condition that made Starbuck's property ineligible for the permit.

17 The second step is to determine if the reasonably foreseeable financial effect will be material. The  
18 reasonably foreseeable financial effect of a governmental decision on a parcel of real property is material  
19 whenever the decision would change the developmental potential of the parcel of real property. In this  
20 case, both decisions change the development potential by offering new opportunities or removing  
21 barriers from that opportunity. Materiality is also present when the decision would change the highest  
22 and best use of the parcel of real property. In this case, both decisions would allow Starbuck to change  
23 how he uses the parcel. Materiality is also present when the decision would change the character of the  
24 parcel of real property. At the hearings, the City Council and many public commenters were focused on  
25 how the ordinance authorizing cannabis dispensaries in Lompoc could help revitalize the local economy,  
26 especially in the OTC. Both decisions—to allow dispensaries in the OTC and the decision to remove  
27 dance studios from being interpreted as youth centers—have the potential to change the character of the  
28 parcel by bringing in additional businesses and customers to the OTC. Materiality is also present when

1 the decision would cause a reasonably prudent person to believe that the decision would influence the  
2 market value of the official's property. As stated above, one intent of the ordinance was to improve the  
3 local tax base and encourage local economic growth. By expanding cannabis dispensaries to the OTC,  
4 the decisions could have an anticipated effect of improving the value of real property in the OTC by  
5 making the OTC a more desirable location to do business in.

6 Based on the foregoing, Starbuck had a conflict of interest with respect to the March 20, 2018 and  
7 April 3, 2018 decisions.

## 8 VIOLATIONS

### 9 Count 1: Conflict of Interest

10 Starbuck had a conflict of interest when he participated in and ultimately voted on March 20,  
11 2018 for a governmental decision that had a reasonably foreseeable material financial effect on his  
12 financial interest, in violation of Government Code Section 87100.

### 13 Count 2: Conflict of Interest

14 Starbuck had a conflict of interest when he participated in and ultimately voted on April 3, 2018  
15 for a governmental decision that had a reasonably foreseeable material financial effect on his financial  
16 interest, in violation of Government Code Section 87100.

## 17 PROPOSED PENALTY

18 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
19 count.<sup>19</sup> Thus, the maximum penalty that may be imposed is \$10,000.

20 This matter does not qualify for the Streamline Program because it involves a conflict of interest.

21 In determining the appropriate penalty for a particular violation of the Act, the Enforcement  
22 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an  
23 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division  
24 considers the facts and circumstances of the violation in the context of the following factors set forth in  
25 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused  
26 by the specific violation; (2) The level of experience of the violator with the requirements of the Political  
27 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence

28  

---

<sup>19</sup> See Section 83116, subdivision (c).

1 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,  
2 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission  
3 staff or any other governmental agency in a manner not constituting complete defense under Government  
4 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the  
5 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the  
6 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

7 A conflict of interest is a serious violation of the Act with a high degree of public harm. This type  
8 of violation undermines public trust in government by creating the appearance that the decision was the  
9 product of a conflict of interest. Such conduct contradicts the Act’s decree that public officials should  
10 serve the needs of all citizens in an impartial manner—free from bias caused by their own financial  
11 interests.

12 Starbuck is an experienced public official, having served in office since 2010 and knew or should  
13 have known of the Act’s prohibition against conflicts of interest. In addition, Starbuck was advised by  
14 the city’s attorney to recuse himself from the discussion regarding the interpretation of “youth centers.”  
15 While Starbuck initially took this advice, he ultimately participated in and voted in that decision. In  
16 aggravation, though Starbuck reported his real property interest, he failed to disclose the rental income  
17 generated by this property. According to Starbuck, he did not report the income because he had a verbal  
18 agreement with the other owner of the property that all income would go to the majority owner. As the  
19 minority owner, Starbuck did not actually receive the income, although he was legally entitled to and  
20 should have reported up to the prorated portion of the income. Starbuck’s annual share of reportable  
21 income was less than \$3,000. As the real property interest was timely and accurately disclosed, the share  
22 of reportable income was less than \$10,000 per year, and Starbuck has since amended his Statements of  
23 Economic Interest to disclose this income, this reporting error is considered as aggravation for settlement  
24 purposes.

25 The Commission has previously considered another stipulation involving a conflict of interest: *In*  
26 *the Matter of Leticia Perez*, FPPC No. 19/960 (The Commission approved a settlement in this matter on  
27 June 18, 2020.) The respondent had an economic interest in her spouse’s business and through that  
28 business, had an economic interest in a cannabis business. The respondent had a conflict of interest when



1 she voted on a decision to ban the sale of cannabis and related products. The Commission imposed a  
2 penalty of \$4,000.

3 There is no evidence that Starbuck acted with intent to conceal or deceive. Starbuck disclosed his  
4 ownership in the real property in his timely filed SEIs. His interest was also discussed at meetings.

5 With respect to the March 20, 2018 decision to adopt the ordinance allowing cannabis  
6 dispensaries in the OTC, the evidence suggests that the violations were negligent and resultant from a  
7 mistaken understanding of the law. At the time of this vote, the City Council was advised that most of the  
8 OTC, including Starbuck's property, was ineligible for a cannabis dispensary due to the state law  
9 requiring a set back for youth centers. Additionally, Starbuck was informed by the City Attorney that  
10 because his property was inside the buffer zone, he was permitted to participate and vote on the  
11 ordinance. However, as discussed above, it was reasonably foreseeable that the ordinance would have a  
12 financial effect on the property and that the effect was material because the ordinance created a new  
13 opportunity for the highest and best use of the property and the ordinance would change the  
14 characteristics of the area surrounding Starbuck's property.

15 However, with respect to the April 3, 2018 decision to interpret "youth centers" as excluding  
16 dance studios, Starbuck failed to heed the previous advice of the City Attorney. There was no public  
17 discussion as to why Starbuck either had or did not have a conflict with respect to the April 3, 2018  
18 decision. After the complaint was received, the response from the City Attorney, on behalf of Starbuck,  
19 stated that they believed that the public generally exception applied. However, the Enforcement  
20 Division's investigation did not find evidence to substantiate that assertion. In addition, Starbuck asserts  
21 that his property contained an older building and that it was not a viable building for a cannabis  
22 dispensary. The Enforcement Division did not obtain evidence to confirm or deny the suitability of the  
23 building for a dispensary. Starbuck also noted that he had no intention to convert or take on a cannabis  
24 dispensary as a tenant.

25 The Enforcement Division has no evidence to suggest a pattern of violations. Starbuck has no  
26 prior history of violations.

27 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a  
28 penalty of \$3,000 is recommended for Count 1, the conflict involving the adoption of the ordinance to

1 allow dispensaries in the OTC and a penalty of \$5,000 is recommended for Count 2, the decision to  
2 exclude dance studios from the interpretation of “youth centers” for purposes of setting a set back or  
3 buffer zone for cannabis dispensaries. A total penalty of \$8,000 is recommended.

4 **CONCLUSION**

5 Complainant, the Enforcement Division of the Fair Political Practices Commission, and Dirk  
6 Starbuck hereby agree as follows:

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

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

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

14 4. Respondent understands, and hereby knowingly and voluntarily waives, any and all  
15 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.  
16 This includes, but is not limited to the right to appear personally at any administrative hearing held in this  
17 matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-examine all  
18 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
19 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
20 reviewed.

21 5. Respondent agrees to the issuance of the decision and order set forth below. Also,  
22 Respondent agrees to the Commission imposing against them an administrative penalty in the amount of  
23 \$8,000 One or more payments totaling said amount—to be paid to the General Fund of the State of  
24 California—is/are submitted with this stipulation as full payment of the administrative penalty described  
25 above, and same shall be held by the State of California until the Commission issues its decision and  
26 order regarding this matter.

27 6. If the Commission declines to approve this stipulation—then this stipulation shall become  
28 null and void, and within fifteen business days after the Commission meeting at which the stipulation is

1 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to  
2 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
3 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
4 Director, shall be disqualified because of prior consideration of this Stipulation.

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

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

\_\_\_\_\_  
Angela J. Brereton, Chief of Enforcement  
Fair Political Practices Commission

10  
11  
12 Dated: \_\_\_\_\_

\_\_\_\_\_  
Dirk Starbuck

1           The foregoing stipulation of the parties “Dirk Starbuck,” FPPC Case No. 18-297 is hereby  
2 accepted as the final decision and order of the Fair Political Practices Commission, effective upon  
3 execution below by the Chair.

4  
5           IT IS SO ORDERED.

6  
7           Dated: \_\_\_\_\_

\_\_\_\_\_ Richard C. Miadich, Chair  
Fair Political Practices Commission