

Item 12 - 20-41.3 Proposed Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
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5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

14 WILLIAM WITTE,

15 Respondent.
16
17
18

) Case No.: 20-41.3

) **STIPULATION, DECISION AND**
) **ORDER**

19 _____
20 **STIPULATION**

21
22 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
23 respondent WILLIAM WITTE, agree as follows:

- 24
25 1. This Stipulation will be submitted for consideration by the City of Oakland Public
26 Ethics Commission (Commission) at its next regularly scheduled meeting;
27 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
28 the final resolution to this matter without the necessity of holding an administrative

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1 hearing to determine the liability of, or penalties and/or other remedies to be imposed
2 upon, Respondent;

- 3 3. Respondent knowingly and voluntarily waives all procedural rights under the Oakland
4 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
5 Procedures, and all other sources of procedural rights applicable to this PEC
6 enforcement action. These procedural rights include, but are not limited to, the right to
7 personally appear at an administrative hearing held in this matter, to be represented by
8 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
9 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 10 4. Respondent represents that they have accurately furnished to the Commission all
11 discoverable information and documents that are relevant to the Commission's
12 determination of a fair and comprehensive resolution to this matter;
- 13 5. Upon approval of this Stipulation and full performance of the terms outlined in this
14 Stipulation, the Commission will take no future action against Respondent, including
15 any officer, director, employee, or agent of Respondent, regarding the activities
16 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
17 complete resolution of all claims by the Commission against Respondent, including any
18 officer, director, employee, or agent of Respondent, related to such activities and any
19 associated allegations;
- 20 6. If Respondent fail to comply with the terms of this Stipulation, then the Commission
21 may reopen this matter and prosecute Respondent to the full extent permitted by law,
22 except that the Statute of Limitations shall be waived for any violations that were not
23 discoverable or actionable by the Commission due to non-compliance with any
24 provision of this Stipulation;
- 25 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
26 does not preclude the Commission or its staff from cooperating with, or assisting any
27 other government agency with regard to this matter, or any other matter related to it;
28 except that neither the Commission nor its staff shall refer this matter, or any other

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1 matter related to it, as pertains to any alleged violation by Respondents, to any other
2 government agency;

3 8. Respondent admits no violation of, nor any liability under, the provision(s) of the
4 Oakland Municipal Code specified in Exhibit #1 to this Stipulation, nor any other
5 provision(s) of the Oakland Municipal Code. Respondent nevertheless seeks to resolve
6 this matter via this Stipulation and is not contesting the allegation(s) described in
7 Exhibit #1 to this Stipulation;

8 9. The Commission will impose upon Respondent the penalties and/or other remedies
9 specified in Exhibit #1 to this Stipulation;

10 10. Respondent will pay the amount specified in Exhibit #1 to this Stipulation to the City of
11 Oakland general fund within sixty (60) calendar days of the date on which the
12 Commission votes to accept this Stipulation. Commission staff may extend the payment
13 deadline at its discretion;

14 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
15 void, and within fifteen business days after the Commission meeting at which the
16 Stipulation is rejected, any payments already tendered by Respondent in connection
17 with this Stipulation will be reimbursed to them;

18 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
19 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
20 and neither any member of the Commission, nor the Executive Director or any member
21 of PEC staff, shall be disqualified from that hearing because of prior consideration of
22 this Stipulation;

23 13. This Stipulation may not be amended orally. Any amendment or modification to this
24 Stipulation must be in writing duly executed by all parties and approved by the
25 Commission at a regular or special meeting, except for any extension to the payment
26 deadline described in paragraph 10, which Commission staff may grant at its sole
27 discretion and which need only be in writing not requiring execution;

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14. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California and the City of Oakland. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable; and

15. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document. Verified electronic signatures shall have the same effect as wet signatures. The parties need not sign this agreement until after the Commission has voted to accept it.

So agreed:

Simon Russell, Chief of Enforcement
City of Oakland Public Ethics Commission, Petitioner

Dated

William Witte, Respondent

Dated

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DECISION AND ORDER

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The foregoing Stipulation of the parties to “In the Matter of WILLIAM WITTE,” PEC Case No. 20-41.3, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

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INTRODUCTION & FACTUAL SUMMARY

This case concerns a campaign contribution made by William Witte on October 21, 2020, to an Oakland political committee called the Committee for an Affordable East Bay (FPPC ID # 1428904; “campaign committee”). At the time Witte made his donation he was the part-owner of a subsidiary company (95th & International Housing Partners, L.P.) that was seeking to lease City-owned land in East Oakland for purposes of an affordable housing and commercial retail development. (The City Council approved the proposed lease on September 15, 2020). City contractors are prohibited from making campaign contributions to candidate-controlled committees at certain times, as set forth in more detail below.

The City of Oakland Public Ethics Commission (“PEC”) contends that the campaign committee was actually a “candidate-controlled” committee of then-Mayor Libby Schaaf. Witte takes no position regarding the PEC’s allegation that the campaign committee was

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1 candidate-controlled.¹ The parties to this Stipulation, however, acknowledge and agree that
2 the campaign committee was not registered as candidate-controlled at the time Witte made
3 his contribution or at any time thereafter, nor was Witte ever informed that the campaign
4 committee was candidate-controlled.

5 PEC staff and Respondent have agreed to settle this matter without an administrative
6 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
7 analysis to the PEC for its approval. Together, PEC staff and Respondents recommend
8 approval of their agreement, including a settlement payment totaling \$2,500 (Two Thousand
9 Five Hundred Dollars) as described in more detail below.

SUMMARY OF LAW & LEGAL ANALYSIS

12 All statutory references and discussions of law pertain to the referenced statutes and
13 laws as they existed at the time of the violations.

14 All definitions of terms are the same as those set forth in the California Political Reform
15 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
16 is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter
17 3.12) or the contrary is stated or clearly appears from the context.²

18 Provisions of the California Political Reform Act relating to local elections, including
19 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
20 (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.³

23
24 ¹ The PEC, the Committee For An Affordable East Bay, and Libby Schaaf and pursuing a separate settlement
25 regarding these allegations; see PEC case # 20-41.1.

26 ² OMC § 3.12.040.

27 ³ OMC § 3.12.240(d).

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Oakland’s Ban on Contributions From City Contractors at Certain Times

City contractors are prohibited from making a contribution, in any amount, to a candidate-controlled committee during what is informally known as the blackout period.⁴

Relevant here, OCRA’s “city contractor” prohibition applies to an individual or entity who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for (among other things) the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, or for purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council.⁵

If the alleged contractor is a business entity, the restriction applies to all of the entity’s principals, including, but not limited to, the entity’s board chair, president, chief executive officer (CEO), and any individual who serves in the functional equivalent of one or more of those positions.⁶

The blackout period is any time between commencement of negotiations and one hundred eighty (180) days after the completion or the termination of negotiations for such contract.⁷

⁴ OMC § 3.12.140(A).

⁵ OMC § 3.12.140(A).

⁶ OMC § 3.12.140(C).

⁷ OMC § 3.12.140(A).

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Element 1: Candidate-Controlled Committee

The first required element of the contractor contribution ban is to show that the receiving committee was candidate-controlled.

Here, the PEC asserts that the campaign committee was a candidate-controlled committee. For purposes of this settlement agreement, Respondent can neither confirm nor deny that the campaign committee was a candidate-controlled committee.

Element 2: City Contractor

The second required element to establish a violation of the contractor contribution ban, is to show that the donor in question qualified as a “contractor.”

Here, Witte made a \$7,500 contribution to the campaign committee on October 21, 2020. At the time Witte made his donation he was the part-owner of a subsidiary company (95th & International Housing Partners, L.P.) that was seeking to lease City-owned land in East Oakland for purposes of an affordable housing and commercial retail development. (The City Council approved the proposed lease on September 15, 2020). As such, Witte was the principal of an entity that was proposing to lease City-owned land, in an amount that required approval by the City Council. He therefore qualified as a contractor and was prohibited from donating to the PAC in this case during the blackout period.

Element 3: Blackout period

The third and final required element to establish a violation of the contractor contribution ban, is to show that the donations in question were made during the blackout

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1 period, which is anytime after the commencement and negotiations up until six months after
2 the contract has been executed.

3 As stated above, Witte made his contribution on October 21, 2020. At the time he made
4 his contribution, his company (95th & International Housing Partners, L.P.) had just received
5 City Council approval to negotiate a lease agreement with the City on September 15, 2020. As
6 such, Witte’s company was engaged in contract negotiations with the City at the time he
7 made his contribution to the candidate controlled campaign committee. His contribution
8 therefore fell within the blackout period.

COUNTS:
WILLIAM WITTE

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13 Respondents, William Witte, has reached a proposed settlement with the PEC
14 regarding activity that implicates the following Oakland Municipal Code(s):

15
16 **Count 1: Contribution from a City Contractor to a Candidate-Controlled Committee**

17
18 On or around October 21, 2020, Respondents William Witte made a contribution in the
19 amount of \$7,500 to a committee (Committee For An Affordable East Bay Supporting Derreck
20 Johnson and Opposing Rebecca Kaplan for Oakland City Council At-Large 2020 (the
21 “campaign committee”)) that the PEC maintains was candidate-controlled.

22 As a principal of a City contractor, Witte was prohibited from making contributions to
23 a candidate-controlled committee. Without taking a position on the question of whether the
24 PAC was candidate-controlled, Respondent is prepared to reach a settlement agreement with
25 the PEC on this count.

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AVAILABLE REMEDIES

The PEC's Guidelines

Oakland's Campaign Reform Act authorizes the Commission to impose the following base-level and maximum remedies for the following types of activity:

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Contractor Contribution Prohibition	1	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary settlement payments, the Commission may issue warnings or require other remedial measures.⁸

The PEC will consider all relevant mitigating and aggravating circumstances surrounding the facts of a case when deciding on a settlement agreement, including, but not limited to, the following factors:

1. The seriousness of the activity, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the activity was deliberate, negligent, or inadvertent;
4. Whether the activity was isolated or part of a pattern;

⁸ OMC § 3.12.270(C).

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- 1 5. Whether the respondent has a prior record of violations and/or demonstrated
2 knowledge of the rule or requirement at issue;
- 3 6. The extent to which the respondent voluntarily and quickly took the steps necessary
4 to cure any alleged violation (either independently or after contact from the PEC);
- 5 7. The degree to which the respondent cooperated with the PEC's enforcement activity
6 in a timely manner;
- 7 8. The relative experience of the respondent;
- 8 9. The respondent's ability to pay the contemplated settlement without suffering undue
9 financial hardship. This factor shall not apply to the portion of a settlement that
10 constitutes a repayment or disgorgement of the allegedly unlawful amount, except in
11 cases of extreme financial hardship.

12
13 The PEC has broad discretion in evaluating a case and determining the appropriate
14 settlement based on the totality of circumstances. This list of factors to consider is not an
15 exhaustive list, but rather a sampling of factors that could be considered. There is no
16 requirement or intention that each factor – or any specific number of factors - be present in
17 an enforcement action when determining a settlement. As such, the ability or inability to
18 prove or disprove any factor or group of factors shall in no way restrict the PEC's power to
19 bring an enforcement action or agree to a settlement.

20 21 **ANALYSIS & RECOMMENDATION**

22
23 The circumstances of the Respondent's conduct establish mitigating factors that
24 should be considered.

25 Respondent's contribution was not made with the intention to conceal, deceive, or
26 mislead. The PAC's Statement of Organization did not identify the PAC as a candidate-

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1 controlled committee, nor was Respondent ever otherwise informed that Libby Schaaf (or
2 any other candidate) controlled it.

3 Respondent recognizes the City of Oakland's interest in enforcing its ban on
4 contributions from City contractors. Respondent cooperated fully with the PEC's
5 investigation. Respondent is also cooperating with the PEC in settling this matter without an
6 administrative hearing.

7 For its part, PEC staff believes that a settlement payment in the amount of \$2,500 is
8 appropriate in light of the facts of this case and the purposes of the law. Although he could
9 not have known at the time his contribution was made, the size of Respondent's
10 contribution was relatively small in light of the total amount of funds raised by the campaign
11 committee during the 2020 election. PEC staff also believes it would be unfair to demand a
12 higher settlement payment from Respondent in light of the fact that the information
13 publicly reported by the campaign committee at the time indicated that it was not
14 candidate-controlled. Respondent further consulted legal counsel regarding the making of
15 this contribution as part of his due diligence. The PEC is also pursuing claims against Schaaf
16 and others responsible for the campaign committee who may have caused, aided or abetted
17 the contribution.

18 The situation here is comparable to PEC # 20-41.2, involving a contribution from
19 another City contractor (Lyft, Inc.) to the same campaign committee as in this case. In that
20 case, Lyft had also been largely unaware that the PAC was controlled by a candidate. Lyft
21 agreed to settle for 50% of the value of its contribution (\$100,000). However, unlike in that
22 case, there are further mitigating factors present here: (1) Respondent's contribution was
23 far smaller than Lyft's; (2) Respondent was not aware of facts that should have reasonably
24 given rise to a suspicion that the committee was candidate-controlled to the same degree
25 that Lyft was; and (3) Respondent exercised due diligence in consulting with his legal
26 counsel before making the contribution.

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1 Based on the foregoing, PEC staff and Respondent recommend that the Commission
2 approve their stipulated agreement, consisting of the following:

Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Contractor Contribution Prohibition	William Witte	\$7,500	\$2,500

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