

Proposed Stipulation and Case Summary

1 Kellie F. Johnson
Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza, Rm. 104
3 Oakland, CA 94612
Telephone: (510) 238-4976
4

5 Petitioner

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION

8
9 In the Matter of

) Case No.: 19-24

10 LANE PARTNERS, and
11 ANDREW HAYDEL, PRINCIPAL

) **STIPULATION, DECISION AND
ORDER**

12 Respondent.
13

14
15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
17 respondent LANE PARTNERS, agree as follows:

- 18 1. This Stipulation will be submitted for consideration by the City of Oakland Public
19 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 20 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
21 the final resolution to this matter without the necessity of holding an administrative
22 hearing to determine the liability of Respondents;
- 23 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
24 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
25 Procedures, including, but not limited to, the right to personally appear at an
26 administrative hearing held in this matter, to be represented by an attorney at their own
27 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
28 testify at the hearing, and to have the matter judicially reviewed;

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- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. Respondents violated the Oakland Campaign Reform Act by contributing \$1,000 to
6 *Lynette Gibson-McElhaney Legal Defense Fund* in October 2018 at a time when they
7 were subject to the City's ban on contributions from City contractors to candidates, in
8 violation of Oakland Municipal Code section 3.12.140.
- 9 6. The attached exhibit (Exhibit: Case Summary) is a true and accurate summary of the
10 facts in this matter and is incorporated by reference into this Stipulation;
- 11 7. The Commission will impose upon Respondents a total administrative penalty in the
12 amount of \$5,000;
- 13 8. A cashier's check from Respondents, in said amount, made payable to the "City of
14 Oakland," is submitted with this Stipulation as full payment of the administrative
15 penalty, to be held by the Commission until the Commission issues its decision and
16 order regarding this matter;
- 17 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
18 void, and within fifteen business days after the Commission meeting at which the
19 Stipulation is rejected, all payments tendered by Respondents in connection with this
20 Stipulation will be reimbursed to them; and
- 21 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
22 the Commission becomes necessary, neither any member of the Commission, nor the
23 Executive Director, shall be disqualified because of prior consideration of this
24 Stipulation.

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Dated: _____
Kellie F. Johnson, Enforcement Chief of the City of
Oakland Public Ethics Commission, Petitioner

Dated: _____
Andrew Haydel, on behalf of
Lane Partners, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Lane Partners,” PEC Case No. 19-24, 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.

Dated: _____
James Jackson, Chair
City of Oakland Public Ethics Commission

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INTRODUCTION

In June 2019, Commission Staff initiated a pro-active investigation after Andrew Haydel's lawyer called to report that Haydel, a commercial real-estate investor and principal at Lane Partners LLC, "may have made a contribution" to an Oakland political candidate's defense fund during a time when he and Lane Partners, a City contractor, was subject to the contractor campaign contribution ban.

Between 2016-2018, Lane Partners was involved with several different development projects with the City of Oakland. One such project was the Eastline project.

PROCEDURAL FACTS:

The Respondent and Staff reached a settlement agreement in February 2020. Staff prepared a Stipulation recommending that the Public Ethics Commission (PEC) impose a penalty of \$2,000. In the Matter of Haydel was scheduled on the PEC's March 2020, Agenda. At the PEC's March meeting, the Commissioners rejected the recommended penalty of \$2,000 and instead informed the Respondent that a \$5,000 penalty was a more appropriate penalty based on the facts and experience of the Respondent. The PEC instructed Staff to renegotiate the Stipulation with a penalty of \$5,000. Staff reached out to the Respondent who initially agreed to sign a revised Stipulation and pay the increased penalty of \$5,000.

Between late March 2020 and September 2020, the City of Oakland, because of a national declaration of a pandemic, shut down in person services offered by the City and an Emergency City Operation Provision was enacted. The October 2020, PEC meeting was the first opportunity, after the imposition of the Emergency Order, that the Respondent was able to appear to resolve the outstanding PEC matter. The Respondent intends to appear before the PEC, not to dispute the underlying facts of the Campaign Finance Violation but to request that the PEC reconsider the imposition of a \$5,000 penalty. In the event the PEC does not reconsider the imposition of a \$5,000 penalty, the Respondent will submit this signed revised Stipulation and pay the imposed penalty of \$5,000.

STATEMENT OF FACTS

1. Eastline, located at 2100 Telegraph

Eastline was a City-owned property located at 2100 Telegraph Avenue. The property contained a public parking garage.

On March 26, 2015, the City Council voted to authorize an Exclusive Negotiating Agreement ("ENA") between the City and an entity called TB2 Retail Complex, LLC ("TB2") for the development of a mixed-use residential/retail project at the site. The ENA envisioned either a sale or long-term lease of the property to TB2.

Separately, two other private entities -- Lane Partners and Walton Street Capital -- had been acquiring other privately-owned properties that shared the same block as 2100 Telegraph. Those

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entities eventually approached TB2 with a proposal to change the envisioned project at 2100 Telegraph into a larger office/retail complex, with possible residential units being added in a second phase. The new project would encompass the entire block, effectively merging the City-owned property at 2100 Telegraph (which TB2 was currently trying to acquire under the ENA with the City) with the adjacent properties owned by Lane Partners and Walton Street Capital. The plan called for TB2, Lane Partners, and Walton Street Capital to form a joint venture called W/L Telegraph Owner, LLC (“W/L”) for purposes of developing the project.¹

In order to make the new project a reality, TB2’s ENA with the City would need to be reassigned to the new entity, W/L. In November 2015, TB2 submitted a request to the City an assignment of the ENA from TB2 to W/L. That reassignment was approved by the City Council’s Community and Economic Development Committee by unanimous vote on June 28, 2016, and via consent calendar by the full City Council on July 5, 2016.

On July 9, 2019, the final terms of the ENA came before the City Council for a vote. The basic terms of the ENA were that W/L would acquire the property from the City for the fair market value of \$28 million, for purposes of constructing an office tower. W/L had earlier worked out an agreement with Kaiser Permanente, whereby Kaiser would become the anchor tenant of the building (assuming Council approved the sale); Kaiser would then probably purchase the property from W/L, and W/L would continue to oversee construction.

At the Council meeting, Andrew Haydel spoke during public comment in favor of the sale, and also (by request of Council) returned to the podium during Council discussion to answer a Councilmember’s question regarding parking impacts of the project (*see* 6:22:00 of the Council meeting video). The Council voted to approve the deal on first reading (6-0-2; Kaplan and Fortunato Bas abstaining).

On July 16, 2019, a second reading of the proposed agreement took place at the Council (with some portions of the accompany staff report amended, correcting earlier projected tax revenue from the project). Andrew Haydel again spoke in favor of the project during public comment. A public speaker from the main behind-the-scenes developer of the project, SUDA, also thanked Councilmember McElhaney for her help in moving the project along early on when “technical” problems were arising. The item passed via consent agenda

The main negotiators on the project with the City have been Alan Dones and Regina Davis of SUDA, and that Haydel has been the main negotiator for Lane Partners. Scott Smithers of Lane Partners also occasionally took part. Their legal representatives were from Wendell, Rosen, Black and Dean.

SUMMARY OF THE LAW:

Under the 2014 Oakland Campaign Reform Act (OCRA):

“no person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, for selling or leasing any land or building to the City, or for purchasing or leasing any land or building from the City, whenever the value of such

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transaction would require approval by the City Council shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such elected City Official or candidate at any time between¹ commencement of negotiations and one hundred eighty (180) days after the completion of the termination of negotiations for such contract.”²

Pursuant to the 2014 Oakland Campaign Reform Act O.M.C. 3.12.420 a person is defined as, an individual, proprietorship, joint venture, syndicate, business, trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

VIOLATION

Count 1: Making an Unlawful Contractor Contribution During a Prohibited Period

Here, the contract for the Eastline project falls within the contractor contribution ban because it was a contract for the sale /development of land owned by the City, the value of which required a City Council vote. Lane Partners was the counterparty to that contract, and as such was subject to OCRA’s ban on contributions to candidates, their committees and/or defense funds from City contractors.

The blackout period for 11 West Partners began as early as on November 2015, when Lane Partners entered into a reassignment with TB2’s ENA with the City to form a new entity, W/L. In November 2015, TB2 submitted a request to the City an assignment of the ENA from TB2 to W/L., and continued through July 9, 2019, When the City voted to approve the final terms of the ENA.

Lane Partners contributed \$1,000 in its own name to *Lynette Gibson-McElhaney’s Defense Fund*, the controlled defense fund of an elected official, on October 21, 2018, which was within the blackout period. Because Lane Partners was a City contractor, it therefore contributed \$1,000 to *McElhaney’s Defense Fund* in violation of the contractor contribution ban.

Date Rec’d	Contributor	Candidate/Elected Official	Amount
10/21/2018	Lane Partners	Lynette Gibson McElhaney’s Defense Fund	\$1,000

¹ The project is referred to as the “Eastline project”; see <http://www.eastline-oakland.com/> (accessed April 30, 2019).

² OMC § 3.12.140 (A).

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CONCLUSION

According to the Enforcement Division's penalty guidelines, the baseline penalty for a violation of the contractor contribution ban is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contribution is \$1,000, which brings the baseline penalty to \$2,000.

In determining an appropriate final penalty amount, the PEC may consider the following aggravating and mitigating factors:

1. The seriousness of the violation, 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 violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

Here, Commission staff originally recommended the baseline fine of \$2,000. While the violation is mitigated by the fact that the Respondent contacted the PEC to self-report the violation, and the making of the contribution during the contractor ban period appears to be negligent in that respondent was not aware of the rule and had no prior record of such violations, a contribution of \$1,000 is not excessive (considering there are no limits on contributions to legal defense funds) but also not insignificant and was made during the time in which the respondent was seeking Council action. Therefore, the baseline fine is appropriate and should not be adjusted in either direction. The seriousness of the harm caused by both of these violations was minimal. The amount unlawfully contributed by Lane Partners was nominal compared to other donations they had given in the past to other candidates.

There was no evidence here of any intention to conceal, deceive, or mislead. Although it appeared the Respondent may have been prompted by a news article that discussed unlawful campaign contributions, the Respondent did contact the PEC to self-report the violation. Lane Partners has no previous history of violating this provision of OCRA.

The PEC, however, modified the penalty amount, see the revised recommendation below.

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REVISED RECOMMENDATION

In March 2020, Staff presented this Stipulation with a recommendation of \$2,000. The PEC rejected the recommendation of a penalty of \$2,000 and instead directed Staff to renegotiate the Stipulation with the imposition of a \$5,000 penalty. Pursuant to the PEC's directive, Staff has revised its penalty recommendation to reflect the PEC's preference of a \$5,000 penalty.

PROPOSED PENALTY

Pursuant to the directive of the PEC, Staff is recommending that the Commission impose a \$5,000 penalty.

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CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • CITY HALL • 1ST FLOOR, #104 • OAKLAND • CA 94612

Public Ethics Commission
Enforcement Unit

(510) 238-3593
FAX (510) 238-3315
TDD (510) 238-3254

March 10, 2020

To: Andrew Haydel
Client of: Zack Wasserman

Re: PEC Case No. 19-24; Warning Letter

Dear Mr. Haydel:

The City of Oakland Public Ethics Commission (PEC) enforces the Oakland Campaign Reform Act (OCRA). Under OCRA, any person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City is prohibited from making any contribution to a Mayor, a City Council Member or a candidate for City Council or any other designated public official, or committee controlled by such elected City Official or candidate at any time between commencement of negotiations and one hundred eighty (180) days after the completion of the termination of negotiations for such contract.

Your attorney brought to the attention of the PEC that Lane Partners, a real estate development company, of which you are the principal, made a \$1,000 contribution to Oakland City Councilmember Lynette Gibson-McElhaney's legal defense fund on October 21, 2018, at a time when Lane Partners was in active contract negotiations with the City of Oakland for the sale of City property, the East-line Project. That contribution was in violation of O.M.C. § 3.12.140 (A).

For this violation of the contribution limit, the PEC accepted the proposed Stipulation of Resolution but rejected the penalty amount of \$2,000. Instead, based on aggravating factors, the PEC directed staff to pursue a fine of \$5,000. Further, the PEC issued this warning letter to educate you on the relevant contractor ordinance and provide an opportunity for you to make changes to your organization's contribution practices.

In the future, you are warned to refrain from making contributions to elected officials or their controlled committees, including legal defense funds, if and when you commence

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contract negotiations with the City of Oakland or one hundred eighty (180) days after the completion of the termination of negotiations for such a contract.

Please let me know if I can assist you in better understanding Oakland ethics laws. If you would like further information or have additional information regarding this matter, you can reach me at (510) 238-4976 or KJohnson3@oaklandca.gov.

Sincerely,

Kellie F. Johnson
Enforcement Chief
City of Oakland Public Ethics Commission