

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest  
(916) 322-5662                      322-5660                      322-5901                      322-6441                      322-6444

January 31, 1985

Charles D. Haughton  
City Attorney  
City of Beverly Hills  
450 North Crescent Drive  
Beverly Hills, CA 90210

Re: Your Request for Advice  
Our No. A-84-327

Dear Mr. Haughton:

Thank you for your request for advice on behalf of Councilmember Donna Ellman concerning her obligations under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

### QUESTION

May Councilmember Ellman participate in the City Council's decision on an application for revision of a subdivision map for a condominium subdivision project in view of her ownership of a condominium unit in the project?

### CONCLUSION

Based on the facts presented and your opinion as City Attorney on the effects of the decision, it appears reasonably foreseeable that the decision on the subdivision map will have a material financial effect on the fair market value of Councilmember Ellman's condominium unit. Therefore she may not participate in the Council decision.

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<sup>1/</sup> The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code.

### FACTS

In 1979, a final subdivision map was recorded for a 128-unit condominium subdivision project at 300 North Swall Drive in Beverly Hills. The developer constructed Phase I of the project consisting of 64 units in two structures and proceeded to sell all of the units. Application has been submitted by the developer for revision of the existing map. In the revision, the developer proposes that the Phase II project be increased from 64 units in two structures to 107 units in two structures of equal size. Under the revision, the condominium units will be substantially smaller than the units in Phase I and will be sold at a lower price. In addition, the developer proposes to design and construct a meeting and recreation room in the Phase II project for the exclusive use of the Homeowner's Association. The application for revision of the subdivision map was denied by the Planning Commission, and the developer is expected to file an appeal with the City Council.

In 1983, Councilmember Ellman purchased Unit #105 in Phase I of the development project and currently resides in the project.

### DISCUSSION

As you know, a public official is prohibited from making, participating in, or attempting to use her official position to influence a governmental decision in which she has a financial interest in the outcome. Section 87100. An official has a financial interest in the outcome of a governmental decision when it is reasonably foreseeable that the decision will have a material financial effect on, among other interests, an interest in real property worth \$1,000 or more. Section 87103(b). Councilmember Ellman's interest in her condominium unit is an interest in real property within the meaning of the Act and undoubtedly worth more than \$1,000. Accordingly, she must refrain from participating in any City Council decisions which could materially affect the value of her condominium.<sup>2/</sup>

In your letter, you stated that you have initially advised Councilmember Ellman that she should not participate in the

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<sup>2/</sup> Regulation 2 Cal. Adm. Code Section 18702 provides monetary guidelines for determining materiality. In the case of an interest in real property, an effect of one-half of 1 percent of the property's fair market value is generally considered material.

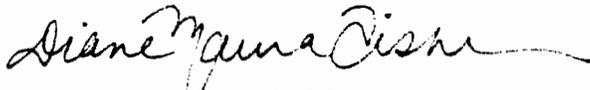
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Council decision on the appeal based on her ownership of the condominium in the project. In our telephone conversation, you stated that the proposed revision of the project is likely to reduce the value of the condominiums in Phase I. You based your opinion on the fact that, under the proposal, the condominiums in Phase II will be greater in number and substantially smaller than was originally approved. You noted this would significantly affect the marketability and value of the condominium units in Phase I. Based on all of the facts, we concur with your analysis. We also agree that Councilmember Ellman must disqualify herself from any form of participation in the decision except that permitted to her under 2 Cal. Adm. Code Section 18700(d)(2) and (f)(1) (copy enclosed). That is to say she may appear before the City Council to represent solely her own interest and point of view as a resident of the condominium project. However, she may not speak as a representative of anyone else's interests.

You also raised a question concerning Councilmember Ellman's participation in the matter if there is a tie vote on the appeal. Section 87101 provides that an official who is otherwise disqualified from participation in a decision under Section 87100 may participate to the extent that her participation is "legally required" for the decision to be made. See also 2 Cal. Adm. Code Section 18701 (copy enclosed). However, Section 87101 also specifically provides that the fact that an official's vote is needed to break a tie does not make her participation legally required. Accordingly, Councilmember Ellman may not participate to break a tie vote on the decision by the City Council on the appeal.

Please feel free to contact me if I can be of further assistance.

Sincerely,

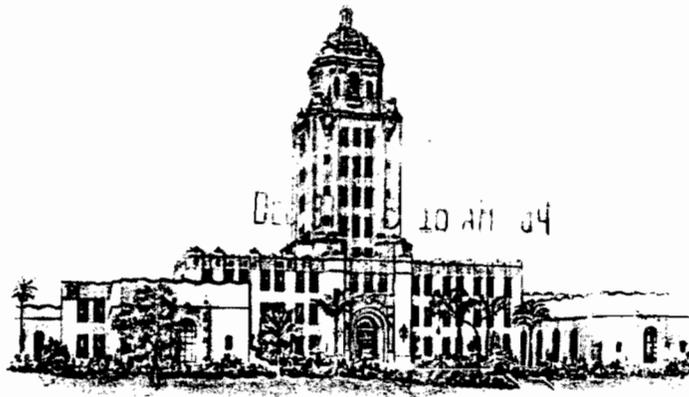


Diane Maura Fishburn  
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DMF:plh  
Enclosures

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## CITY OF BEVERLY HILLS

450 NORTH CRESCENT DRIVE  
BEVERLY HILLS, CALIFORNIA 90210

(213) 550-4877

December 27, 1984

Barbara A. Milman  
General Counsel  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

Re: Advice Letter

Dear Ms. Milman:

On behalf of Councilmember Donna Ellman this office requests your advice letter as to whether or not Councilmember Ellman has a conflict of interest if she votes or participates in the decision-making process on any matters concerning a proposed condominium subdivision, and if a conflict exists, under what circumstances she could vote or participate.

### The Project

In 1979, a final subdivision map was recorded for a 128 unit condominium subdivision project at 300 North Swall Drive. The developer constructed Phase I of the project consisting of 64 units in two structures and proceeded to sell the units.

An application has been submitted by the developer for revision of the existing map. The revision proposes that the Phase II project be increased from 64 units in two structures to 107 units in two structures of equal size.

The application for revision of the subdivision map was denied by the Planning Commission and the developer is expected to file an appeal with the City Council.

### Councilmember Ellman

In 1983, Councilmember Ellman purchased Unit #105 in Phase I of the development at 300 North Swall Drive and currently resides in the project.

Councilmember Ellman also advises that the developer has represented to the owners of Phase I that it will design and construct for the exclusive use of the Homeowner's Association a meeting and recreation room in the Phase II project.

#### Conflict

We have advised Councilmember Ellman that it is our initial opinion that her ownership of a unit in the project alone is sufficient to disqualify her from voting or participating in the decision-making process on any matters concerning the application for revision of the subdivision map.

Councilmember Ellman has also requested that we seek your advice on her disqualification if, at the time of the vote on the application for revision, there is a tie vote. Our initial advice on this matter is that she would still be disqualified since her vote is not legally required because a quorum still exists for consideration of this matter and a tie vote sustains the action of the Planning Commission denying the application.

Should additional information be needed to render your advice, please contact me.

Very truly yours,



CHARLES D. HAUGHTON  
City Attorney

CDH:md

cc: Councilmember Ellman