

April 13, 2012

Councilman Rudy Ramirez  
276 Fourth Avenue  
Chula Vista, CA 91910

Re: Your Request for Advice  
**Our file No. A-12-023**

Dear Mr. Ramirez:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> There are other bodies of law, separate and apart from the Act’s conflict-of-interest provisions that may apply to your situation. We urge you to check with the City Attorney’s office to determine whether any other laws are applicable in light of the facts you present.

### **QUESTION**

Does the Act prohibit you from participating in city council decisions regarding proposed amendments to the Chula Vista Mobilehome Housing Assistance Ordinance (the “Relocation Ordinance”) where you own a residence within 500 feet of a mobile home park?

### **CONCLUSION**

Yes. You will have a disqualifying conflict of interest in city decisions regarding the Relocation Ordinance if the decision would have even a one-penny effect upon your real property that is located within 500 feet of property that is involved in the decision. Also, the “public generally” exception will not apply unless the effect on your property is not distinguishable from 10-percent or more of all property owners or all residential property owners in the city.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS

You are a Chula Vista City Councilmember and have asked about the city council's consideration of amendments to the Relocation Ordinance. The Relocation Ordinance, which appears in Section 9.40 of the Municipal Code, implements state requirements<sup>2</sup> for changing the use, closure, or conversion of mobile home parks. Mobile park owners are required to prepare a mitigation report and may be required to take actions to mitigate the effects of the change in use, closure or conversion. Mitigation actions commonly include paying the costs of relocation or, if the mobile home cannot be moved, paying the value of the mobile home.

The Relocation Ordinance had not been updated for over a decade. As a result, city staff prepared an amendment to update the ordinance. The proposed amendment generally seeks to increase the amounts payable for relocation assistance to reflect current costs, provide for earlier notice of any proposed closure, and streamline the appeals process by removing an appeal to the Development Services Department and have the appeal go directly to the City Council.

The Relocation Ordinance only addresses the impact report and attendant steps to mitigate. If the park owner seeks a change of use, with or without a zoning change, separate actions by the park owner would have to be taken. Those actions are addressed by a separate municipal code section and state law requirements. The proposed amendments do not involve those additional requirements.

Changes to the Relocation Ordinance, together with a recent action by the city council to institute vacancy decontrol in the city's mobile home parks (a decision from which you recused yourself), have and will significantly increase the value of the city's mobile home parks. The changes will increase the likelihood that parks will be redeveloped for higher land uses and this increase could affect property values in the surrounding neighborhoods now and in the future.

Your residence is located within 500 feet of a mobile home park. There are 31 mobile home parks in the city, with about 3500 spaces for mobile homes (including trailers) within these parks. Approximately 100 homes immediately surround each park. There are 59,495 housing units in the city, of which 24,558 are renter-occupied and 33,147 are owner-occupied.

## ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Specifically, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

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<sup>2</sup> Government Code §§65863.7 and 66427.4.

The Commission has adopted an eight-step standard analysis to decide whether an official has a disqualifying conflict of interest. (Regulation 18700(b)(1)-(8).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her financial interests. (Section 87103.)

**Steps One and Two: Are you a “public official” within the meaning of Section 87100 and will you be making, participating in making or influencing a governmental decision?**

As a Chula Vista city councilmember, you are a public official under the Act. (Sections 87200 and 82048.)

You wish to vote and participate in city council decisions regarding the Relocation Ordinance. By voting on or participating in these decisions, you will be making, participating in making, or otherwise using your official position to influence a governmental decision.

**Step Three: Do you have a financial interest in the decisions at issue?**

A public official has a financial interest in a decision within the meaning of Section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, on any one of five enumerated economic interests. (Section 87103; Regulations 18703-18703.5.). There are two economic interests applicable to your facts.

**Real Property** - An interest in real property in which a public official has a direct or indirect interest of \$2,000 or more. (Section 87103(b), Regulation 18703.2.)

As the owner of your residence, you have an economic interest in real property. While you have not stated the property's worth, you presumably have an interest of at least \$2,000 in the property. (Section 87103.) Consequently, you may not make, participate in making or in any way attempt to use your official position to influence a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on your real property.

**Personal Finances** - Under the “personal financial effects” rule, a public official always has an economic interest in his or her personal expenses, income, assets, or liabilities, as well those of his or her immediate family. (Section 87103, Regulation 18703.5.)

Even though a public official is considered to always have an economic interest in his or her personal finances, the financial effect on the value of real property owned directly or indirectly is not considered to be a separate financial effect on the official's personal finances and would not be analyzed separately under the “personal financial effects” rule. (Regulation 18705.5(a).) Accordingly, the personal financial effects rule does not appear to apply to your circumstances and we will not discuss it further.

**Step Four: Is your economic interest directly or indirectly involved in the governmental decision?**

For governmental decisions that affect real property, the standards set forth in Regulation 18704.2 apply. (Regulation 18704(a)(2).) Real property in which a public official has an economic interest is directly involved in the governmental decision if it meets the standards in Regulation 18704.2(a)(1). The standard pertinent to your advice is real property that is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision.

Your real property is located within 500 feet of a mobile home park that is the subject of decisions regarding the Relocation Ordinance. Accordingly, your real property is directly involved, unless an exception applies.

There is one exception to the general rule suggested by your facts. A public official's real property is not directly involved if the decision solely concerns the amendment of an "existing zoning ordinance" and is applicable to "all other properties designated in that category." (Regulation 18704.2(b)(1).) You state that the amended ordinance will only address impact reports and attendant steps to mitigate. If a park owner seeks a change of use, with or without a zoning change, separate actions by the park owner would have to be taken. The decisions you have identified do not involve a zoning ordinance, and, therefore, the zoning exception does not apply. Because no other exception in Regulation 18704.2(b) applies, your real property is deemed directly involved in decisions regarding the Relocation Ordinance.

**Steps Five and Six: Materiality standard and whether it is reasonably foreseeable that the decision will have a material financial impact on your property interest.**

A conflict of interest may arise only when the reasonably foreseeable impact of a governmental decision on a public official's economic interest is material. (Regulation 18700(a).) An effect upon economic interests is considered "reasonably foreseeable" if there is a substantial likelihood that it will occur. (Regulation 18706(a).) A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made depends on the facts surrounding the decision.

For real property directly involved in a governmental decision, *any* financial effect is presumed to be material. (Regulation 18705.2(a)(1).) This is known as the "one penny" rule. The presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have *any* financial effect on the real property. (Ibid.)]

You state that the proposed amendments to the Relocation Ordinance will significantly increase the value of mobile home parks as well as the likelihood that the parks will be

redeveloped for higher land uses. You also indicate that this, in turn, *could* affect property values in the surrounding neighborhoods, including your home. As stated above, the Commission does not act as a finder of fact in providing advice. Therefore, the foreseeability of a particular financial effect is a determination that must be left, in most instances, to the informed judgment of the public official. If you determine that the reasonably foreseeable financial effect of the city council decisions will have an effect of at least “one penny” on your real property, you would have a disqualifying conflict of interest.

### **Step Seven: Does the “Public Generally” Exception Apply?**

Despite a conflict, you may participate in the decisions if the requirements of the public generally exception under Regulation 18707.1 are met. For the basic rule, Regulation 18707(b) provides:

“Steps to Determine Application of Public Generally. To determine if the effect of a decision is not distinguishable from the effect on the public generally as set forth in subdivision (a) of this regulation, apply Steps One through Four:

“(1) Step One: Identify each specific person or real property (economic interest) that is materially affected by the governmental decision.”

Your real property will be materially affected by city council decisions regarding the Relocation Ordinance.

“(2) Step Two: For each person or real property identified in Step One, determine the applicable ‘significant segment’ rule according to the provisions of 2 Cal. Code Regs. Section 18707.1(b).”

For decisions that affect a public official’s real property, “significant segment” is defined as 10-percent or more of all property owners or all residential property owners in the jurisdiction. (Regulation 18707.1(b)(1)(B).)

“(3) Step Three: Determine if the significant segment is affected by the governmental decision as set forth in the applicable ‘significant segment’ rule. If the answer is “no,” then the analysis ends because the first prong of a two-part test set forth in 2 Cal. Code Regs. Section 18707.1(b) is not met, and the public official cannot participate in the governmental decision. If the answer is ‘yes,’ proceed to Step Four.”

You have provided information regarding the number of housing units in the city (59,495), as well as the number that are owner-occupied (33,147) and renter-occupied (24,558). You have also indicated that there are approximately 3,315 homes immediately surrounding the city’s 31 mobile home parks. However, under Regulation 18707.5(b)(1) which defines “significant segment,” we must determine whether 10-percent or more of all *property owners* or all *residential property owners* in the city or 5,000 or more of *property owners* or *residential*

*property owners* will be affected by the proposed decisions. Without this information we are unable to determine whether the public generally exception applies to your circumstances.<sup>3</sup>

**Step Eight: If you have a conflict of interest in a decision, may you nevertheless participate because your participation is legally required?**

Section 87101 (Regulation 18708) provides an exception under which a public official who has a conflict of interest in a governmental decision may nevertheless participate. You have not provided facts indicating that this exception is applicable to your situation.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl

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<sup>3</sup> We note that we have requested this information twice and, in both of your replies, the information was not provided. If you are able to obtain this information, you may wish to write in again so that we can provide further advice in this matter.