

April 17, 2012

Joseph A. Medrano  
Vice Mayor, City of Clayton  
807 Savignon Ct.  
Clayton, CA 94517

Re: Your Request for Advice  
**Our File No. A-12-048**

Dear Mr. Medrano:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) In addition, our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest.

### **QUESTION**

Do you have a conflict of interest that would prohibit you from participating in decisions regarding a city project that is less than 500 feet from your home that you rent?

### **CONCLUSION**

No. You do not have a cognizable economic interest under the Act because you rent your home on a month-to-month tenancy.

### **FACTS**

You are a City Councilman with the City of Clayton. You rent your primary residence on a month-to-month tenancy. The City of Clayton will be considering a project within the city limits that will be within 500 feet of the home you rent.

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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.

## ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in any given governmental decision.

### **Steps One and Two: Are you a Public Official Making, Participating in Making, or Influencing Governmental Decisions?**

The Act’s conflict-of-interest provisions apply only to “public officials.” (Sections 87100, 87103; Regulation 18700(b)(1).) A “public official” is “every member, officer, employee or consultant of a state or local government agency....” (Section 82048.) As a member of the Clayton City Council, you are a public official under the Act.

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant intervening substantive review, the official negotiates, advises, or makes recommendations to the decision-maker regarding the governmental decision. (Regulation 18702.2.) A public official is attempting to use his or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. (Regulation 18702.3.) You have not referred to a particular governmental decision, but have stated that you will make governmental decisions about the project that the city will consider. In so doing, you would be making governmental decisions relating to this project.

### **Step Three: What are Your Economic Interests?**

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, or on any one of five enumerated economic interests. (Section 87103; Regulations 18703-18703.5.)

The applicable economic interests include:

- An interest in a business entity in which a public official has a direct or indirect investment of \$2,000 or more. (Section 87103(a), Regulation 18703.1(a).)

- An interest in any business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d), Regulation 18703.1(b).)
- 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.)
- Any source of income, including promised income, to the public official that aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c), Regulation 18703.3.)
- Any source of gifts to the public official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e), Regulation 18703.4.)
- A public official also has an economic interest in his or her personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. This is also known as the “personal financial effects” rule. (Section 87103, Regulation 18703.5.)

The only potential economic interest in which we have information is your rental home. Section 82033 provides that an “interest in real property” includes any leasehold, beneficial, or ownership interest in real property located in the jurisdiction that the public official owns directly, indirectly, or beneficially if the fair market value of the interest is \$1,000 or more. This interest does not include a month-to-month tenancy. (Regulation 18233.) You therefore do not have a “real property” interest under the Act.

A public official also has an interest in his or her personal finances. (Section 87103; Regulation 18703.5). You have not provided any facts suggesting that the project will affect the amount of rent you pay or have any other effect on your personal finances. We therefore do not analyze this effect, but raise it for your information.

You have not provided information regarding any other economic interest, and we therefore conclude our analysis at this point, finding that you will not have a conflict of interest in governmental decisions relating to this project.<sup>2</sup>

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<sup>2</sup> Regulation 18705.5, involving a public official’s personal finances, states that where the decision does not involve appointing, hiring, firing, promoting, demoting, suspending without pay or otherwise taking disciplinary action with financial sanction against the official or a member of his or her immediate family or setting a salary for the official or his or her immediate family, there is no presumption of materiality. Because these decisions are not implicated, this regulation does not apply.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl