



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 8, 2015

Michael Hansen  
602 W First, Unit 106  
San Diego, CA 92101

Re: Your Request for Advice  
**Our File No. A-15-172**

Dear Mr. Hansen:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

### **FACTS**

You are currently an employee of the City of San Diego and subject to the Act as a policy advisor to the Mayor of San Diego with the title of Director of Land Use and Environmental Policy. You recently received a notice of a proposed action of Civic San Diego (“CivicSD”) on an application for a Process Two Neighborhood Use Permit No. 2015-41. This permit is for an expansion of a previously conforming structure and rooftop outdoor use area associated with an eating and drinking establishment. The project is located at 1909 India Street, which is immediately adjacent to your primary residence in Downtown San Diego. You have a leasehold interest in this property.

CivicSD is a non-profit public benefit corporation wholly owned by the City of San Diego. CivicSD carries out certain land use permitting functions for Downtown San Diego under consulting agreements with the City. In your capacity as a policy advisor to the Mayor, you routinely work on CivicSD issues. CivicSD’s decision-making body is a Board of Directors appointed by the Mayor and City Council. The proposed action is a staff decision without a public hearing, but is appealable to the Board of Directors.

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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

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that “[p]ublic officials, whether elected or appointed, 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).) In furtherance of this goal, Section 87100 of the Act prohibits a 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.

Your question concerns an exception to the conflict of interest rules set forth in Regulation 18704. Regulation 18704(d) provides:

“Making, participating in, or influencing a governmental decision does not include:

“(2) Appearances as a Member of the General Public. An appearance by a public official as a member of the general public before an agency in the course of its prescribed governmental function if the official is appearing on matters related solely to the his or her personal interests, including interests in:

“(A) Real property owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family;

“(B) A business entity owned entirely by the official, members of his or her immediate family, or the official and members of his or her immediate family;  
or

“(C) A business entity over which the official, members of his or her immediate family, or the official and members of his or her immediate family solely or jointly exercise full direction and control.”

*1. May you address the staff of Civic San Diego, Civic San Diego Board of Directors, and the City of San Diego City Council as a private citizen regarding a proposed outdoor bar and restaurant immediately abutting your primary residence?*

As noted above, the Act does not prohibit public officials from representing their personal interests in their private capacity. Even if a conflict of interest is present, a public official may appear before his or her agency as any other member of the general public in the course of its prescribed governmental function in order to represent himself or herself on matters related solely to his or her personal interest, including an interest in real property which is wholly owned by the official or members of his or her immediate family. Such an appearance, properly made, does not constitute making, participating in making, or influencing a governmental decision.

While not explicitly listed in the examples in the regulation, we conclude this exception would also apply to your leasehold interest in your primary residence. “Real property” includes leaseholds of more than a month-to-month basis. (Section 82033; Regulation 18233.)

Under this exception, however, you must limit your comments to your personal interests and make clear that you are not speaking in the interest of any other person or group, or acting in your official capacity. (*Mitchell* Advice Letter, No. A-12-011.) Similarly, you may not discuss the decision with other officials outside of public comments made at any public meetings.

*2. May your boyfriend, who has no association with the City of San Diego or Civic San Diego, express his views regarding the proposed project to the same parties?*

The Act's conflict of interest rules only apply to "public officials." A "public official" is defined as every member, officer, employee, or consultant of a state or local government agency. (Section 82048.) Assuming your boyfriend is not a public official, the conflict of interest rules would not apply to him.

*3. May either of you engage professional consultants to advocate for your interests as private citizens, such as noise experts or government affairs consultants?*

Within the limitations set forth in Regulation 18704(d)(2), you may appear in the same manner as any other member of the public. Thus, if public members can appear with experts, you may as well. Or you may consult experts outside of the public meeting in preparation of your comments. With respect to your boyfriend, since he is not a public official, his conduct is not limited by the Act.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl